

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WA.No.818 of 2015
IN WP(C).1802/2009

AGAINST THE JUDGMENT IN WP(C) 1802/2009 of HIGH COURT OF KERALA
DATED 17/12/2014

APPELLANT/PETITIONER:

THE MATTOOL COIR VYAVASAYA CO-OPERATIVE SOCIETY LTD. NO.235
P.O MATTOOL, KANNUR DIST, REP BY ITS SECRETARY

BY ADVS. SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENTS/RESPONDENTS:

1. M. KANNAN
S/O.MAVVANAYIL NARAYANI, P O KARANTHAT, RAMANTHALI
VIA PAYYANNUR, KANNUR DIST-670101

2. CO-OPERATIVE TRIBUNAL
THIRUVANANTHAPURAM-695001

R1 BY ADV. SRI.C.A.MAJEED
R1 BY ADV. SRI.K.H.ASIF
BY GOVT. PLEADER (SR.) SRI.JOSEPH GEORGE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P. R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

W. A. No.818 of 2015

Dated this the 12th day of August, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

The inordinate delay on the part of the appellant in challenging the verdict passed by the Kerala Co-operative Tribunal dismissing the plaint way back on 30/12/1995, i.e. about 14 years ago, and the callous inaction on the part of the appellant/writ petitioner in satisfying the process charges and curing the defect for service of notice upon the concerned respondent, has been deprecated by the learned single Judge declining interference; which is sought to be intercepted by filing this appeal.

2. The case of the appellant Society is that the first respondent, while working as the Secretary in-charge of the Society, misappropriated some amount from the Society. The incriminating circumstances noted in the course of

inspection by the concerned authorities much later pertained to the alleged misappropriation/misconduct committed way back in the year 1975-76. It is stated that the first respondent was no more available in the service of the Society, as he simply left the service without submitting resignation. It is also conceded that, no disciplinary action was taken against the first respondent at any point of time.

3. However, based on the Inspection Report, the Society filed a plaint before the Arbitrator by A.R.C. No.3/1983 seeking to realize the due amount by virtue of the alleged loss created to the Society. Ext.P1 award was passed by the Arbitrator on 04/05/1992, which was sought to be challenged by the worker, by filing necessary proceedings before the Kerala Co-operative Tribunal. After hearing both the sides, the award was set aside as per Ext.P2 judgment dated 06/09/1994, referring to non-satisfaction of the stipulated requirements and also that the documents concerned which was sought to be relied on were not properly proved. The matter was remanded for fresh

consideration with liberty to the parties to adduce further evidence.

4. Pursuant to Ext.P2 order passed by the Tribunal, the matter was reconsidered by the Arbitrator who passed Ext.P3 order on 06/07/1995, virtually restoring the earlier order, with liberty to the Society to recover a sum of ₹1,61,728.83/- with interest and cost as specified therein. This was challenged by the first respondent before the Tribunal and after considering the facts and figures, the Tribunal passed Ext.P4 order dated 30/12/1995, whereby the award was set aside. The matter was left there, without any further challenge from the part of the Society.

5. On a fine morning, about 14 years after passing Ext.P4 order, the Society approached this Court by way of filing W.P.(C) No.1802 of 2009, wherein 'notice on admission' was ordered on 21/01/2009. The inordinate delay in filing the proceedings was also taken note of by the learned single Judge, when 'notice on admission' was ordered. The notice sent to the first respondent was returned unserved, with the

endorsement that “the addressee left India”. No further steps were taken by the Society to cure the defect and to ensure completion of service of notice. The matter was finally heard by the learned single Judge on 17/12/2014 and the way in which the proceedings were being taken in a casual manner was noted; especially when the writ petition itself was filed **nearly 14 years after** passing Ext.P4 order by the Tribunal. It took another '**three and a half years**' for the Society to make an attempt to cure the defect in taking steps against the first respondent for effecting completion of service of notice. It was in the said circumstances, that interference was declined and the writ petition was dismissed.

6. Still, it took more time for the Society to file an appeal; which in fact was filed along with C.M. Application No.445 of 2015 seeking to condone the delay of 33 days in filing the appeal. After completion of service of notice in the C.M. Application, we condoned the delay and the matter has come up for admission.

7. Heard the learned counsel for the appellant and the learned counsel for the first respondent at length, besides hearing the learned Government Pleader appearing for the second respondent.

8. The learned counsel for the appellant points out that the delay was never intentional or wilful and that the Society had virtually become defunct, which was the reason for not challenging Ext.P4 order passed by the Tribunal in 1995. It is also stated that the concerned counsel who represented the Society earlier, had left the practice and as such, it was not possible for the Society to move things by engaging another lawyer. Almost similar explanation is given with regard to the subsequent delay as well, with regard to satisfaction of process charges and in curing the defect in serving notice to the first respondent. The laxity in pursuing the matter, the grave default and callous inaction on the part of the appellant/writ petitioner was specifically noted by the learned single Judge, observing that the explanation was not palatable at all. We have also gone through the proceedings

and the sequence of events. It is revealed that the Tribunal has considered the matter quite meticulously and observed that the opportunity given has not been properly made use of to establish the case of the Society. The Tribunal found that the suit was filed on the basis of 'original' of Ext.A1 inspection report, however without producing the original and that the document produced was not even a duly attested copy in terms of Section 103 of the Kerala Co-operative Societies Act, read with Rule 32 of the K.C.S. Rules. The author of the inspection report was also not examined and as such, it was held that document produced was not admissible in evidence; which in turn was rejected.

9. The observation made by the Tribunal in paragraphs 5 and 6 of its verdict seems to sustain the course pursued in not granting further opportunity for producing the original of Ext.A1 or duly attested copies of the original inspection report and to return the plaint to be re-presented. The said observations as discernible from paragraphs 5 and 6 of the said verdict are extracted below:

“5. The plaint does not disclose as to what are the acts of misappropriation committed by the defendant. Plaint only says that serious irregularities committed by the defendant are found in the inspection report and quoted the alleged misappropriations by saying that inspection report discloses so. The averments in the plaint does not show that the plaintiff society can pin point as to how the defendant is liable for the plaint claim. As I said earlier, the inspection report did not come in evidence properly as Ext.A1 is inadmissible. The author of the original is also not examined. Therefore, I find that the plaintiff failed to detail the different acts of misappropriation in the plaint which take the defendant answer the plaint. Moreover, the inspection report which is said to have disclosed the different acts of misappropriation is also not brought in evidence in the suit.

6. Now, it is too much late to return the plaint to the plaintiff for presenting a new plaint with necessary averments and to give an opportunity to produce the original of Ext.A1 or duly attested copies of the original inspection report as the misappropriations alleged are for the period from 10/01/1975 to 26/06/1976. A period of twenty years is over. Now it will be very difficult for the defendant to defend the charge of misappropriations said to be conducted twenty years ago. Hence, in the interest of justice, the suit is liable to be dismissed. I do so.”

This Court finds that the order passed by the Tribunal is not liable to be deprecated, either on facts or on law, and as

such, there is no merit as well.

10. The proceedings filed before the Tribunal and before this Court reveal that the Society had earlier sought for to be represented through the lawyers by name Sri.C.Krishnan and Smt.K.K.Chandralekha. The names of the said lawyers have very well been included in the cause title of the judgment rendered in the writ petition. The same lawyers, along with the learned lawyer who made the submission before this Court in this appeal, still seek to represent the appellant Society, though the name of Sri.C.Krishnan is not figuring out. This Court finds that the reasoning given by the learned single Judge not to interfere with the matter by condoning the inordinate **delay of more than 17 years** (14 + 3.5) is not liable to be entertained in favour of the appellant Society. The so-called reason offered by the Society is not liable to be termed as a reason or explanation; much less anything satisfactory. This Court also finds that the appellant Society was virtually sleeping over the issue without any regard to the rights and liberties. The

jurisdiction vested on this Court is not intended to help or extend any favours to such litigant. This Court finds support from the law declared by the Apex court on the point as reported in **Rabindra Nath v. Union of India [AIR 1970 Page SC 470 (V 57 C 103)]**. Interference is declined and the appeal is dismissed, both on the ground of delay as well as on merit.

Sd/-
P. R. RAMACHANDRA MENON
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

