IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

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The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.748 of 2015
and
M.P.No.1 of 2015

National Agricultural Co-operative Marketing Federation of India Limited, NAFED House,
Siddharth Enclave, Ashram Chowk,
Ring Road, New Delhi - 110 004
rep. By its Managing Director .. Appellant/Defendant

Vs

G.Somasundaram .. Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 09.09.2014 made in A.S.No.302 of 2013 on the file of the III Additional Judge, City Civil Court, Chennai, confirming the judgment and decree made in O.S.No.1348 of 2011 dated 27.06.2013 by the XIII Assistant Judge, City Civil Court, Chennai.

For Appellant .. Mr.D.Vijaya Kumar

For Respondent .. Mr.R.Mukundan

JUDGMENT

The defendant, who lost before the Courts below in the suit filed for declaration seeking to set aside the order of dismissal with consequential prayer, is the appellant herein.

2.The plaintiff was working as Manager (Finance) at the relevant point of time. Charges have been framed against him along with his senior officers on the premise that they are responsible for the creation of false and fabricated bank guarantee resulting in undue benefit to one M/s.Raja Edibles Private Limited, having been appointed as Super Stockist followed by delivery of goods to the tune of Rs.99 lakhs. A criminal case has also been registered in this regard.

3.Pursuant to the charges so framed, an enquiry officer was appointed. Prior to that, a preliminary report was submitted for the purpose of finding out the fact by appointing one person by name Suresh. This was done to go into the larger issue as to what happened in the matter of creation of bank guarantee, appointing M/s.Raja Edibles Private Limited as Super Stockist, release of goods and the person responsible for it. The enquiry officer found that higher punishment has to be given to the plaintiff as against the higher officials. Accordingly, he recommended for transfer. However, the disciplinary authority found that a case of dismissal has been made out and accordingly, the plaintiff was dismissed from service. The appeal filed by the plaintiff was also rejected. The orders passed by the disciplinary authority and the appellate authority read as under:

> "..........Now, therefore, on careful consideration of the Inquiry Report, Inquiry Proceedings documents, evidence recorded in the inquiry and reply dated 23.1.2009 to show cause notice submitted by Shri.G.Somasundaram, the Executive Committee in its meeting held on 10.7.2009 resolved that Shri.G.Somasundaram be awarded with maximum of major penalty of dismissal from service under the rules. Orders are accordingly issued."
>
> ".....Your appeal dated 05.08.2009 against the order under reference has been considered by the Appellate Authority i.e. the Board of Directors in the meeting held on 17.03.2010 and it has been decided to confirm the penalty imposed on you vide aforesaid order. Accordingly, the order cited stands confirmed. Extract of the minutes of the meeting of the Board of Directors held on 17.03.2010 is enclosed herewith."

Challenging the same, the suit has been laid.

4.The suit was contested both on merit and on maintainability by the appellant. It is the case of the appellant that as per Section 115 of the Multi State Co-operative Societies Act, 2002 (for short 'the Act'), there was no prior notice and thus the suit is not maintainable. On notice, it is contested that one of the other delinquent officers has not been examined as a witness in the present suit and therefore, the allegations made against him cannot be substantiated.

5.The trial Court decreed the suit as prayed for. It was held that Section 115 of the Act does not have an application to the case on hand. Reliance has been made on Article 311 of The Constitution of India. On facts, it was found that the action taken by the plaintiff has been approved by the other delinquent officers, being the higher authorities followed by the release of goods. Thus, for the error, if any, committed by the plaintiff, he cannot be handpicked and fixed the entire responsibility. On the question of procedure, it was found that certain documents called for by him have not been furnished. An observation has been made on the manner in which the disciplinary authority has decided the issue and so is the case of the appellate authority. The lower appellate Court also agreed with the finding of the trial Court while dismissing the appeal. Challenging the same, the present appeal has been filed.

6.At the time of admission, the following substantial question of law has been framed:

> Whether the Courts below were not wrong in failing to see the Multi-State Co-operative Societies Act, 2002, Central Registrar, or any other Tribunal or Form which has jurisdiction to deal with the plaint?

7.Learned counsel appearing for the appellant submits that the suit is not maintainable for want of prior notice as mandated under Section 115 of the act. The decision rendered by the Apex Court in Morinda Cooperative Sugar Mills Limited Vs. Morinda Cooperative Sugar Mills Workers' Union ((2006) 6 SCC 80) in fact helps the case of the appellant when the Courts below have committed an error in granting the relief in favour of the plaintiff on the premise that the other delinquent officers have been let off. The question is as to whether the plaintiff is responsible or not. Thus the judgment and decree rendered by the Courts below require interference.

8.Learned counsel appearing for the respondent submits that Section 84 of the Act has to be read with Section 115. Section 84 of the Act defines the issue pertaining to constitution, management or business of the society. It specifically excludes the disciplinary action. As the present phraseology is used under Section 115 of the Act, such a dispute, as raised in the present case, falls outside the jurisdiction of the Act. Thus, there is no bar in maintaining the suit. The power of the Civil Court being plenary, the Courts below have rightly rendered the decision on the question of maintainability. On merit also, the Courts below have considered the entire evidence available and satisfied. Thus no interference is required.

9.Coming to the issue of maintainability, Section 84 of the Act speaks about the reference of dispute. It specifically excludes a disciplinary action taken by the Act against an employee. Section 84(2) of the Act explains what constituted a constitution, management or business of the multi-state co-operative society. Therefore, Section 115 of the Act, which speaks about the prior notice has been seen in the context of Section 84 of the Act. Thus the dispute qua the disciplinary action does not come within the purview of Section 84 of the Act. It cannot be construed as one touching upon the constitution, management or business. The exclusion of Section 84(1) of the Act is very specific. Once such a dispute as arose in the present case does not come within the rigor of Section 84 of the Act, the question of applying Section 115 of the Act would not arise. To that extent, the decision rendered by the Courts below will have to be accepted though reliance made upon Article 311 of the Constitution of India cannot be accepted.

10.Coming to the merits of the case, it has been found by the Courts below concurrently that the orders passed by the disciplinary authority and the appellate authority cannot be sustained in the eye of law. A factual finding has been rendered that the higher authorities have approved and appointed M/s.Raja Edibles Private Limited as Super Stockist. Therefore, the decision was taken not by the plaintiff. It is not as if the enquiry officer has exonerated the other two higher officers. It was told at the bar that Subramanian, who took the decision and thereafter released the goods, has since retired. The agreement with M/s.Raja Edibles Private Limited was signed by the Branch Manager. An approval has also been given by the Head Office. The goods have been delivered on 18.01.2007 even before receiving the confirmation letter of bank guarantee from Satara Branch on 19.01.2007. Thus a factual finding has been given that the Branch Manager executed the agreement on 06.12.2006 even prior to receiving the approval from the Head Office and thereafter took steps to deliver the goods on 18.01.2007, which once again, was prior to the receiving of letter of confirmation of bank guarantee from the Satara Branch. The Courts have found that the documents, as sought for by the plaintiff, has not been given thus violating the principles of natural justice.

11.The punishment rendered by the disciplinary authority as confirmed by the appellate authority, as rightly observed by the Courts below, cannot be sustained in the eye of law on the ground of total non-application of mind as well. These orders are cryptic orders without any discussion. The report of the enquiry officer is nothing but a piece of evidence, though the recommendation made by him is not binding in nature.

12.Accordingly, in view of the aforesaid findings rendered, this Court is of the view that no case is made out to reverse the judgment and decree rendered by the Courts below in exercise of the power under Section 100 C.P.C. The substantial questions of law are answered against the appellant and in favour of the respondent. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The III Additional Judge,
City Civil Court, Chennai.

2.The XIII Assistant Judge,
City Civil Court, Chennai.

+1 cc to Mr.D.Vijayakumar Advocate sr 6462
+1 cc to Mr.R.Mukundan Advocate sr 6612

S.A.No.748 of 2015

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