

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

OP(C).No. 14 of 2015 (O)

**AGAINST THE JUDGMENT IN APPEAL NO. 11/2014
OF KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM
AGAINST THE ORDER IN IA NO. 14/2013 IN ARC.NO. 147/2009
OF CO-OPERATIVE ARBITRATION COURT, THIRUVANANTHAPURAM**

PETITIONER :

**KERALA STATE CO-OPERATIVE CONSUMER FEDERATION LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR, GANDHI NAGAR
ERNAKULAM.**

**BY ADVS.SRI.A.SUDHI VASUDEVAN
SMT.K.PUSHPAVATHI
SRI.R.SYLESHWAREN NAIR
SRI.JOSE JONES JOSEPH**

RESPONDENT(S) :

- 1. K.VASU
"PRANAVAM", GAYATHRI ENCLAVE, MARADU POST
ERNAKULAM - 682 304.**
- 2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM - 695 001.**
- 3. M.NIZAR (NOT PARTY IN APPEAL)
PRASANTH NAGAR, ULLOOR, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM - 695 001.**

R1 BY ADV. SRI.P.N.MOHANAN

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 06-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

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OP(C).No. 14 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1 - A TRUE COPY OF THE EX-PARTE AWARD DT. 09.2.12 PASSED BY THE ARBITRATION COURT IN ARC 147/2009.
- EXT. P2 - A TRUE COPY OF THE IA NO. 14/2013 FILED BY THE PETITIONER HEREIN, IN ARC 147/2009 BEFORE THE ARBITRATION COURT.
- EXT. P3 - TRUE COPY OF IA NO. 25/2013 FILED BY THE PETITIONER BEFORE THE ARBITRATION COURT FOR IMPEADING.
- EXT. P4 - TRUE COPY OF THE ORDER DT. 10.10.13 PASSED BY ARBITRATION COURT IN IA 14/2013 IN ARC 147/2009.
- EXT. P5 - TRUE COPY OF THE JUDGMENT DT. 29.10.14 PASSED BY THE KERALA CO - OPERATIVE TRIBUNAL IN APPEAL 11/2014.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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[CR]

B. KEMAL PASHA, J.

.....
O.P.(C) No.14 of 2015
.....

Dated this the 6th day of July, 2015

J U D G M E N T

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An Arbitrator under the Co-operative Societies Act, 1969, has passed an *ex-parte* award. The defendant against whom the *ex-parte* award was passed, has approached the Arbitrator through I.A.14/2013 in ARC.147/2009 to get the *ex-parte* award set aside. The Arbitrator has taken the view that the defeated defendant ought to have filed an appeal before the Tribunal, and an application filed for getting the *ex-parte* award set aside was not maintainable.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. The position is covered by the decision in ***Cheru***

Ouseph v. Kunjipathumma [1981 KLT 495], wherein it was held as follows:-

“All powers which are not specifically denied by the statute or the statutory rules should be vouchsafed to a Tribunal that it may effectively exercise its judicial function.”

The said decision in **Cheru Ouseph (Supra)** has been upheld by the Division Bench of this Court in **Thankam R. Pillai v. Arbitrator [1996 KHC 49]**.

5. In **Ebrahim Ismail Kunju v. Phasila Beevi [1991 (1) KLT 861]**, it was held:-

“A Tribunal should be facilitated to do all that a court could do in similar situations; and much more than that. Greater speed and the total liberation from the tentacles of technicalities, give a better look and greater efficiency for effectively manned Tribunals. If there be no statutory prohibition, the Tribunal should therefore normally be in a position to ordain its affairs and modulate its procedures in such a manner as to best subserve the interest of the public, and in particular the

litigant public. Looked that way, even in the absence of an enumerated head of statutory power on the conjoint reading of S.23 and the enumerated provisions of the C.P.C. Referred to in that section, this court would have permitted the Tribunal to pass an Order which would better serve the interest of the litigant and of the Tribunal.”

6. In ***Thankam R. Pillai*** (*supra*), it was held that the Arbitrator functioning under the Co-operative Societies Act is an adjudicatory body coming within the meaning of the term 'Tribunal', which is a quasi judicial adjudicatory body and, therefore, the principles laid down by the Supreme Court in ***Rameshwar Manjhi v. Management of Sangramgarh Colliery [AIR 1994 SC 1176]*** are equally applicable to a proceeding pending before the Arbitrator. It was held therein that even though there is no specific provision in the Act for enabling the Arbitrator to bring on record the legal representatives of the deceased party, the Arbitrator being an adjudicatory body, which has quasi judicial powers, has

got the authority to implead the legal representatives, even though no specific power for the same is prescribed in the Co-operative Societies Act.

7. It is true that a power to set aside an *ex-parte* award has not been expressly given to the Arbitrator as per the Co-operative Societies Act. At the same time, from all the above, it is evident that the Arbitrator has powers to set aside an *ex-parte* award, as such a power is inherent in the exercise of jurisdiction by such a quasi judicial adjudicatory body. The Arbitrator ought to have exercised his powers to deal with the question as to whether the *ex-parte* award passed was liable to be set aside or not. Instead of it, it seems that the Arbitrator has simply passed Ext.P4 order by finding that the party ought to have filed an appeal and not an IA for getting the *ex-parte* award set aside. The whole approach made by the Arbitrator seems to be illegal in view of the decisions noted above.

In the result, this O.P.(Civil) is allowed. Ext.P4 order

OPC.14/2015

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stands set aside and consequently, Ext.P5 passed by the Kerala Co-operative Tribunal is also set aside. IA No.14/2013 in ARC.147/2009 stands allowed. The *ex-parte* award stands set aside. The Arbitrator is directed to proceed with the matter accordingly.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/06/07

// True Copy //

PA to Judge