



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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C.R.P.(MD)No.1527 of 2019

and

C.M.P.(MD)No.7991 of 2019

The Secretary

E.E.178, Pudukkottai Primary Agricultural

Cooperative Credit Society Ltd.,

Thoothukudi District.

: Petitioner/3rd Petitioner/
3rd Defendant

Vs.

1.P.Shanmugavel

2.P.M.Balasubramanian

3.I.Jackson Duraimani

4.Jeyaraj

5.Krishnavanitha

6.Mariammal

7.Thangam

8.Marimuthu

9.Rajkumar

: Respondents 1 to 9/Respondents 1 to 9/
Plaintiffs 1 to 9

10. The Deputy Registrar of Cooperative Societies,
Thoothukudi Circle, Thoothukudi District.

11. The Manager/Election Officer,
Thoothukudi District Central Cooperative Bank,
Thoothukudi District.

: Respondents 10 & 11/Petitioners 1&2/
Defendant 1 & 2

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 06.09.2018 passed in I.A.No.701 of 2018 in O.S.No.127 of 2018 by the learned Principal District Munsif, Thoothukudi and allow the above Interlocutory Application.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

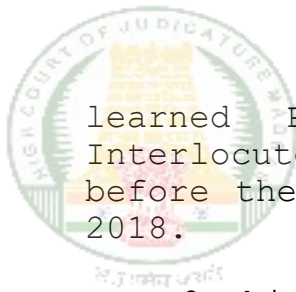
For R10 & R11 : Mr.R.Sethuraman

Special Government Pleader

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.701 of 2018 in O.S.No.127 of 2018 by the

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learned Principal District Munsif, Thoothukudi. The said Interlocutory Application filed by the revision petitioner herein before the Court below to reject the plaint filed in O.S.No.127 of 2018.

2.This Court ordered notice to respondents 1 to 9. Notice also served through Court. However, none appeared for the respondents 1 to 9.

3.The suit was filed by the respondents 1 to 9 challenging the nomination to contest Board of Directors of the Cooperative Society, who is petitioner herein. The respondents 1 to 9 have filed their nomination for the purpose of elect them as Board of Directors of the petitioner society and they have filed their nomination on 31.03.2018, which was last date for filing nomination. However, the nomination of the respondents 1 to 9 have been rejected on 02.04.2018 and displayed on the notice board about the details of the acceptance and rejection of the nominations. Result of the election was also declared on 03.04.2018. In the petitioner society, there are 11 Board of Directors posts and 13 nominees' nominations was accepted, however, two nominees withdrew their nomination and therefore, balance 11 nominees were elected as Board of Directors on 03.04.2018. Hence, there is no need to conduct further election.

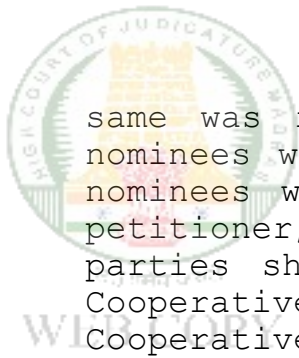
4.In the above circumstances, the respondents 1 to 9 have filed O.S.No.127 of 2018 to declare the election as null and void and issue a direction to conduct fresh election.

5.The revision petitioner filed an application before the Court below under Order 7 Rule 11 of C.P.C., stating that if any dispute with regard to the election, same should be agitated before the Registrar, Cooperative society under Section 152(2)(a) of the Tamil Nadu Co-operative Societies Act 1983 and the Civil Court has no jurisdiction to decide the issue relates to election and hence, he prayed to reject the plaint.

6.The respondents in I.A., have filed their counter stating that the petitioner herein did not filed its counter in suit and that the civil Court has jurisdiction to conduct the suit relates to cooperative societies' dispute and relied a decision of this Court reported in 2015 (5) MLJ 673.

7.After considering the arguments of both sides, the Court below dismissed the application filed by the petitioner herein. Challenging the said order, the revision petitioner filed the present civil revision petition.

8.The learned counsel appearing for the petitioner submitted that election was announced for the post of 11 Board of Directors. The respondents herein filed their nomination, however, the



same was rejected. Finally, 13 nominations were accepted. Two nominees were withdrew their nominations and hence, the balance 11 nominees were declared as Board of Directors. According to the petitioner, no election was conducted and if there is any dispute, parties should agitate the same before the Registrar, Tamil Nadu Cooperative Societies under Section 152(2)(a) of the Tamil Nadu Cooperative Societies Act.

9.In support of his contention, the learned counsel relied on a decision of Division Bench of this Court reported in 2008-4-L.W.883 in a case of **P.Eswaramoorthy & 15 others Vs. R.J.B.Leoraj and 10 others**. By following this decision, another decision also relied by the learned counsel reported in 2018-4-L.W.718 in a case of **M.Siva Subramanian Vs. The Joint Registrar of Cooperative Societies, Tirunelveli Region, Tirunelveli-627 002 and others** wherein paragraph 39(d), it is stated that the Civil Courts in the State of Tamil Nadu are hereby directed not to entertain any civil suits in respect of co-operative societies, since Section 156 of the Cooperative Societies Act ousts the jurisdiction of the civil courts and the civil courts are directed to strictly adhere to the principles laid down by the Division Bench of this Court in **P.Eswaramoorthy and others V. R.J.B.Leoraj and others, 2008 4 LW 883**.

10.Therefore, the revision petitioner contended that the present suit is liable to be rejected on the ground that civil Court has no jurisdiction to entertain the same.

11.The learned Special Government Pleader appearing for the respondents 10 and 11 adopted the submissions of the learned counsel for the petitioner.

12.Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for R10 and R11.

13.Present suit was filed challenging the declaration of the election as null and void and conduct fresh election in the petitioner society. It is admitted fact that the respondents 1 to 9 were filed their nomination, however, their nominations were rejected by the revision petitioner herein. Thereafter, 13 nominees filed their nomination for the post of 11 Board of Directors, subsequently, 2 nominees withdrew their nomination. Hence, balance 11 nominees were declared as Board of Directors on 03.04.2018. Against the same, the respondents 1 to 9 filed a suit. In the suit, an Interlocutory Application came to be filed by the petitioner herein questioning the jurisdiction of the civil Court and very maintainability of the suit. The trial Court dismissed the said application.

14.For the sake of convenience, it is relevant to extract the Sections 90 and 156 of the Tamil Nadu Cooperative Societies act:

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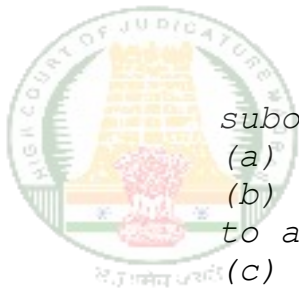
90. Disputes .- (1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of section 75 or the Registrar or the society or its 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.

Explanation.- For the purposes of this section, a dispute shall include- (i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of the deceased member whether such debt or demand be admitted or not. (ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property and (iii) a decision by the board under sub-section (3) of section 34; Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the result of such election.

(2) The Registrar may, on receipt of such reference; (a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person



subordinate to him and-

- (a) decide the dispute himself; or
- (b) transfer it for disposal to any person subordinate to and empowered by him; or
- (c) refer it for disposal to an arbitrator or arbitrators; or
- (d) retransfer the same for disposal to the person from whom it was withdrawn; or
- (e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purposes of this section any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property, the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or retransferred under sub-section (2) or sub-section (3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section.

(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the dispute were a suit and the Registrar a civil court,. Subject to the following modifications, namely:-

- (i) when the dispute relates to a society in respect of which a special officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of



limitation shall be six years from the date of the order issued section 88 or section 137, as the case may be:

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), the period of limitation, shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;

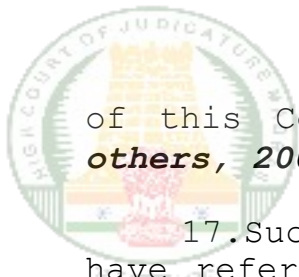
(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

156. Bar of jurisdiction of civil courts._
Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by order under this Act.

15. On perusal of the above, it appears that any dispute relating to the election or between the members of the society should be referred to the Registrar. Further issue to be decided in this case is whether the present suit is maintainable or not?

16. Present dispute fall within scope of the provisions of the Act and the same shall be referred to the Registrar, Tamil Nadu Cooperative Societies. Further this Court in a decision reported in **2018-4-L.W.718** in a case of **M.Siva Subramanian Vs. The Joint Registrar of Cooperative Societies, Tirunelveli Region, Tirunelveli-627 002 and others** wherein paragraph 39(d), it is stated that the Civil Courts in the State of Tamil Nadu are hereby directed not to entertain any civil suits in respect of co-operative societies, since Section 156 of the Cooperative Societies act ousts the jurisdiction of the civil courts and the civil courts are directed to strictly adhere to the principles laid down by the Division Bench



of this Court in **P.Eswaramoorthy and others V. R.J.B.Leoraj and others, 2008 4 LW 883.**

17.Such being a case, the private respondents herein should have referred the present election dispute to the Registrar, Tamil Nadu Co-operative Societies. Without referring the present election dispute to the Registrar, Tamil Nadu Co-operative Societies, the respondents herein filed the present suit in spite of the specific bar under Section 156 of the Act to file any civil suit before the Civil Court. Therefore, when there is a specific bar under Section 156 of the Act, the respondents herein are not entitled to file the present suit before the Court below without referring the same to the Registrar, in terms of the Section 90 of the Act. But these aspects have not been considered by the Court below, while disposing I.A.No.701 of 2018. Therefore, this Court is of the view that the suit is specifically barred under Section 90 and 156 of the Tamil Nadu Co-operative Societies Act. Hence, the order passed by the Court is liable to be set aside.

18.In view of the above discussion, the order of the Court below in I.A.No.701 of 2018 in O.S.No.127 of 2018 is set aside and this Civil Revision Petition is allowed and the plaint filed in O.S. No.127 of 2018 stands rejected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1. The Principal District Munsif,
Thoothukudi.
2. The Deputy Registrar of Cooperative Societies,
Thoothukudi Circle, Thoothukudi District.
3. The Manager/Election Officer,
Thoothukudi District Central Cooperative Bank,
Thoothukudi District.

+1 CC to Mr.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-89785[F] dated 26/09/2019)

C.R.P. (MD)No.1527 of 2019
25.09.2019

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