

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
+ CIVIL REVISION PETITION No. 5868 OF 2015

% Dated 18.02.2016

Sri S. Sudharshan Rao & another

....Petitioners

Vs.

\$ The Citizen Co-operative Society Limited

....Respondent

! Counsel for the Petitioners : Sri M. Dasharatham

^ Counsel for the Respondent : Sri G.B.S.S. Papa Rao

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1967 Supreme Court 1274

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CIVIL REVISION PETITION No. 5868 OF 2015

Sri S. Sudharshan Rao & another

....Petitioners

Vs.

The Citizen Co-operative Society Limited

....Respondent

JUDGMENT PRONOUNCED ON 18.02.2016

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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | yes |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | yes |
| 3. Whether Their Lordship wish to see the fair copy of the Judgment? | No |

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No. 5868 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The two judgment-debtors are the petitioners in this Revision, which was directed against the order passed on 02.11.2015 by the learned Judge, Family Court-cum-Additional District Judge, Khammam in E.A.No. 2 of 2014 in E.P.No. 88 of 2012.

E.P.No. 88 of 2012 has been instituted for executing the Award passed on 14.05.2011 in Arbitration Case No. 17 of 2010. The Award, it is not disputed before us, has attained finality. Therefore, no objection could have been maintained for the Execution Petition taken out for execution of the said Award. In fact, no such objection was raised either. But however, during the course of inquiry, on behalf of the petitioner in the Execution Petition, the Branch Manager of the petitioner Society at Khammam has filed an affidavit in lieu of his chief-examination. An objection was raised as to how a Branch Manager can maintain the Petition without the necessary authorization granted in his favour by the Managing Director of the Society. Then, the affidavit in lieu of chief-examination filed by the Branch Manager has been withdrawn and an Application, E.A.No. 2 of 2014 has been taken out in the E.P. under Rule 32 of the Civil Rules of Practice seeking permission of the Court to represent the petitioner in the Execution

Petition. The permission sought for was accorded by allowing E.A.No. 2 of 2014 on 02.11.2015 by the Court. It is this order dated 02.11.2015, which is challenged in this Revision.

Heard learned counsel for the petitioners Sri M. Dasaratham and the learned counsel for the respondent Sri G.B.S.S. Papa Rao.

The petitioner is a cooperative society, which is got registered in terms of Section 7 of the Multi-State Co-operative Societies Act, 2002 and hence, the Central Registrar has issued a certificate of registration signed by him. Under Section 8 of the aforementioned Act, any such certificate of registration shall be conclusive evidence that the Society mentioned therein is duly registered under the said Act. Sub-section (1) of Section 9 of the said Act has spelt out that registration of a multi-state cooperative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal having the power to acquire, hold and dispose of property, enter into contracts, institute and defend suits and other legal proceedings and shall, by its name, sue or be sued. Therefore, the Execution Petition as instituted by and in the name of "the Citizens Co-operative Society Limited" could not have been found objectionable, as it has been instituted in the name of the society and the combined reading of Sections 7, 8 and 9 of the aforesaid Act render the said proceedings as instituted as a legally valid exercise.

It will also be appropriate to notice the provisions contained in Order XXIX of the Code of Civil Procedure, which dealt with suits by or against the corporations. Rule 1 thereof would set out that in suits by or against a corporation, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or Other Principal Officer of the Corporation who is able to depose to the facts of the case. Thus, Rule 1 authorizes the pleadings to be signed and verified on behalf of the Corporation by either the Secretary or any Director or "Other Principal Officer" of the Corporation who is able to depose to the facts of the case. Therefore, apart from the Secretary

and Director of a Corporation, any Other Principal Officer, who is capable of deposing to the facts of the case, can also sign and verify the pleadings set up on behalf of a Corporation. Unless the petitioners herein are able to establish, by credible material, that the Branch Manager of the Society at Khammam is not one of those principal officers of the Society or that he is not capable of deposing to the facts of the case, perhaps, any such objection for verification of the facts set out by a Branch Manager could not have been maintained. Similarly, for deposing to the facts of the case, by a Branch Manager of the Society could not have been objected to.

Further, Section 84 of the Multi-State Co-operative Societies Act, 2002 provided for a special mechanism for resolution of disputes. Sub-section (1) of Section 84 of the said Act would set out that notwithstanding anything contained in any other law for the time being in force, if any dispute touching the constitution, management or business of a multi-state co-operative society arises, amongst members, or between a member and a past-member or between a member and the multi-state co-operative society, as in the present case, such dispute shall be referred to arbitration. Sub-section (4) thereof would set out that where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the Arbitrator to be appointed by the Central Registrar. Sub-section (5) proceeds further by spelling out that the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration proceedings under the Multi-State Co-operative Societies Act, 2002 as if the proceedings for arbitration were referred for settlement or decision under the provisions of the 1996 Act. Section 36 of the Arbitration & Conciliation Act, 1996 provided for the mechanism for enforcement of an award, which has attained finality. Section 36, hence, provided that where the time for making an application to set aside the arbitral award under Section 34 has expired, or such Application having been made, it has been refused, the Award shall be enforced under the Code of

Civil Procedure, 1908 in the same manner as if it were a decree of the Court. It will also be appropriate, in this context, to notice that under Section 34 of the 1996 Act, the time limit prescribed for seeking to set aside the arbitral award is not later than three months from the date on which the party making any such Application under Section 34 has received the arbitral award. The proviso to sub-section (3) of Section 34 has further provided for condonation of a delay of 30 days but not beyond thereafter. Thus, if a period of four months elapses from the date the arbitral award has been received by a party, its right to get the same set aside under Section 34 of the 1996 Act gets exhausted. In other words, the arbitral award can get enforced any time after lapse of four months from the date the parties receive the copy of the arbitral award, but do not prefer to challenge the same in terms of Section 34.

In the instant case, the arbitral award has been passed on 14.05.2011, whereas the Execution Petition was filed for enforcing the said Award on 04.11.2011, thus, after lapse of more than 5 ½ months time. But the Award was not challenged. We are therefore, of the opinion that the Execution Petition as instituted is in accordance with law.

In this context, it will also be appropriate to notice the provisions contained in Order XXI Rule 11 of the Code of Civil Procedure. Sub-rule (2) thereof sets out that every application for execution of a decree shall be, in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case and shall contain the particulars specified therein.

It is not in dispute that the Execution Petition as presented did contain all the necessary particulars, made a mention of under sub-rule (2) of Rule 11 of Order XXI of the Code. Therefore, the only question, which the executing court is required to be satisfied, is that the contents of the written application filed for execution of the arbitral award is verified by the person, who is acquainted with the facts of the

case or not. In other words, it is not necessary that the person, who can institute a suit and verify the facts spelt out therein, alone need to file the written application for execution of the decree. The rationale behind this principle being under sub-rule (1) of Rule 11 of Order XXI of the Code, an oral application at the time of passing of the decree for payment of money can as well be made by seeking for immediate execution thereof by the arrest of the judgment-debtor prior to the preparation of a warrant if the said person is within the precincts of the Court. Therefore, power is conferred on the civil Court to enforce a decree based upon an application taken out in writing, by a person, who is acquainted with the facts of the said case and not necessarily by the very same person, who may have been authorized to institute the original suit proceedings.

This apart, in a classic enunciation of the legal principles, the Supreme Court in ***S. Govinda Menon v. Union of India***^[1], has spelt out the juristic distinction between a corporation sole and corporation aggregate in the following words:

“But there is a juristic distinction between a Corporation sole and a Corporation aggregate and the Corporation sole is not endowed with a separate legal personality as the Corporation aggregate. As Maitland said:

“If our corporation sole really were an artificial person created by the policy of man we ought to marvel at its incompetence. Unless custom or statute aids it, it cannot (so we are told) own a chattel, not even a chattel real. A different and an equally inelegant device was adopted to provide an owning “subject” for the ornaments of the church and the minister thereof adopted at the end of the Middle Ages by lawyers who held themselves debarred by the theory of corporations from frankly saying that the body of parishioners is a corporation aggregate. And then we are also told that in all probability a corporation sole cannot enter into a contract except with statutory authority or as incidental to an interest in land Be that as it may, the ecclesiastical corporation sole is no “juristic person”; he or it is either natural man or juristic abortion.” (See selected Essays of Maitland” pp. 100 and 103)

Keeton has also observed as follows:

“It was a device for transmitting real property to a succession of

persons without the necessity for periodic conveyances. It was never intended that this device should be erected into a psychological person with a developed existence of its own.....”

In view of what has been noted by us so far, the Execution Petition, as instituted in the instant case, is clearly maintainable.

The composite High Court of Andhra Pradesh has framed the Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980, exercising the power available to it under Article 227 of the Constitution of India read with Sections 122 and 126 of the Code of Civil Procedure and with the previous approval of the Governor of the State, for the purpose of incorporating certain administrative instructions for the guidance of the subordinate civil Courts in the matter of discharge of their day to day functions. Rule 32 thereof has provided for an agent to appear on behalf of a party and before so appearing, he is required to seek the permission of the Court for so appearing as an agent. Sub-rule (2) thereof empowered the judge to record, in writing, that the agent is permitted to appear and act on behalf of the party. In the instant case, that is what exactly has been done by the civil Court. Therefore, no exception can be taken thereto and the exercise of jurisdiction carried out by the civil Court in ordering E.A.No. 2 of 2014 in E.P. No. 88 of 2012 is in accord with the legal principles on the subject and hence, the Civil Revision Petition stands dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

18th February 2016

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[\[1\]](#) AIR 1967 Supreme Court 1274