

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 21036 of 2015 (D)

PETITIONER:

THE ODAMTHODE KSHEEROLPADAKA SAHAKARANA
SANGHAM LTD NO.C 66(D), ODAMTHODE,
MANATHANA, KANNUR DISTRICT
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.M.SASINDRAN
SRI.S.SHYAM KUMAR

RESPONDENTS:

1. K.V. MATHEW, S/O. VARGHEES, KARUVANPLAKKAL
VEEDU, ODAMTHODE, PO MANATHANA,
KANNUR DISTRICT-670 674.
2. KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM 695 001
REPRESENTED BY ITS SECRETARY.

R1 BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)
R1 BY ADV. SRI.GEORGE MATHEWS
R2 BY SPL.GOV'T. PLEADER SRI.D.SOMASUNDARAM
R2 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 21036 of 2015 (D)

PETITIONER'S EXHIBITS:

EXHIBIT P1: A TRUE COPY OF THE DOMESTIC ENQUIRY REPORT

EXHIBIT P2:A TRUE COPY OF THE SHOW CAUSE DATED 25.07.2009 ISSUED BY THE DISCIPLINARY SUB COMMITTEE

EXHIBIT P2(a): A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P2

EXHIBIT P3:A TRUE COPY OF THE ORDER PASSED BY THE PRESIDENT DATED 8.11.2009

EXHIBIT P3(a): A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P3

EXHIBIT P4: A TRUE COPY OF THE MEMORANDUM IN ARC NO.18/2010

EXHIBIT P4(a):A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P4

EXHIBIT P5:A TRUE COPY OF THE AWARD IN ARC NO.18/2010

EXHIBIT P6: A TRUE COPY OF THE COMPLAINT FILED BEFORE THE LABOUR COURT, KANNUR

EXHIBIT P6(a):A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P6

EXHIBIT P7:A TRUE COPY OF THE AWARD IN INDUSTRIAL DISPUTE NO.1/2011

EXHIBIT P8:A TRUE COPY OF THE PLAINT IN ARC NO.48/2012

EXHIBIT P8(a): A TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P8

EXHIBIT P9: A TRUE COPY OF THE ORDER DATED 7.3.2014 IN ARC NO.48 OF 2012

EXHIBIT P10: A TRUE COPY OF THE JUDGMENT IN APPEAL NO.54/2014 BY THE KERALA CO-OPERATIVE TRIBUNAL

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No. 21036 of 2015 D

Dated this the 10th day of August, 2015

JUDGMENT

The petitioner, a Co-operative Society, assails in this writ petition Exhibit P10 judgment of the second respondent, the Co-operative Appellate Tribunal, which has set aside Exhibit P9 order of the Arbitration Court and directed it to hear on merits the ARC filed by the first respondent.

2. The facts in brief are that the first respondent, being the erstwhile Secretary of the petitioner Society, initially faced certain allegations of financial irregularities. It resulted in the initiation of disciplinary proceedings against him. Eventually, the finding of the disciplinary authority that the first respondent had been guilty of financial irregularities and misappropriation of money led to

the first respondent's removal from service. When the first respondent challenged the order of removal before the Board of Management of the petitioner Society, it resulted only in the affirmation of the findings and the consequential dismissal of the statutory appeal, through Exhibit P3.

3. Aggrieved, the first respondent approached the Arbitration Court by taking recourse to Section 69 of the Co-operative Societies Act, 1969 ('the Act' for brevity). Soon after the filing of A.R.C.No.18/2010, the first respondent has, however, sought the leave of the Arbitration Court to withdraw the proceedings with a view to approaching the Industrial Tribunal/Labour Court. Accordingly, the Arbitration Court through Exhibit P5 award, apart from dismissing the ARC as having been withdrawn, permitted the first respondent to approach the Labour Court.

4. When the first respondent filed Exhibit P6 petition before the Labour Court, Kannur, it rejected the petition

through Exhibit P7 award, essentially on the ground that the first respondent did not answer the description of a workman and that the Labour Court inherently lacked the jurisdiction to try the matter.

5. In the light of the above developments, left with no other alternative, the first respondent again approached the Arbitration Court by filing A.R.C.No.48/2012 on 19.09.2012. Based on the objections raised by the petitioner Society concerning the maintainability of the Arbitration case, the learned Arbitration Court dismissed the ARC at the threshold through Exhibit P9.

6. Aggrieved, the first respondent filed Appeal No. 54/2014 before the second respondent Tribunal, which rendered Exhibit P10 judgment directing the learned Arbitration Court to entertain the ARC on merits. It was, then, the turn of the petitioner Society to assail through the present writ petition Exhibit P10 judgment of the Appellate Tribunal.

Summary of Submissions:**Petitioner's:**

7. In the above factual backdrop, the learned counsel for the petitioner has strenuously contended that the first respondent himself initially had Exhibit P4, A.R.C.No. 18/2010, dismissed as withdrawn through Exhibit P5 award. He has further contended that the first respondent for whatever reason could not come back to the same forum and re-agitate the issue that he voluntarily withdrew initially. According to the learned counsel, the first respondent's action is hit by the principles of res judicata.

8. Drawing my attention to Exhibit P9 order of dismissal passed by the learned Arbitration Court, the learned counsel would contend that it did not suffer from any legal infirmity to be interfered with by the second respondent Tribunal. In elaboration of his submissions, the learned counsel has further drawn my attention to Exhibit P10 judgment of the second respondent Tribunal to

strenuously contend that the findings of the learned Tribunal were not only in violation of Section 11 of Code of Civil Procedure ('the Code' for brevity), the principle of res judicata, but also the salutary statutory mandate under Order XXIII Rule 1 of the Code.

9. In Support of his submissions, the learned counsel for the petitioner has placed reliance on **Pallichal Farmers Service Co-Operative Bank Ltd. v. State of Kerala**¹, **Sarguja Transport Service v. STAT**², **Abhishek Malviya v. Additional Welfare Commissioner**³, **Sandhya Educational Society v. Union of India**⁴, **Raveendran v. State of Kerala**⁵, **Basawaraj & others v. The Spl. Land Acquisition Officer**⁶, and **Inmati Mallappa Basappa v. Desai Basavaraj Ayyappa & others**⁷.

First Respondent's:

¹ 2015 (1) KLT 347

² (1987) 1 SCC 5

³ (2008) 3 SCC 108

⁴ (2014) 7 SCC 701

⁵ 2007 (3) KLT 558

⁶ (2013) 14 SCC 81

⁷ AIR 1958 SC 698

10. Per contra, Shri.Gracious Kuriakose, the learned Senior Counsel for the first respondent, has submitted that the first respondent was initially of the bona fide impression that both the Arbitration Court and the Labour Court concurrently had jurisdiction. Since he had felt that the Labour Court was a more appropriate forum and was better equipped to decide the issue of the first respondent's dismissal from service, he approached the said forum, only after taking the necessary leave from the learned Arbitration Court. According to the learned Senior Counsel, there was no animus on the part of the first respondent to abandon the case.

11. In elaboration of his submissions, the learned Senior Counsel has drawn my attention to Rule 122 of the Kerala Co-Operative Societies Rules ('the Rules' for brevity) to stress that only to a limited extent, the provisions of the Code will apply to the proceedings before the Arbitration Court.

12. In sum and substance, it is the contention of the learned Senior Counsel that the first respondent has been constrained to approach once again the learned Arbitration Court under the compelling circumstances that have arisen owing to the subsequent statutory developments that the Labour Court has not got the necessary jurisdiction to entertain the first respondent's plea concerning his removal from service. In support of his submissions, the learned Senior Counsel has placed reliance on **Union of India & Anr. v. Sher Singh & Others**⁸.

13. Heard the learned counsel for the petitioner and the learned Senior Counsel for the first respondent, apart from perusing the record.

14. If we examine chronologically, the first respondent, the erstwhile Secretary of the petitioner Society, was removed through Exhibit P2 from the service on 25.07.2009. Having challenged Exhibit P2 before the

⁸ (1997) 3 SCC 555

learned Arbitration Court in A.R.C.No.18/2010, soon thereafter he sought the leave of the Arbitration Court to withdraw the ARC with liberty to approach the Labour Court, which, in his view, was better suited to decide the dispute raised by the first respondent. It has, thus, resulted in Exhibit P5 award of dismissal passed by the learned Arbitration Court.

15. It is profitable to extract the cryptic Exhibit P5 order, which reads as follows:

“Plaintiff filed a petition seeking permission to withdraw the case with liberty to file a fresh application before the Labour Court. Petition allowed. Suit is dismissed without cost with permission to file a fresh application before the Labour Court.”

16. When the first respondent filed Exhibit P6 petition before the designated Labour Court at Kannur, the said forum rendered Exhibit P7 award in I.D.No.1/2011. A perusal of Exhibit P7 reveals that the Labour Court has found that the first respondent does not answer the description of the workman as defined under Section 2(S) of

the Industrial Disputes Act ('the ID Act' for brevity). Accordingly, it has further concluded that the cause espoused by the first respondent does not amount to any industrial dispute; as a corollary, it has concluded that it lacks inherent jurisdiction to deal with the matter.

17. Later, the first respondent, out of service, still having not secured any adjudication of his grievance on merits, once again approached the learned Arbitration Court by filing Exhibit P8—A.R.C.No.48/2012. Evidently based on the objection raised by the petitioner-Society regarding the maintainability of the proceedings, the Arbitration Court rendered Exhibit P9 order dated 07.03.2014. As can be seen from Exhibit P9, the learned Arbitration Court has framed two issues concerning the maintainability of the proceedings: (1) limitation and (2) res judicata.

18. The principal issue that engages the attention of this Court is whether the ARC is barred by the principle of

res judicata or any other statutory constraint.

19. On appreciation of the rival submissions, the learned Arbitration Court has eventually concluded that the first respondent's approach for a second time is barred by the principle of res judicata. The learned Arbitration Court has premised its finding on the reasoning that entertaining A.R.C.No.48/2012 would amount to “dual prosecution” for the same relief. The learned Arbitration Court has also rendered a finding that ARC is barred by limitation as well.

20. At the outset, it may be apposite for this Court to point out that Exhibit P9 does not contain any reasons how the ARC has been barred by limitation. It is a finding, in my view, without any adjudication—a mere ipsi dixit.

21. The first respondent, having been aggrieved by Exhibit P9 order of the learned Arbitration Court, has filed a statutory appeal before the second respondent Tribunal in Appeal No.54/2014. The learned Tribunal, in turn, rendered Exhibit P10 judgment. The learned Tribunal has opined that

the order of the Arbitration Court granting permission to withdraw A.R.C.No.18/2010 was not produced before it. As a result, the Tribunal has felt that without perusing the order, it is not possible for it to ascertain whether any leave was granted to withdraw the case with liberty to file a fresh case on the very same cause of action.

22. A further perusal of Exhibit P10 shows that the learned Tribunal has, in my view correctly, examined the issue in the perspective of the limitations imposed by Order XXIII rather than Section 11 of the Code. In that regard, the finding of the learned Tribunal is that at the time when the first respondent withdrew A.R.C.No.18/2010, the judicial view was that the Labour Court and the Arbitration Court had concurrent jurisdiction; only later has the legal position changed to the effect that the Arbitration Court alone has the jurisdiction.

23. Having arrived at a conclusion that Exhibit P7 award of the Labour Court, Kannur, was not on merits, the

learned Tribunal has upheld the contention of the first respondent and reversed Exhibit P5 order of the learned Arbitration Court. The net result is that the learned Tribunal has held that A.R.C.No.48/2012 filed by the first respondent is eminently maintainable.

24. Though initially the learned counsel for the petitioner has laid much emphasis on the fact that A.R.C. No.48/2012 has been barred by res judicata, later he has given up the said plea and focused his submissions on the impediment caused by Order XXIII Rule 1 of the Code against the maintainability of the A.R.C.No.48/2012. And rightly so.

25. In **Jacob Varkey v. Idukki District Co-Operative Bank Ltd.**⁹, a learned Division Bench of this Court has held that the permission granted by the Arbitration Court to the petitioner to withdraw the case with liberty to file a fresh one after impleading the proper

⁹ CDJ 2001 Ker HC 118

parties is perfectly within its jurisdiction. The learned Division Bench has further felt that no further prejudice has been caused to the rival parties as none of their legal rights has been infringed on account of the leave granted to the plaintiff.

26. In fact, in the present instance, the proposition of law is on the converse. The learned counsel for the petitioner has placed reliance on this judgment to hammer home, perhaps, the point that Order XXIII of the Code has an application to the proceedings before the Arbitration Court. I am afraid, the judgment in the least has held that Order XXIII has any direct application to the proceedings before the learned Arbitrator. Essentially guided by the principles of justice, equity, and good conscience, the learned Division Bench of this Court in *Jacob Varkey* (Supra) has held that the Arbitration Court in the interest of justice can take recourse to any device so that a genuine cause has not perished on the altar of technicality. The

pronouncement as to the power of the learned Arbitration Court to permit the plaintiff to withdraw the ARC with liberty to file a fresh one is essentially based, as has already been observed, on the equity jurisprudence, rather than on the literal application of Order XXIII of the Code.

27. In **Raveendran v. State of Kerala**¹⁰, another learned Division Bench of this Court has only affirmed the resultant statutory position in the face of Section 69 of the Act. It has held that on the constitution of the Co-operative Arbitration Court, every dispute pending before the Registrar or any person entrusted with the power to dispose of the same in respect of non-monetary disputes relating to the local area of the jurisdiction of the Arbitration Court shall be transferred to the jurisdictional Arbitration Court.

28. In *Sarguja Transport Service* (supra), the Hon'ble Supreme Court has held that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the

¹⁰ 2007 (3) KLT 558

interest of justice to withdrawal of the writ petitions also, essentially, on the ground of public policy. Indeed, the Constitutional Courts exercising the power under Article 226 of the Constitution of India do not have a separate code of procedure. As a result, the Courts have devised their own procedures, usually, in the form of writ rules which are framed under Article 225 Constitution of India.

29. In the face of Section 141 of the Code, it is not uncommon for the High Courts to spell out in the writ rules whether the provisions of the Code of Civil Procedure apply, and if they apply, to what extent? In that context, the Courts have consistently held that though the provisions of the Code do not apply wholesale to the writ proceedings, the common law principles, such as Section 11 or Order XXIII of the Code would apply. It is, ofcourse, as a part of the well-entrenched equity considerations, which even the Civil Courts have in terms of Section 151 of the Code in the manner of inherent powers. Ipso facto, it cannot be

concluded that since the writ Courts have adopted the very provisions of, or the principle akin to, Section 11, Order XXIII or some other analogous provisions in the Code, the said provisions will also apply with equal vigour to all other proceedings before any other adjudicatory forum.

30. In *Abhishek (supra)* and *Sandhya Educational Society (supra)*, the Hon'ble Supreme Court has dealt with the same issue of application of Order XXIII to writ proceedings. In *B.Premanand (supra)*, the Hon'ble Supreme Court has held that when there is a conflict between the law and equity, it is the law which is to prevail, and that the equity can only supplement the law when there is a gap. But it cannot apply across the board. Established as the said legal principle has been, I do not see its imminent application in the present instance. To elaborate, there is no provision in the Kerala Co-operative Societies Act, under which the Arbitration Court has come into existence, either dealing with a legal principle akin to the one enshrined in

Order XXIII, or barring recourse to the principles of equity with a view to filling the statutory interstices.

31. In *Basawaraj (supra)*, the Apex Court has held that the law of limitation may harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. According to their Lordships, the Court has no power to extend the period of limitation on equitable grounds. There cannot be any quarrel with the said proposition of law, and I am in respectful agreement with it. The fact, however, remains that in the present instance, no issue concerning the limitation is being decided. If at all it is to be contended that the first respondent's approach to the Arbitration Court is barred by limitation, it is entirely up to him to take recourse to a provision like Section 14 of the Limitation Act, if it applies, because the Arbitration Court is a Court of the first instance, rather than an appellate court.

32. The issue in the present writ petition has come up for consideration under peculiar circumstances. To elaborate, it can be seen that initially the first respondent having suffered summary dismissal from service approached the learned Arbitration Court by filing an ARC. Later he withdrew the said proceedings with the leave of the learned Arbitration Court to approach the Labour Court. In real earnest, the first respondent raised the dispute before the Labour Court, for he had bona fide believed that both the fora, i.e. the Arbitration Court and the Labour Court, had concurrent jurisdiction, and that the latter had been statutorily better placed to decide the issue. Nevertheless, it turned out that his claim before the Labour Court could not be sustained on a technicality that the first respondent did not fit the definition of the workman.

33. Distraught, the first respondent has rushed back to the court of his first approach, i.e., the Arbitration Court and renewed his plea by filing another ARC. The court of

the first instance has felt that the ARC initiated by the first respondent has been barred not only on the ground of limitation but also on the ground of res judicata.

34. When the first respondent laid challenge against the refusal of the learned Arbitration Court to have the matter tried on merits, the second respondent Tribunal, eventually, overturning the decision of the trial court, issued a direction to the Arbitration Court to have the matter considered on merits.

35. At the outset, it is made clear that the principle of res judicata does not apply in the present instance for more than one reason. In the first place, no forum has adjudicated the matter on merits to hold that the issue stood concluded between the same parties. Secondly, the Labour Court has rejected the first respondent's application on the ground that it inherently lacked the jurisdiction. Nevertheless, the second respondent Tribunal has rightly appreciated the issue in the context of the supposed legal

impediment in terms of Order XXIII Rule 1 of the Code.

36. Considered in a conspectus, the singular issue that falls for consideration before this Court is whether A.R.C.No.48/2012 has been barred by Order XXIII Rule 1 of the Code since the first respondent has earlier withdrawn A.R.C.No.18/2010. It is, in these circumstances, apposite to examine Order XXIII Rule 1, which reads as follows:

"Order XXIII, Rule 1: Withdrawal of suit or abandonment of part of claim.—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An Application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other, person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1),
or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),
he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]

37. Firstly, it is to be held that there is no abandonment on the part of the first respondent. All through his conduct is bona fide. I hasten to add at this juncture that mere bona fides on the part of a suitor are not sufficient to protect him from the statutory rigour if it has a binding effect otherwise. There is no cavil that the first respondent did successfully seek leave of the Arbitration Court through Exhibit P5.

38. Before the Labour Court, which the first respondent approached without further waste of time, the issue was whether the first respondent would fit the definition of the workman. To the misfortune of the first respondent, the Labour Court found the issue against him; resultantly, it declared through Exhibit P7 award that it inherently lacked jurisdiction to entertain the first respondent's claim. Only under these compelling circumstances has the first respondent once again approached the learned Arbitration Court.

39. The issue further boils down to whether the provisions of the Code of Civil Procedure apply to and bind the Co-operative Arbitration Court. In my considered view, the answer is in the negative.

40. In **Nityananda M. Joshi v. LIC**¹¹, the Hon'ble Supreme Court has held that the scheme of the Indian Limitation Act is that it only deals with applications to

¹¹ (1969) 2 SCC 199 (at P.200)

courts, and that the Labour Court is not a court to apply the Indian Limitation Act, 1963. In **Sakuru v. Tanaji**¹² accepting the earlier precedential position, the Apex Court has held that the provisions of the 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, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure.

41. In **Kavi Rajan v. Co-Operative Tribunal**¹³, what has fallen for consideration is the application of Section 5 of the Limitation Act, i.e., the condonation of delay, in initiating the judicial proceedings. A learned Division Bench, on reference, has laid down, placing reliance on Sakuru (supra), that the Co-operative Tribunal is not a Court and that the provisions of the Limitation Act

¹² AIR 1985 SC 1279

¹³ 1989 (2) KLT 895

are not applicable.

42. In elaboration, I may hold that the Arbitration Court has come into existence in terms of the Kerala Co-operative Societies Act, 1969. Section 98 of the Act mandates that both the second Tribunal and the Arbitration Court shall have the powers of a civil court in respect of the enumerated matters therein; namely summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavits and issuing commissions for examination of witness. Rule 122 is a replica of Section 98.

43. The Act, at the outset, as part of its Preamble, declares that the enactment has the effect of consolidating, managing and unifying the laws relating to the Co-operative Societies in the State of Kerala. It goes without saying that the Act is not a singular instance of legislative intent, but a codification of relevant provisions. In other words, Act 21 of

1969 is a consolidated Act partaking the character of a code. If this is to be accepted, the Act is a complete code.

44. The procedural interstices can only be filled up guided by either the common law principles or those of justice of equity and good conscience, which is nothing but equity jurisprudence. In view of the authoritative judicial pronouncement in Kavi Rajan (supra) by a learned Division Bench of this Court, I cannot but hold that a Co-operative Arbitration Court or a Tribunal under the Act, 1969 is not a civil court.

45. In **Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa & Others**¹⁴, the provisions of the Representation of the People Act, 1951 ('the RP Act' for brevity) fell for consideration. In fact, in the said enactment, the then extant Section 90 (now Section 87 being analogous) conferred wide powers on the Tribunal as if it were a civil court. Thus, the Code of Civil Procedure applied

¹⁴ AIR 1958 SC 698

in a larger arena than what has been specified in Section 98 of the Act. As per Section 90 of the RP Act, subject to the provisions of the said Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908. As per Section 92 of the RP Act, the Tribunal was deemed to be a civil court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

46. Despite the same, after an elaborate consideration of the relevant provisions, a learned three-Judge Bench of the Hon'ble Supreme Court has held that the provisions of Order XXIII Rule 1 of the Code do not apply because the RP Act is a self-contained code.

47. Guided by the above ratio of the Hon'ble Supreme Court, I am of the considered opinion that Section 98 of the Act has not got the potential of importing wholesale all the other provisions of the Code of Civil

Procedure into the Kerala Co-operative Societies Act, 1969. If no specific procedure has been provided concerning any particular aspect either in the Act or the Rules, nothing prevents the Arbitration Court or the Tribunal, as the case may be, to be guided by the principles analogous to the provisions in the Code of Civil Procedure. I may add that they cannot, however, be applied to stifle the legitimate proceedings, thereby denying the suitor a right to have the matter heard on merits. Essentially, the procedural gaps are required to be filled up by the application of well-established canons of justice, equity and good conscience.

In the facts and circumstances, I am of the considered opinion that Exhibit P10 judgment of the second respondent Tribunal does not suffer from any legal infirmity to be interfered with by this Court under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed.

The issue of limitation is, however, left open. It is entirely for the first respondent to take recourse to Section 14 of the Limitation Act, subject to its applicability, if he is so advised. At any rate, it is equally open to the petitioner to oppose any application for condonation of delay by taking all legally available pleas against the same. No order as to costs.

Dama Seshadri Naidu, Judge

rv/tkv

'C.R.'