

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

FAO.No. 389 of 2012 ()

AGAINST THE JUDGMENT IN OS 165/2011 of SUB COURT, PALA
DATED 10-08-2012

APPELLANTS/PLAINTIFFS:

1. KASTHURI RAJAN AGED 56 YEARS
W/O.LATE RAJAN ACHARI, HARI NIVAS HOUSE
PONKUNNAM P.O., CHIRAKKADAVU VILLAGE
KAJIRAPPALLY TALUK.

2. GIRISH M.R. AGED 27 YEARS
S/O.LATE RAJAN ACHARI, HARI NIVAS HOUSE
PONKUNNAM P.O., CHIRAKKADAVU VILLAGE
KANJIRAPPALLY TALUK.

BY ADVS.SRI.LIJI.J.VADAKEDOM
SMT.REXY ELIZABETH THOMAS

RESPONDENTS/DEFENDANTS:

1. PONNAMMAL, AGED 67 YEARS
D/O.LAKSHMIKUTTYAMMAL
RESIDING AT THAVANAPLACKAL HOUSE, KAVUMBHAGOM P.O.
CHERUVALLY VILLAGE, KANJIRAPPALLY TALUK-686519.

2. GOPALAKRISHNAN @ VIJAYAN, AGED 62 YEARS
S/O.LEKSHMIKUTTYAMMAL
RESIDING AT THAVANAPLACKAL HOUSE, KAVUMBHAGOM P.O.
CHERUVALLY VILLAGE, KANJIRAPPALLY TALUK-686519.

3. MOHANAN @ KUTTAI, AGED 57 YEARS
S/O.LEKSHMIKUTTYAMMAL
RESIDING AT THAVANAPLACKAL HOUSE, KAVUMBHAGOM P.O.
CHERUVALLY VILLAGE, KANJIRAPPALLY TALUK-686519.

4. SURESH BABU, AGED 52 YEARS
S/O.LEKSHMIKUTTYAMMAL
EARLIER RESIDING AT THAVANAPLACKAL HOUSE
KAVUMBHAGOM P.O., CHERUVALLY VILLAGE
KANJIRAPPALLY TALUK, RESEARCH OFFICER
DISTRICT PLANNING OFFICE
THIRUVANANTHAPURAM NOW RESIDING FOR RENT
AT MALAYANNOOR HOUSE
C/O.M.D.BABY, MULAYANNOOR HOUSE, MANJAPPALLUKUNNU
PONKUNNAM P.O., CHIRAKKADAVU VILLAGE
KANJIRAPPALLY TALUK-686506.

5. RANI SURESH, AGED 47 YEARS
W/O.SURESH BABU
EARLIER RESIDING AT THAVANAPLACKAL HOUSE
KAVUMBHAGOM P.O., CHERUVALLY VILLAGE
KANJITAPPALLY TALUK
NOW RESIDING FOR RENT AT MALAYANNOOR HOUSE
C/O.M.D.BABY, MULAYANNOOR HOUSE, MANJAPPALLUKUNNU
PONKUNNAM P.O., CHIRAKKADAVU VILLAGE
KANJIRAPPALLY TALUK-686506.

6. THE KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.
HEAD OFFICE, KOTTAYAM-1
REPRESENTED BY ITS GENERAL MANAGER-686001.

R6 BY ADV. SRI.SUNIL CYRIAC,SC,DIST.CO-OP,BANK,KTM
R1-R5 BY ADV. SRI.SERGI JOSEPH THOMAS

THIS FIRST APPEAL FROM ORDERS HAVING BEEN RESERVED ON 30.06.2015 AND
FINALLY HEARD ON 08.07.2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

“CR”

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.389 of 2012

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Dated this the 8th day of July, 2015

JUDGMENT

Sunil Thomas, J.

The plaintiffs in O.S.No.165 of 2011 of the Sub Court, Pala, aggrieved by the finding in issue No.1 and the order returning the plaint to be presented before the proper court having jurisdiction has preferred this appeal.

2. The plaintiffs are legal representatives of one Rajan Achari. Defendants 1 to 4 are the legal representatives of one Lakshmikutty Ammal. Both the predecessors stood as sureties to the 5th defendant, for availing a loan from the 6th defendant, Kottayam District Co-operative Bank. The 5th defendant committed default in repayment of loan, whereupon proceedings were initiated by the Co-operative Society before the Registrar of the Co-operative Societies and obtained an arbitration award. During the pendency of the execution proceedings, predecessors of the plaintiffs as well as that of defendants 1 to 4 died and their legal representatives stepped into the shoes.

3. Since the property belonging to the plaintiffs were proceeded against, under a threat of sale, plaintiffs discharged the liability due to the bank. Thereafter, the present suit was filed by the plaintiffs to recover one half of the said amount due from legal representatives of the co-surety, invoking Sec.146 of the Indian Contract Act.

4. In the written statement filed by defendants 1 to 4, they set up a contention that the civil suit was not maintainable and an arbitration proceeding under the Kerala Co-operative Societies Act, 1969 alone was sustainable. It was contended that Sec.69 of the Kerala Co-operative Societies Act would operate as a bar. Learned Sub Judge raised a preliminary issue and after hearing both sides, held that in the light of Section 69 and Section 100 of the Kerala Co-operative Societies Act, the suit was not maintainable. Plaint was ordered to be returned for presentation before the proper court.

5. The above judgment is under challenge in this appeal. Heard both sides and examined the records.

6. The suit is one instituted by the legal representatives of one co-surety, as against another co-surety through his legal

representatives. The principal debtor is the fifth defendant. The contention of the defendants was that the suit falls within the ambit of Section 69(2)(b) of the Kerala Co-operative Societies Act and hence, hit by Section 100 of the said Act. Section 69 provides that a dispute between the persons mentioned in the Section or such person with the Society or between the Societies shall be adjudicated by the authorities mentioned therein. In the case of certain category of disputes, authority vests with the Co-operative Arbitration Court and the remaining with the Registrar. Section 69(2)(b) provides:

“b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not”.

7. The court below held that the suit falls within the ambit of Section 69(2)(b) and hence, the suit was not maintainable in the light of Section 100 of the Kerala Co-operative Societies Act.

Section 100 of the Act provides as follows:

“Bar of jurisdiction of Courts: No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act”.

The view of the court below was that the principal debtor was made a party to the suit and hence, the bar will apply. The plaint discloses that there was a specific averment in the plaint that the 5th defendant was included in the party array being a proper party only, and that no relief was claimed against her, since the claim against the principal debtor was maintainable only as per Section 69 of the Kerala Co-operative Societies Act. It was further mentioned that the plaintiffs reserved their right to proceed against her. Evidently, the plaintiffs being conscious about the bar under Section 69, had specifically and categorically pleaded that no relief was sought against the principal debtor. That being so, the suit cannot be treated as one laid against the principal debtor. In the case at hand, the dispute was by the successors of a co-surety against the successors of another co-surety and not against the principal debtor.

8. A perusal of section 69(2)(b) indicates that, a dispute in relation to a claim made by a surety against the principal debtor, where the society has recovered the amount due from the surety as a result of default of the principal debtor will be hit by Section 69(2)(b). Section 69(2)(b) clearly operates only in a case of suit

filed by a surety against the principal debtor. Evidently, a claim by co-surety against another co-surety is not covered by Section 69. Hence, Section 69(2)(b) cannot operate as a bar.

9. A perusal of the remaining provisions of Section 69 shows that the various claims and disputes which are brought within the jurisdiction of the authorities prescribed under Section 69 relate to the inter se dispute between the past or present members of the Society or, against the Society or between Societies. In all the provisions other than Section 69(2)(b), one of the party to dispute will either be a member, past or present, of the Society, or the Society itself. Though Section 69(2)(b) may appear to be an exception to the general scheme of the Statute for providing a forum for adjudication of disputes in which one party is a past or present member of a Society or a Society itself, actually it is not. The reason for bringing a dispute between the surety and principal debtor within the ambit of Section 69 is clear from section 59 of the Act. Section 59 provides that the Co-operative Society shall give loan only to a member of the society. In other words, a principal debtor in a loan transaction with Co-operative Society will be a member of the Society. This justifies why the dispute between the surety and the principal debtor is

brought within the campus of Section 69. This fits within the general scheme of Section 69 and excludes a dispute between a co-surety against another co-surety. Hence, Section 69 evidently does not apply in the case of a dispute between the co-surety against another co-surety.

10. In the light of the above, the finding of the court below that the suit is not maintainable and is hit by Section 69 is not sustainable. The view of the court below is liable to be interfered with.

11. In the result, the appeal is allowed. The impugned judgment of the court below is set aside. It is held that the suit is not hit by Section 69 of the Kerala Co-operative Societies Act. Court below shall take back the plaint to its file and proceed to consider the various claims made by the plaintiffs in accordance with law. Both sides shall appear before the court below on 10.08.2015.

This appeal is allowed accordingly. No costs.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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