

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2020

Pronounced on : 23.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(PD)No.1110 of 2015

and

M.P.No.1 of 2015.

1. The Special Officer,
S.921 Edappadi Handloom Weavers
Co-operative Production & Sale Society Ltd.,
Thavan Street, Edappadi,
Edappadi Taluk,
Salem District.

2. The Manager,
S.921 Edappadi Handloom Weavers
Co-operative Production & Sale Society Ltd.,
Thavan Street, Edappadi,
Edappadi Taluk,
Salem District.

... Revision
Petitioners/Defendants

versus

M/s.Sri Ram Auto Consulting
and Service Centre,
Rep. by its Proprietor K.Selvaraj
5/47, Poolampatty Road,
Edappadi,
Edappadi Taluk,
Salem District.

... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to strike off the plaint and consequently, dismiss the suit in O.S.No.329 of 2012.

For Revision Petitioners : Mr.R.Balaramesh

For Respondent : Mr.R.Nalliyappan

ORDER

The revision petitioners herein are the defendants in O.S.No.329 of 2012 pending on the file of the District Munsif, Sankari.

2. This Civil Revision Petition has been filed by the Special Officer of the Edapadi Handlooms Weavers' Co-operative Society to strike off the plaint in O.S.No.329 of 2012, stating that the suit is barred under Section 156 of the Tamil Nadu Co-operative Societies Act, 1983.

3. The case of the revision petitioners is that the revision petitioners Society let out a premise in Door No.5 of 47 on Edapadi to Poolampatti main road in Edapadi Town, for a period of three years, for monthly rent of Rs.1,260/- on 06.10.2006. The lease was extended in the year 2009 for a further period of three years and the period of lease was over by 07.10.2012 and when the petitioners Society refused to extend the lease and insisted to

vacate the premises, the respondent/tenant filed a suit against the Office Bearers of the Society in O.S.No.329 of 2012 before the District Munsif, Sankari, for permanent injunction restraining the revision petitioners/defendants and their subordinates from interfering with the peaceful possession of the suit property, until evicted by due process of law and also obtained ad-interim injunction. In the suit, the revision petitioners Society entered appearance and also filed a written statement.

3. It is the further case of the revision petitioners that the provisions under Section 156 of the Tamil Nadu Co-operative Societies Act, specifically, bars the Civil Court from taking cognizance of the suit. However, the learned District Munsif, Sankari, entertained the suit filed by the respondents in O.S.No.329 of 2012 and also granted an order of interim injunction and therefore, these revision petitioners/defendants in the suit filed this Civil Revision Petition to strike off the plaint in O.S.No.329 of 2012.

4. The learned counsel for the revision petitioners submitted that the respondent/plaintiff, without approaching the authorities by initiating arbitration proceedings under the Act, had filed the suit and hence, the suit is liable to be struck off. Further, the respondent/plaintiff, by suppressing the

material facts, had obtained an order of interim injunction. Therefore, the present suit is vexatious and purely abuse of process of law. It is further submitted that the revision petitioners Society has also filed a petition under Section 10(2)(ii)(3)(iii) of the TNRCLRC Act before the Rent Controller, Sankari in R.C.O.P.No.1 of 2013 and the same is pending. In support of his contention, the learned counsel for the revision petitioners has relied upon the following decisions:

(i) M.M.V.Alappan and others vs. Karaikudi Co-operative House Building Society Ltd., reported in CDJ 2008 MHC 1095, wherein this Court has held as follows:

“35. Accordingly, the substantial question of law No.(i) is decided to the effect that in the facts and circumstances of the case, the Civil Court is having no jurisdiction to entertain the suit as effective remedy is contemplated under the Tamil Nadu Co-operative Societies Act; the substantial question of law No.(ii) is decided to the effect that the plaintiffs were claiming right only as the member of the Society as against the Co-operative Society and one other member of the Co-operative Society and the dispute has arisen relating to sale of plot only and consequently, Section 90 and other provisions of the Act are applicable and they are very much covered as contemplated under Section 90 of the Act. The Arbitrator under Section 90 of the Act, is the competent authority to decide the validity of the cancellation or otherwise of the matter and also the subsequent sale deed executed by the

Society in favour of the writ petitioner herein.”

(ii) Marine Times Publications Pvt. Limited and Shriram Transport and Finance Co. Ltd. and another, reported in 1991 (1) SCC 469, wherein, the Hon'ble Supreme Court has held as follows:

“12. We find that the appellant before us is a member of respondent No.2, a co-operative society. Respondent No.1 is not a member. The main question before us is whether the claim of respondent No.1 in the dispute can be said to be one made against the co-operative society, being respondent No.2, through the appellant, a member. On analysing the plaint, it appears clear to us that the main claim of respondent No.1 is for a decree of order for specific performance of the agreement, whereby the appellant agreed to sell the said premises to respondent No.1. The prayer for an order that respondent No.2 Society should be directed to give their approval to the said transaction was merely an ancillary prayer made with a view to complete the relief of specific performance. As far as the claim to have the agreement specifically performed is concerned, we fail to see how it can be said to be a claim made by a person. Non member against the society. The claim of the respondent No.1 against the society, as made in the plaint, cannot be said to be made through a member, the appellant herein, because it is only when a decree for performance of the said agreement is passed against the society through a member. Moreover, as we have pointed out that relief is only in the nature of ancillary relief, subsidiary to the main relief of specific performance. In our opinion, the dispute set out

in the plaint cannot be said to fall within the scope of Section 91(1)(b) of the said Act and in view of this, the learned Judge of the High Court was with respect, in error, in coming to the conclusion that both the parties to the dispute belonged to the categories covered under Section 91(1)(b) of the said Act. In our opinion, it is not necessary for us to decide whether the dispute in question was one “touching the business of the society” because even if that were so, it could not be referred to the co-operative Court in the view which we have taken at set out earlier.”

(iii) The Managing Director and Special Officer, Sago, Salem vs. Muthuselvi, reported in 2013 (5) CTC 877, this Court has held as follows:

“5. To appreciate the contention of both the parties, we will have to see the plaint allegations and also the provision of section 156 of the Tamil Nadu Co-operative Societies Act. As stated supra, the respondent is a member of the revision petitioner society and the respondent and other members used to get 70% value of the starch and sago as advance after delivering the finished products at the office of the revision petitioner and the members are expected to sell the finished products deposited with the revision petitioner within a period of one year or to return the advance amount received by them, failing which the Society is entitled to sell the finished products as per Article 40 of the Bye-laws. In this

case, the finished products were deposited between 12.4.2011 and 30.6.2011 and within one year period, the finished products were not taken back by the respondent and therefore, the revision petitioner issued notice on 5.5.2012 calling upon the respondent to comply with the Bye-laws by removing the goods within a period of one year or to return the advance amount failing which the finished goods will be sold by the Society. Admittedly, the entire advance amount was not repaid by the respondent and according to the respondent, on 9.6.2012, she returned the advance amount for 6 lots which approximately comes to Rs.15,00,000/= and as the respondent attempted to sell the remaining lots for non- repayment of advance amount, the suit was filed for injunction. Therefore, the transaction as stated in the plaint is only in the nature of bailor and bailee and the articles were entrusted with the revision petitioner with the intention that as soon as the respondent/plaintiff repays the advance received, the articles will be delivered back and a further condition is attached that the amount shall be repaid within a period of one year and the articles should be sold within a period of one year.

6. The question now arises for consideration is whether such a transaction can be brought within the provisions of Tamil Nadu Co-

operative Societies Act and whether issuance of notice by the revision petitioner calling upon the respondent to repay the advance amount or to sell the articles within a period of one year failing which the articles will be sold by the revision petitioner by invoking Article 40 of the Bye-laws and subsequent sale of articles by the revision petitioner can be brought under the phrase 'action by the officer of the Society' within the meaning of section 156 of the Co-operative Societies Act.

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15. In the judgment reported in 2012 (2)

Scale 113, the Honourable Supreme Court dealt with a similar question and held that the subject matter of the suit is not covered by section 91 (section 90 of the Tamil Nadu Co-operative Societies Act). An enquiry into the question whether a private dispute can be enumerated under section 91 of the Tamil Nadu Co-operative Societies Act was raised. In that case, the property was originally owned by the

Society and the tenant members of the society initiated proceedings and during the pendency of the said proceedings, a resolution came to be passed by the General Body of Society to sell the land in favour of some respondents and aggrieved by the resolution two suits were filed in the Bombay High Court and in those suits, preliminary objection was raised regarding the maintainability in view of section 91 and 163 of the Maharashtra Co-operative Societies Act, 1960 and the same was allowed by the Division Bench of the Bombay High Court and the Honourable Supreme Court reversed the judgment of the Division Bench holding that the dispute cannot be brought within the ambit of section 90 of the Tamil Nadu Co-operative Societies Act.

16. In my opinion also, having regard to the facts stated in the plaint, it cannot be stated that the transaction between the parties can be brought within the the provisions of Tamil Nadu Co-operative Societies Act and unless action taken by the revision petitioner is brought within the provisions of the Act, civil court's jurisdiction cannot be excluded. Hence, I do not find any merit in the submission of the learned counsel and I do not find any infirmity in the order of the court below.

5. Per contra, Mr.Nalliyappan, learned counsel for the respondent

submitted that the suit filed by the respondent/plaintiff was entertained by the learned District Munsif, Sankari and ad-interim injunction was also granted in favour of the respondent/plaintiff. Further, the decision, relied upon by the learned counsel for the revision petitioners, reported in **CDJ 2008 MHC 1095**, cannot be applied to the facts of the case on hand, wherein, allotment was cancelled in violation of terms and conditions of allotment. Therefore, the ratio laid down in the said case cannot be applied to this case. It is also contended that the RCOP proceedings filed by the revision petitioners Society before the Rent Controller, Sankari, in R.C.O.P.No.1 of 2013 was subsequently withdrawn.

6. Heard Mr.Bala Ramesh, learned counsel for the revision petitioners and Mr.R.Nalliyappan, learned counsel for the respondent.

7. A perusal of the records would go to show that the suit property is a RCC terrace building, bearing Door No.5/47, on the Edappadi to Poolampatty Main Road in Edappadi Town. The respondent took the building on lease for a period of three years on a monthly rent of Rs.1,260/- on 06.10.2006 and paid an advance amount of Rs.10,000/-. Again, on 25.09.2009 another lease agreement was executed between the Secretary of the Society

and the respondent, by which, the respondent agreed to pay the enhanced rent of Rs.1,600/- and the period of lease was for three years and then, the respondent agreed to hand over the property to the petitioner on or before 07.10.2012. Further, the Society is in a rented building, which belongs to one P.P.Krishnan of Singampattai of Erode District, who has been repeatedly demanding the petitioner to vacate the premises as the rented building is in a highly dilapidated condition and the same is required for renovation and for his personal use. Therefore, the petitioner, by informing the same, urged the respondent to vacate the property and deliver the same to the petitioner. Despite a legal notice, the respondent has not vacated the premises. In this regard, the Society has also filed R.C.O.P.No.1 of 2013, before the Rent Controller, Sankari, seeking an order to evict the respondent from the building.

8. According to the revision petitioners, the respondent, by suppressing the above facts, filed the suit before the District Munsif, Sankari, which is barred under Section 156 of the Tamil Nadu Co-operative Societies Act, 1983 and it is a clear abuse of process of court. Therefore, it is necessary to look into the provisions under Section 156 of the Tamil Nadu Co-operative Societies Act, which reads as follows:-

“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.”

9. A bare reading of the aforesaid provision stipulates that the Civil Court is ousted of its jurisdiction in entertaining any suit and that no injunction shall be granted by any civil Court in respect of anything which is done or intended to be done by invoking the Tamil Nadu Cooperative Societies Act.

10. In K.K.Modi vs. K.N.Modi, reported in AIR 1998 (3) SCC 573, the Apex Court has held as follows:

“The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for

this purpose considerations of public policy and the interests of justice may be very material."

11. Further, it is a well settled law that the power under Article 227 of the Constitution of India, involves a duty on the part of the High Court to keep all Court within its jurisdictional bounds to prevent abuse of process of Court. This Court has got inherent jurisdiction under Article 227 of the Constitution to prevent abuse of process of Court and passing order to strike off plaint from the file of the Court, if it is a clear abuse of process of law and Court, as per the plaint averments and the relief sought for by the party seeking the relief.

12. Moreover, the Hon'ble Apex Court has made it clear that for invoking Article 227 of the Constitution, to strike off the plaint, there must be abuse of process of Court, as per the plaint averments and the admission made by the plaintiff, seeking the relief in the suit, otherwise this Court cannot pass such orders.

13. From the above facts, it is clear that the respondent, by suppressing the fact that the revision petitioners Society demanded him to vacate the premises in order to renovate the building, filed the suit in

O.S.No.329 of 2012, before the District Court, Sankari, for permanent injunction and also obtained ad-interim injunction by way of filing an interlocutory application in I.A.No.1405 of 2012 in O.S.No.329 of 2012, which is a clear abuse of process of Court. Further, as per the provisions under Section 156 of the Tamil Nadu Co-operative Societies Act, there is a bar of jurisdiction of civil courts in entertaining the civil suit and no injunction shall be granted by any Civil Court. Therefore, the plaint is liable to be struck off.

14. Accordingly, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

23.12.2020

Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif,
Sankari.

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B.PUGALENDHI, J.

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Pre-delivery Order in
CRP(PD)No.1110 of 2015

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