

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 01.11.2019

Pronounced On : 08.11.2019

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.2742 of 2013

and M.P.No.1 of 2013

S.Jayakumar

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Petitioner

..Vs..

1. Kothari Mill No.1
Employees Co-operative House
Building Society SLM-SHG 45,
Rep. By its Special Officer,
Door No.1699/11, Jayashree Complex,
Trichy Road, Ramanathapuram Post,
Coimbatore - 641 045



2. N.M.Sukumar

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Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying for striking off the plaint in O.S.No.2 of 2013 on the file of the Sub-Registrar, Co-Operative House Building Society, Coimbatore.

For Petitioner : Mr.P.Satheesh Kumar

For Respondents : Mr.A.Tamilarasan (for R1)
No appearance (for R2)

ORDER

The petitioner in the Civil Revision Petition is the 1st defendant in OS No.2/2013-14 on the file of the Deputy Registrar of Co-operative Societies-cum-Arbitrator, Co-operative House Building Society, Coimbatore. He has filed the Civil Revision Petition, seeking the relief to strike off the plaint in OS No.2/2013-14 pending on the file of Deputy Registrar, Co-operative House Building Society, Coimbatore.

2. Initially, the Secretary, Kothari Mill No.1, Employees Co-operative House Building Society Limited, Coimbatore, filed a plaint on 17.02.2013, before the Deputy Registrar of Co-operative Societies-cum-Arbitrator, under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 for recovery of a sum of Rs.32,53,830/- from the revision petitioner and from one N.M.Sukumar/2nd respondent herein.

3. The contention raised by the revision petitioner, before this Court is since the petitioner being a third party, the Deputy Registrar of Co-operative Societies-cum-Arbitrator, is not having any jurisdiction to take cognizance under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 [hereinafter called as 'Act']. The further contention of the revision petitioner

is that, instead of filing a suit before the civil Court, the Secretary, Kothari Mill No.1, Employees Co-operative House Building Society Limited, has wrongly presented the plaint before the Deputy Registrar of Co-operative Societies-cum-Arbitrator, which is erroneous in law. So, as per Article 227 of the Constitution of India, for rectifying the mistake committed by the Deputy Registrar of Co-operative Societies-cum-Arbitrator, the revision petitioner / 1st defendant, is before this Court, with the present Civil Revision Petition.

4. Now, considering the submission made by the learned counsel appearing for the revision petitioner / 1st defendant, it would be relevant and useful to see Section 90 of the Act, which reads as follows:

“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 of legal representative 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.”

5. A whole reading of the said Section reveals the fact the only in respect of the dispute arising between the members of the Co-operative Society, the proceedings initiated before the Deputy Registrar of Co-operative Societies-cum-Arbitrator, is maintainable. But, in this case, the revision petitioner herein has filed a counter before the Deputy Registrar of Co-operative Societies-cum-Arbitrator, contending that he is a third party. In order to deny the said contention, no relevant document has been placed before this Court, on the side of the 1st respondent / plaintiff.

6. As per the case of the prosecution, the Secretary, Kothari Mill No.1, Employee's Co-operative House Building Society Limited, Coimbatore based on an agreement for purchasing the land, the revision petitioner and one another person viz., N.M.Sukumar/2nd defendant, have received Rs.80,00,000/- in which, Rs.32,53,830/- is balance, to be paid by the revision petitioner. So the averments set out in the plaint filed before the Deputy

Registrar of Co-operative Societies-cum-Arbitrator, clearly reveals the fact that the revision petitioner is a third party.

7. On going through the entire averments set out in the plaint filed before the Deputy Registrar of Co-operative Societies-cum-Arbitrator, nothing has been averred that the revision petitioner is a member of the Society, or otherwise, he is related with the Society through a past member. So in the absence of any averments in respect to the relationship of the revision petitioner with the House Building Society, one cannot come to the conclusion that the revision petitioner, is liable under the proceedings initiated under Section 90 of the Act.

8. The learned Deputy Registrar of Co-operative Societies-cum-Arbitrator, Coimbatore, without appreciating the plaint averments, has taken the petition filed by the Secretary, Employees of Kothari House Building Society, Coimbatore, on file and assigned case number viz., OS No.2/2013-14, which is erroneous in law. The cognizance took by the Deputy Registrar of Co-operative Societies-cum-Arbitrator, Coimbatore, is against the provisions of Section 90 of the Act and thereby, the relief sought for by the petitioner, is maintainable.

9. In the light of the above discussion, the plaint filed by the Secretary of Kothari Mill No.1, Employee's Co-operative House Building Society Limited, Coimbatore, before the Deputy Registrar of Co-operative Societies-cum-Arbitrator, is struck off and the entire proceedings initiated in OS No.2/2013-14, is closed. The Civil Revision Petition is disposed of, accordingly. No Costs. Consequently, the connected Miscellaneous Petition is closed.

08.11.2019

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Index: Yes/No.

Internet: Yes.

Speaking / Non-speaking Order

To

The Deputy Registrar of Co-operative Societies-cum-Arbitrator,
Co-operative House Building Society, Coimbatore

WEB COPY

R.PONGIAPPAN, J.,

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Pre-delivery order

CRP (PD) No.2742 of 2013
and M.P.No.1 of 2013

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