IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.1.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1716 of 2017

V.Venkataraman ... Appellant

Versus

1. The Managing Director,
   George Town Co-operative Bank,
   2/62, Krishnappa Agraharam Street,
   Chennai 600 079.

2. The General Manager,
   George Town Co-operative Bank,
   2/62, Krishnappa Agraharam Street,
   Chennai 600 079. ... Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 26.7.2017 passed in W.P.No.19090 of 2017 on the file of this court. Writ petition filed under Art 226 of the constitution of India praying to issue a writ of certiorarified Mandamus calling records relating to the memo dated 28/3/2016 from the 2nd respondent and quash the same and direct the respondent to repay the deduction already made in the petitioner's salary.

For appellant : Mr.R.Rajaram
For respondents: Mrs.T.Girija,
Government Advocate

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the appellant and Mrs.T.Girija, learned Government Advocate, who takes notice on behalf of the respondents.

2. The writ appeal has been filed challenging the order passed by the learned Single Judge dismissing the writ petition filed for the relief of quashment of the impugned order and a direction to the respondent-Society to repay the deduction already made in the petitioner's salary.

3. It appears that the learned Single Judge has dismissed the writ appeal on the ground that there is an alternative remedy available to the petitioner as against the impugned order and the petitioner, without exhausting such remedy, has straightway approached the writ jurisdiction.

4. Learned counsel appearing for the appellant/writ petitioner would submit that the Service Conditions of Employees Adoption of Regulation under Special Bye-law have not been adhered before passing the impugned order and hence, the writ petition is maintainable. He relied upon the decisions of the Supreme Court in A.UMARANI v. REGISTRAR, COOP. SOCIETIES ((2004) 7 SCC 112) and (AKALAKUNNAM VILLAGE SERVICE COOP. BANK LTD. v. BINU N.((2014) 9 SCC 294) in support of his contention.

5. In the instant case, what is observed by the learned Single Judge is as under:-

> "5. Since there is a specific provision under the Tamil Nadu Co-operative Societies Act to resolve the disputes between the members and the management etc., as stated supra, the writ petitioner ought to have approached the Competent Authorities under the provisions of the Tamil Nadu Co-operative Societies Act. Contrarily, the writ petitioner moved this writ petition without exhausting the remedies available under the provisions of the Tamil Nadu Co-operative Societies Act. Thus, this court is of the opinion that the petitioner has to exhaust the remedies available under the Act and, therefore, he has to follow the legal procedures contemplated therein.
>
> 6. Under these circumstances, this court is of the clear opinion that the writ petitioner has filed this writ petition without exhausting remedies available under the Tamil Nadu Co-operative Societies Act. Further, the Co-operative Society is not a "State" within the meaning of Article 12 of the Constitution of India. No writ will lie against the Co-operative Society."

6. The case of A.UMARANI, relied upon by the learned counsel for the appellant, cited above, dealt with regularisation of appointees and the State Government's power to direct for regularisation of services of irregular appointees of Co-operative Societies and therefore, such a decision cannot be applied to the case on hand as it is on a different footing. The other decision relied viz., (2014) 9 SCC 294 dealt with the selection process of the Co-operative Bank in violation of the Circulars issued under Rule 182(5) of the Kerala Cooperative Societies Rules which also cannot cover the issue on hand.

7. The learned counsel appearing for the appellant has taken us through Clauses 5 and 7 of the Regulations under Special By-law relating tot he Service Conditions of Employees Adoption which reads thus:-

> "5. Employees shall be paid wages or salaries on the last working day of the month. No wages period shall exceed one month. Where the services of any employee are terminated, wages earned by him shall be paid before the expiry of the second working day from the day of termination of his service.
>
> ...
>
> 7. Deduction which may be made from wages shall be in accordance with the relevant provisions of Chapter VII of the Chennai Shops and Establishments Act of 1947 as amended from time to time. "

and sought to contend that except having introduced a borrower for the Society, the appellant has not done anything, but, he was penalised with a recovery of Rs.4000/- per month from his salary which is a clear violation of the above referred clauses of Regulations and therefore, sought for indulgence of the court.

8. In the case on hand, the issue is the recovery made by the respondent-Society from the appellant's salary for the default in repayment committed by a borrower introduced by the appellant. Factually, it appears that the appellant had given a letter in favour of the person, who borrowed a loan from the respondent-Society and on his default, the Society had resolved to recover the dues from the appellant-employee. Therefore, there is an issue to be resolved between the employee and the Society. It has to be decided by the fact finding authority based on a detailed enquiry as to whether the Society has violated the Regulations or the employee has played mischief under the guise of introducing the borrower.

9. Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 reads thus:-

> "90. Disputes
> .- (1) If any dispute touching the constitution of the Board or the management or the business of a registered Society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of section 75 or the Registrar or the society or its Board against a paid servant of the Society) 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, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the Society or its Board and any past Board, any officer, agent or servant, or any past officer, past, agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the Society, or

(d) between the Society and any other registered Society, such dispute shall be referred to the Registrar for decision."

10. The above provision makes it clear that the dispute between the appellant and the Society needs to be referred to the Registrar. Of course, there is no dispute that the appellant had introduced a borrower who is shown to have committed default in payment and in furtherance thereof, it appears that the Society resolved to recover the amount due from the borrower only from the salary of the appellant in instalments. It appears that the Society had considered the introducer of the borrower in the position of surety. We cannot ignore the probability of the borrower's attempt to hoodwink the Society with the help of the employee. All such things can be gone through only by a fact finding authority as provided under Section 90 of the Tamil Nadu Co-operative Societies Act. Therefore, the learned Single Judge has rightly dismissed the writ petition of course, on the other ground. The decisions relied upon by the learned counsel appearing for the appellant to substantiate his contention that writ petition is maintainable against a Society are not applicable to the facts and circumstances of the case on hand. In that view of the matter, we cannot differ with the finding rendered by the learned Single Judge while dismissing the writ petition.

11. In the result, this writ appeal is dismissed. However, it is for the appellant to approach the competent authority under section 90 of the Act to redress his grievance viz. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ssk.

To:
1. The Managing Director,
   George Town Co-operative Bank,
   2/62, Krishnappa Agraharam Street,
   Chennai 600 079.

2. The General Manager,
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KS(CO)
EU(17/02/2018)