

K.C. Varkey Vs The Director of Industries and Commerce and Others

Court: High Court Of Kerala

Date of Decision: Jan. 5, 1978

Hon'ble Judges: Narendran, J; Balakrishna Eradi, J

Bench: Division Bench

Advocate: M.K. Narayana Menon, for the Appellant; Government Pleader for 1st Respondent and M.P. Abraham and K.K. Yacob for 2nd Respondent, for the Respondent

Final Decision: Allowed

Judgement

Balakrishna Eradi, J.

The Petitioner before us is the owner of a building situated on the Mahatma Gandhi Road, Ernakulam. He had rented

out that building to the Respondent -- The Kerala State Handicrafts Apex Co-operative Society Ltd., Ernakulam -- as per a lease deed, dated

27th October 1965 registered as document No. 343 of the Sub Registry Office at Ernakulam. The lease comprised two portions of the building,

one consisting of three rooms on the ground floor and the second consisting of one room on the second floor. While stipulating a total rent of Rs.

1075 per mensem it was mentioned in the lease deed that Rs. 850 was for the ground floor portion and Rs. 225 for the room in the second floor.

It would appear that on 23rd September 1968 the Respondent-Society intimated the Petitioner that it proposed to surrender the room on the

second floor on 24th October 1968 retaining the ground floor portion with liability to pay only Rs. 850 per mensem. Ext. P-2 is a copy of the said

communication sent to the Petitioner by the society. In reply thereto the Petitioner wrote to the Society as per Ext. P-3 dated 10th October 1968

stating that he was not amenable to accept a piecemeal surrender of the 2nd floor portion only and intimating the Society that it should either

surrender the entirety of the subject-matter of the leasehold or continue the tenancy as a whole since the Petitioner was not agreeable to a splitting

up of the tenancy. The Society, however, remitted rent only at the rate of Rs. 850 from 24th October 1968 onwards. The Petitioner thereupon

initiated proceedings before the Rent Control Court for eviction of the Society from the building on the ground of non-payment of rent by filing

R.C.P. No. 195 of 1968 before the Rent Control Court, Ernakulam. When those proceedings were pending, the Society surrendered the

possession of the entirety of the leasehold to the Petitioner on 25th November 1969. Long thereafter the Society appears to have preferred a claim

before the Director of Industries and Commerce, Trivandrum (1st Respondent) in his capacity as Registrar of Industrial Co-operative Societies

seeking to recover from the Petitioner a sum of Rs. 2,349.63 alleged to be due to the Society by way of amounts wrongfully retained by the

Petitioner from out of the advance rent deposited by the Society with the Petitioner at the time of the grant of the lease together with interest

thereon. Ext. P-4 is the copy of the plaint filed by the Petitioner before the 1st Respondent. The 1st Respondent appears to have transferred the

case to the Senior Co-operative Inspector attached to the District Industries Office, Ernakulam designating him as Arbitrator to decide the case.

The 2nd Respondent issued a notice to the Petitioner as per Ext. P-6, dated 14th January 1974 informing the Petitioner that the said claim which

was numbered as Suit No. 200 of 1971 was posted for hearing and disposal on 29th January 1974. The Petitioner thereupon appeared before the

2nd Respondent and filed a detailed statement of objections (written statement) dated 11th February 1974 (Ext. P-5). Apart from urging

objections relating to the merits of the claim put forward by the Society the Petitioner contended in Ext. P-5 that Respondents numbers 1 and 2

had acted without jurisdiction in entertaining the claim of the Society and purporting to deal with it u/s 69 of the Kerala Co-operative Societies Act,

1969 inasmuch as the dispute is not one covered by the said section. Apprehending that the said objection will not receive due and fair

consideration at the hands of the second Respondent the Petitioner has come upto this Court praying for the issuance of a writ of prohibition

directing Respondents numbers 1 and 2 to forbear from proceeding with the action initiated against the Petitioner as per Exts. P-4 and P-6.

2. Admittedly the Petitioner is not a member of the 3rd Respondent-Co-operative Society and his relationship with the Society was only that of

landlord and tenant, the Society having taken on lease a building belonging to the Petitioner. The claim put forward by the society is for recovery

from the Petitioner of an amount said to have been deposited with the Petitioner by way of advance rent and allegedly wrongly adjusted by the

Petitioner towards rent for the room on the second floor of the building for the period subsequent to the intimation given by the society of its

intention to vacate that portion. The question is whether such a claim will fall within the scope of Section 69 of the Kerala Co-operative Societies

Act, so as to confer jurisdiction on the Registrar to entertain and dispose of an arbitration suit in respect of the same.

3. It is candidly stated by the learned advocate appearing for the 3rd Respondent and also by the Government Pleader appearing on behalf of

Respondents 1 and 2 that the jurisdiction of the Registrar has been invoked by the society only under Clause (f) of Sub-section (1) of Section 69

and that the Registrar also has purported to entertain the arbitration suit only under that provision. Clause (f) of Section 69(1) provides that if a

dispute arises between a society and a person other than a member of the society who has been granted a loan by the society or with whom the

society has or had business transactions or any person claiming through such a person, such dispute shall be referred to the Registrar for decision,

and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. There is no case that the Petitioner had been

granted any loan by the society; but it is contended by the Respondents that the Petitioner will come within the description ""a person other than a

member of the society with whom the society has or had business transactions"". The 3rd Respondent co-operative society has been formed for the

purpose of doing business in handicraft articles. It is no part of the business of the society to take buildings on rent, although for the purpose of its

business the society may have incidently to take on lease premises for its use. But in entering into a transaction of lease for the said purpose the

society is not transacting business or entering into a business transaction with the Petitioner. In our opinion this position is clearly settled by the

decision of the Supreme Court reported in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . In that case a co-

operative bank owned some buildings and had let out to others parts of the buildings which it did not require for its own purpose. The question

arose as to whether a dispute between the society and one of its tenants was a dispute touching the business of the society so as to fall within the

ambit of Section 91 of the Maharashtra Co-operative Societies Act (Act 32 of 1961). Dealing with that question the Supreme Court observed:

In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other (1) similar

business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye - laws.

The question, arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend

on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it

does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is

the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business.

In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out

properties owned by it. Therefore, it seems to us that the present dispute between a tenant of a member of the bank in a building which has

subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank and the appeal should fail on this short

ground.

Reliance was sought to be placed by the Respondents on a decision of one of us (Narendran, J.) in *Sekharan v. State of Kerala* 1976 KLT 137.

That case is however clearly distinguishable. The co-operative society in that case was engaged in the business of maintaining and letting out

godowns and the dispute had arisen between the society and the contractor who had been entrusted with the construction of a godown. Since the

business of the society itself was to construct, maintain and let out godowns, it was held that the said dispute was one touching the business of the

society. In our opinion, this decision is of no assistance at all to the Respondents before us.

4. In the light of the above discussion it must follow that the claim put forward by the society against the Petitioner is not one covered by Section

69 of the Kerala Co-operative Societies Act and that the Respondents Nos. 1 and 2 have acted without jurisdiction in entertaining the said claim

and proceeding to dispose of the matter as if it were an arbitration suit maintainable u/s 69 of the Act. A writ of prohibition will therefore issue

against Respondents numbers 1 and 2 directing them to forbear from taking any proceedings in Arbitration Suit No. 200 of 1971 pending before

the arbitrator -- Senior Co-operative Inspector attached to the Industries Office, Ernakulam (2nd Respondent). The notice, Ext. P-6, will stand

quashed.

5. The Original Petition is allowed as indicated above. The parties will bear their respective costs.