IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 17695 of 2014 (J)

PETITIONERS:

1. THE PALAKKAD DISTRICT CO.OPERATIVE BANK LTD.
PALAKKAD, REPRESENTED BY ITS GENERAL MANAGER.

2. THE BRANCH MANAGER
PALAKKAD DISTRICT CO.OPERATIVE BANK LTD.
PADINJARANGADI BRANCH, PALAKKAD DISTRICT.

BY ADVS.SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO.OPERATIVE SOCIETIES
PALAKKAD - 678 001.

2. THE KERALA CO-OPERATIVE TRIBUNAL
TRIVANDRUM - 695 001

3. SRI. K.V.BALAN
S/O.KELUNNI, KANDAM SEKHARATHU VEEDU
PATTITHARA PALAKKAD - 679 534

SRI.NOUSHAD THOTTATHIL, GOVERNMENT PLEADER
R3 BY ADV. SRI.P.N.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 17695 of 2014 (J)

APPENDIX

PETITIONERS' EXHIBITS

EXT.P1 - PHOTOCOPY OF THE AWARD IN ARC 299/09 DATED 27-02-2013

EXT.P2- PHOTOCOPY OF THE AWARD IN APPEAL NO.61/13 DAED 12-3-2014

3RD RESPONDENT'S EXHIBITS

R3(A): TRUE COPY OF THE LETTER DT.8.9.09 OF THE BANK.

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) No.17695 of 2014

....

Dated this the 29th day of July, 2015

JUDGMENT

The Palakkad District Co-operative Bank has filed this writ petition challenging Ext.P1 order dated 27.2.2013 of the Joint Registrar of Co-operative Societies in ARC No.299 of 2009 by which the 3rd respondent was granted a decree for realisation of a sum of Rs.3,78,170/- along with interest at the rate of 10% per annum from 1.7.2009 towards the arrears of appraiser commission due to him and Ext.P2 judgment of the Kerala Co-operative Tribunal in Appeal No.61 of 2013, in which the decree was upheld.

2. The 3rd respondent was employed in the 1st petitioner bank as a jewel appraiser on commission basis on 18.4.2001. He continued in the employment of the bank up to 30.6.2009. As per the agreement executed between him and the Bank, the commission was fixed as 25 paise per Rs.100/- of the gold loans granted to customers - subject to a minimum of Rs.3/- and a maximum of Rs.25/- per packet. Subsequent to his relief from

the bank, he filed ARC No.299 of 2009 before the Joint Registrar of Co-operative Societies claiming that he was not awarded the exact amount of commission due to him in accordance with the agreement. In support of his claim, he produced letter dated 8.9.2009 issued by the Bank on his application furnished under the Right to Information Act ('RTI Act' for short) with respect to the appraisal commission paid to him as well as the appraisal commission collected and received by the Bank for the period from 18.4.2001 to 30.6.2009 in each year. As per that letter a sum of Rs.8,32,636/- was collected by the Bank towards appraisal charges whereas the commission paid to the 3rd respondent was only Rs.4,54,166/-. Accordingly he demanded the payment of balance amount of a sum of Rs.3,78,170/- along with interest.

3. The contention of the Bank was that the maximum commission payable to the appraiser was only a sum of Rs.200/- per day and this maximum daily limit was agreed to by the 3rd respondent by an oral agreement with the Bank and hence the amount paid to the 3rd respondent was correct.

4. Before the Joint Registrar of Co-operative Societies, the agreement executed by the petitioner with the Bank was produced along with the letter dated 8.9.2009 issued from the Bank, relating to the charges collected and paid. The Bank had raised a contention that the petition filed by the 3rd respondent was barred by limitation and in answer to his demand the Bank had already informed the 3rd respondent as per letter dated 7.3.2011 that as per clause 4 of the conditions in the agreement the maximum amount that could be paid to the jewel appraiser was Rs.200/- per day which was agreed to by the 3rd respondent. The Joint Registrar found that the 3rd respondent was entitled to a decree as prayed for and passed Ext.P1 order.

5. In the appeal, the Bank while admitting that the 3rd respondent had worked as appraiser for the period from 18.4.2001 to 30.6.2009 contended that there was a maximum limit of Rs.200/- per day and that the entire amount due to him was paid during the tenure of his service.

6. The Co-operative Tribunal, noticed that the documents produced by the 3rd respondent were not marked before the

Arbitration Court, despite the proof affidavit filed by him in lieu of chief examination before the Arbitrator. Therefore the Tribunal marked the same as Exts.P1 to P9. The Tribunal found that as per terms and conditions of appointment of the 3rd respondent as seen from Ext.P2 document therein, the 3rd respondent was eligible for payment of 25 paise for gold loans granted to customers for an amount of Rs.100/- subject to a minimum of Rs.3/- and maximum of Rs.25/- per packet. From Ext.P2 document, it was found that the 3rd respondent was paid only a sum of Rs.4,54,166/- as against the actual dues of Rs.8,32,336/- and therefore the Tribunal found that the award passed by the Arbitrator was based on evidence and it upheld the award passed in the ARC. According to the Bank the application-Ext.P8 submitted by the 3rd respondent, demanding arrears of commission, which was rejected as per Ext.P9, while the 3rd respondent was in service, was not taken up further till he filed ARC No.299 of 2009 and thereafter the 3rd respondent cannot have any claim further, since he acquiesced to the reply of the Bank. The Tribunal upheld the award of the Joint Registrar after scrutinizing the evidence both oral and documentary and all other materials on record.

7. In this writ petition the main contention of the petitioners is that the Joint Registrar of Co-operative Societies did not have the jurisdiction to consider the ARC filed by the 3rd respondent as the same was not maintainable under section 69 of the Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act').

8. According to the Bank, the 3rd respondent who was engaged as a jewel appraiser on commission basis was not an employee of the Bank and hence a petition under section 69 is not maintainable by the person like the 3rd respondent who was merely engaged on commission basis. Yet another contention raised is that the Joint Registrar passed the award on sympathetic grounds and humanitarian consideration which is not permissible under section 69 of the Act. According to them section 69 does not envisage any award on the ground of humanitarian consideration or on consideration of the age of the complainant. According to the Bank, the remedy of the 3rd

respondent lies in a civil court under Indian Contract Act and not before the Joint Registrar of Co-operative Societies.

9. The next contention is that there is no provision for accepting any additional evidence before the appellate authority and therefore the marking of documents- Exts.P1 to P9 - by the Tribunal is contrary to law. Yet another contention is that the 3rd respondent had already demanded enhancement of commission while he was in service as per Ext.P8 application, which was rejected by the Bank on 30.4.2002, by Ext P9. Therefore, he was estopped from making any further claim before the Arbitrator on the face of Exts.P1 and P2.

10. Learned counsel for the Bank had also raised a contention that the complaint itself filed before the Arbitrator was barred by limitation in view of sub section 4 of section 69, according to which any monetary dispute before the Joint Registrar shall be filed within a period of 3 years from the date on which the cause of action arose. It is also pointed out that the claim of the 3rd respondent was for the period from 2001 to 2009 and the application filed before the Joint Registrar was barred by

limitation.

11. I heard the learned counsel appearing for the Bank as well as the learned counsel for the 3rd respondent.

12. According to the 3rd respondent the question of jurisdiction or maintainability was not raised before any of the forums ie., either before the Joint Registrar or before the Co-operative Tribunal and it is raised in this Court for the first time. Regarding the question of limitation, it is pointed that subsection 4 of section 69 by which limitation is prescribed, was introduced only by Act 8 of 2013 whereas the ARC was filed in 2009, when there was no prescription of limitation prescribed for entertaining claims.

13. As the main contention raised by the Bank is with reference to the jurisdiction/maintainability of the petition before the Joint Registrar of Co-operative Societies under section 69 of the Act, it is necessary to have a look at the said provision. Section 69 (1) of the Act provides as follows:

> ***69. Disputes to be decided by Co-operative Arbitration Court and Registrar.-***
>
> *(1) Notwithstanding anything contained in any law*

for the time being in force, if a dispute arises-

a)among members, past members and persons claiming through members, past members and deceased members; or

b)between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

c)between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

d)between the society and any other society; or

e)between a society and the members of a society affiliated to it; or

f)between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

g)between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

h)between the society and a creditor of the society; such dispute shall be referred to the Co-

> *operative Arbitration Court constituted under Section 70 A, in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other court or oth£f authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.*
> *(emphasis supplied)*

14. The contentions raised were with reference to Section 69(1)(c). But I find that Section 69(1)(f) is also relevant. Section 69(1)(c) provides for adjudication of disputes between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society. Further Section 69(1)(f) provides for adjudication of disputes between a society and a person with whom the society had business transaction. Therefore the next question to be considered is whether there was any dispute and if so whether 3rd respondent comes under any of these categories i.e either under clause (c) or (f) of Sub Section 1 of Section 69.

15. Dispute is defined under Section 2(i) of the Act as follows:

> *"(i) dispute means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not;"*

The fact that the 3rd respondent was engaged for the work of appraiser, though on commission basis, is not disputed. From the order of appointment itself, it is evident that he was appointed for the purpose of the work relating to the business of the bank which was engaged in granting gold loan. Therefore the engagement or employment of petitioner was one touching the business of the society. Therefore payment of commission to such a person is also one touching the business of the society. The fact that 3rd respondent was engaged after fixing the remuneration/commission, for the work though on the basis of agreement executed is also not disputed. The contention raised by Sri.M.P.Ashok Kumar, the learned counsel who appears for the Bank is that the Apex Court as well as this Court has in a series of judgments held that jewel appraiser does not come within the term of employee and hence he cannot be considered as an employee or past employee under the purview of section 69(1)(c). On the other hand Sri.P.N.Mohanan, learned counsel for the 3rd respondent refutes the contention pointing out the order issued by the Bank, appointing the 3rd respondent.

16. Chapter XII of the Act provides for establishment and section 80 under this Chapter provides for the classification of Societies in accordance with their type and financial position, the number and designation of officers and servants of different classes of societies etc. Under subsection (3) of section 80 Government have to make rules regulating qualification, remuneration, allowances and other conditions of service of the officers and servants of the society. Sub section (4) provides for reservation of 10% of posts of employees of every society by appointing Scheduled Caste/Scheduled Tribe candidates. Sub section 5 provides for reservation of 3% of total posts of employees of every society to the physically handicapped persons with 40% or more disability. The learned counsel for the Bank

submitted that under the classification and staff pattern as approved by the Registrar of Co-operative Societies, petitioner bank does not have the post of jewel appraiser and hence it is argued that there is no question of an employee under the Bank in the post of jewel appraiser and hence the orders of Joint Registrar as well as the Tribunal are without jurisdiction and nullity.

17. It is to be noted that while section 69(1)(c) provides for adjudication of dispute between the society and an employee, past employee, officer, past officer, agent, past agent etc., section 69(f) provides for adjudication of disputes between the society and any person who had business transaction with the society. The 3rd respondent was a person who undertook the work of jewel appraiser on payment of stipulated amount of commission as per Ext.P1 order of appointment. There was engagement by the Bank and employment under the Bank for the purpose of the business of the bank which was engaged in granting gold loan. The engagement as well as the work of the 3rd respondent was one which touched the business of the society.

3rd respondent worked for the bank. The Bank utilised his services. The Bank paid him remuneration for the work done, though at reduced rates and the 3rd respondent received the remuneration towards the work he has done. Therefore, I do not find any reason to sustain the contention raised by the counsel for the Bank that the ARC could not be entertained or that the Joint Registrar or the Co-operative Tribunal lack jurisdiction in entertaining claims.

18. Coming to the next contention that the petitioner acquiesced in receiving the remuneration fixed the maximum limit of Rs.200/-, it is to be noted that the 3rd respondent was admittedly engaged for the period from 18.4.2001 to 30.6.2009. It is true that by Ext.P8, he had requested for payment of arrears due to him pointing out that he was being given up to the maximum of Rs.200/- per day which is contrary to the terms of the agreement executed and the order of his appointment. It is also true that by Ext.P9 letter dated 3.4.2002 the Bank had given him a reply pointing out that his request was not liable to be considered for the time being as the same will affect several

other branches. It is pertinent to note that the request made in the application submitted by the 3rd respondent-Ext.P8 was about the non-payment of the actual commission to him, which was contrary to the conditions of his appointment and to grant him commission in accordance with the conditions stipulated therein. But in Ext.P9 the Bank stated as follows:

> *"Your application for enhancing the maximum limit for appraisal allowance cannot be considered for the time being in view of the fact that the issue is not confined to one branch alone".*

In Ext.P9, there is nothing to indicate that the rejection was based on any oral agreement in respect of the commission prescribing a daily upper limit.

19. The 3rd respondent was described as a person carrying out the employment of appraiser in the Padinjarangadi branch in accordance with the conditions stipulated. Therefore there is no question of any estoppal or acquiescence when the Bank informed the 3rd respondent in Ext.P9 that it was not an issue for consideration confined to one branch alone. There is not a total denial also. The 3rd respondent had submitted a representation

on 9.2.2009 requesting for enhancement of commission. In this application, he has requested for allowing commission on the basis of decision number 19 of the committee dated 10.3.2001 or else to enhance his commission to Rs.400/-. Immediately the 3rd respondent had submitted another representation on 24.6.2009, requesting for payment of arrears in terms of the conditions fixed in the order of his appointment. It was thereafter he submitted an application under the RTI Act seeking the details of commission collected as well as the commission paid to him and found that the first petitioner bank had already collected the appraisal charges from the customers as stipulated in the order of his appointment. But the same was not paid to him at the rates at which the bank collected from the customers and as agreed to in the agreement or order of appointment. It was under the above circumstances that the Joint Registrar passed the award and the Tribunal upheld the same.

20. Regarding the contention of the petitioner Bank as to receiving of additional evidence by the Tribunal, it is noticed that the Tribunal has only marked those documents which were

already produced before the Joint Registrar. In fact no new evidence was let in and on that ground it is not necessary to non-suit the 3rd respondent.

21. Sri.M.P.Ashok Kumar had also raised a contention with reference to section 10(1B) of Banking Regulation Act, that no banking company shall employ anybody whose remuneration is on commission basis and hence the 3rd respondent cannot be treated as an employee. Moreover there is no post of appraiser under Appendix 3 under which the Bank has been classified and staff pattern is approved by the Registrar of Co-operative Societies under rule 188 of the Co-operative Societies Rules read with section 80(2) of the Act. But as far as the order issued by the Bank appointing the 3rd respondent as appraiser on fixed terms is not disputed, those provisions will not stand in the way of claiming or granting arrears of wages in terms of the agreement between the parties ie. Bank and petitioner.

22. Learned counsel for the Bank referred to the judgment of the Apex Court in ***Balvant N.Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through lrs. and others*** *[2004*

(8) SCC 706] in support of his contention and contended that the decree passed without jurisdiction is a nullity. Relying on the judgment of a Full Bench of this Court in ***Canara Bank and others Vs. Appellate Authority*** *[1981 KLT 413]* which was upheld by the Apex Court, the learned counsel submitted that jewel appraisers are not employees. The learned counsel for the Bank contended that in ***Balwant Rai Saluja and another Vs. Air India Limited and others*** *[2014 (9) SCC 407]* the Apex Court has laid down the tests to determine whether there is employer employee relationship and the 1st respondent does not qualify in any of these tests. It was a case where workmen engaged in statutory canteen of Air India engaged by the contractors were retrenched and an industrial dispute was raised as to the termination of their services. The issue which came up before the Apex Court was whether the workers engaged on casual or temporary basis by a contractor running a statutory canteen can be said to be workmen of the said factory or Corporation. It was under the said circumstances that the Apex Court concluded that the relevant factors to be taken into

consideration to establish an employer employee relationship would include (1) who appoints the workers (2) who pays the salary/remuneration (3) who has authority to dismiss (4) who can take disciplinary action (5) whether there was continuity of service (6) extent of control and supervision. In that case, the Apex Court found that Air India did not have effective and absolute control over the workmen and they were not entitled to regularisation.

23. The next judgment relied on was of the Apex Court in ***M/s.Puri Urban Co-operative Bank Vs.Madhusudan Sahu and another*** *[1992 (3) SCC 323]. It was* also in respect of termination of services. A Full Bench of this Court in ***Canara Bank and others Vs. Appellate Authority*** (supra) also considered the case of jewel appraisers. The issue considered was whether Canara Bank and Bank of India which are establishments under the Central Government were exempted under the provisions of Kerala Shops and Commercial Establishments Act, 1960. While considering the question of termination of services of jewel appraisers, it was found therein that jewel appraiser was

engaged under a special contract and the service code of the bank does not apply to him as he is only an independent contractor.

24. Going through the judgments referred to by the learned counsel for the petitioner Bank, it is seen that all those cases were either challenging the termination of services on grounds of violation of the provisions contained in Industrial Dispute Act or seeking regularisation or absorption in the Bank. In this case such a situation does not arise. As already found by me, the issue raised herein is only with respect to the arrears of commission on the basis of the conditions stipulated by the Bank in the order of appointment of the 3rd respondent. This is a dispute coming under Section 69(1)(f) between the Bank and the 3rd respondent who was engaged by the bank for purposes related to the business of the bank. As per Section 69(1)(c), the jurisdiction is vested in the Joint Registrar/Arbitrator in respect of disputes between the society and an officer, agent or employee or a past officer, past agent or past employee. Thus it can be seen that when Section 69(1)(c) takes in the disputes of an officer, past officer, agent,

past agent, employee and past employee, the dispute with the 3rd respondent who is in the status of an independent contractor, who did the work of appraisal of gold for and on behalf of the Bank definitely comes under clause (f) of Section 69(1). I am of the view that he can also be treated either as a past officer or past agent or past employee at least for the limited purpose of jurisdiction of Joint Registrar or Arbitrator under Section 69, in the light of the admitted factual position and without going into the question whether the 3rd respondent qualifies in the tests enumerated in the Apex Court judgment. Viewed in the above background, it can be seen that there exists a dispute between 3rd respondent and the Bank in respect of the quantum of remuneration in the form of commission towards his employment under the Bank. Therefore, if the provisions contained in Section 69(1) (c) of the Act is construed in such a manner giving effect to each of the expressions like employee, agent, officer etc. employed in the provision together, with reference to the context, in such a manner to advance the purpose and intent for which such a forum is created and provided under the statute, it cannot be said that the Joint Registrar did not have the authority or jurisdiction to entertain the dispute. Section 100 of the Act bars civil suits in respect of a matter for which provision is made in this statute. Going by Section 69(1) (f) and (c) it cannot be said that remedy is not provided for in the statute. The 3rd respondent is not claiming re-instatement or continuity of service or regularisation under any of the Acts like Industrial Disputes Act.

25. Regarding question of limitation raised by the Bank, learned counsel for the 3rd respondent relying on the judgment of Division Bench of this Court in ***Kavi Rajan V. Co-operative Tribunal*** *[1989 (2) KLT 895]* pointed out that the provisions under Limitation Act does not apply to proceedings under the Act. The Division Bench of this Court, on a reference considered the issue with reference to the judgment in an earlier decision in ***Thilakan Vs. M.C.V.Co-Op.Society Ltd.*** *[1978 KLT 256]* wherein it was held that the Assistant Registrar not being a Court governed by Code of Civil Procedure, the provisions of Limitation Act did not have any application to the adjudication proceedings

under section 69 of the Act. The learned counsel contended that in the light of the judgment of the Apex Court in ***Sakuru Vs. Ranaji*** *[AIR 1985 SC 1279]* wherein it was held that the provisions of Limitation Act apply only to proceedings in Courts and not to appeals or applications before bodies other than Courts such as quasi judicial Tribunals or executive authorities. However, it is pertinent to note that the petitioner bank did not dispute the facts furnished by them under the RTI Act to the effect that they have already collected the appraisal charges at the rate provide in the order of appointment though did not pay the 3rd respondent at the same rate as was agreed to.

26. Under the above circumstances, I find that the dispute raised by 3rd respondent in the ARC is one which comes within the purview of section 69(1) (f) of the Co-operative Societies Act.

26. Apart from that he can also be included under Section 69(1) (c) of the Act in so far as it includes not only employees but also agents, even assuming that the word employee cannot take in an appraiser engaged on commission basis. A Full Bench of this Court has found that jewel appraiser is an independent

contractor. Admittedly 3rd respondent and the Bank has entered into a contract and services of 3rd respondent were utilised on the basis of contract. Therefore it comes within the term of dispute under section 2(i) of the Act read with section 69(f) and can even be extended to Section 69(1)(c) of the Act.

27. Joint Registrar as well as Tribunal have found that amount was due to the 3rd respondent, as he was not paid the charges as prescribed in the order of his appointment, which is evident from the information furnished under the RTI Act, which the 3rd respondent has produced before this Court as Ext.R3(a) and award is passed on the basis of the said document. The Arbitrator as well as the Co-operative Tribunal have passed the award and judgment after considering all the circumstances in accordance with law. The 3rd respondent has been before various authorities for the arrears due to him for the work done by him upto 2009. Any further delay in the matter is uncalled for. There is absolutely no circumstance warranting interference of this Court under Article 226 of the Constitution of India.

Under the above circumstances, I do not find any reason to interfere with the impugned orders. Hence the writ petition fails and is dismissed.

Sd/-

P.V.ASHA,
JUDGE.

rkc