

Karnataka High Court The Mandya House Building ... vs The Addl. Registrar
Of ... on 13 September, 2013 Author: B.S.Patil WP.37004/2013 1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF SEPTEMBER 2013

BEFORE

THE HON'BLE MR.JUSTICE B.S.PATIL

W.P.No.37004/2013 (CS-RES)

BETWEEN

THE MANDYA HOUSE BUILDING CO-OPERATIVE SOCIETY LTD., SUB-
ASHNAGAR MANDYA, MANDYA DISTRICT BY ITS SECRETARY. ...
PETITIONER

(By Sri.KRISHNAPPA N.R., ADV.)

AND

1. THE ADDL. REGISTRAR OF CO-OPERATIVE SOCIETIES (H & O)
O/O THE RCS OFFICE BUILDING NO.1, ALI ASKAR ROAD BAN-
GALORE 560052
2. THE KARNATAKA CO-OPERATIVE HOUSING FEDERATION
NY.NO.3, DIVAN MADAVARAO RAOD BASAVANAGUDI BANGA-
LORE 560004 BY ITS MANAGING DIRECTOR. ... RESPONDENTS

(By Sri.N.RAMACHANDRA, ADV. FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227

OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE OR-
DER OF R1 DATED 15.9.12 AND ALSO THE ORDER OF KAT, BANGA-
LORE DATED 5.8.13 PASSED IN RP 104/12 VIDE ANNEX-E & F AND ETC.
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THIS PETITION COMING ON FOR PRELIMINARY HEARING

THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. In this writ petition, petitioner - Mandya House Building Co-operative Society Limited is challenging the order dated 15.09.2012 passed by the 1st respondent - Additional Registrar of Co-operative Societies, Bangalore and also the order dated 05.08.2013 passed by the Karnataka Appellate Tribunal (for short, 'the Tribunal') in Revision Petition No.104/2012.
2. The Tribunal has confirmed the order passed by the Additional Registrar of Co-operative Societies rejecting the application filed by the petitioner seeking certain particulars by way of interrogatories from the 2nd respondent - Federation. The proceedings before the 1st respondent have been initiated by the 2nd respondent - Federation under Section 70 of the Karnataka Co-operative Societies Act (for short, 'the Act') seeking recovery of the dues. According to the 2nd respondent - Federation, it had advanced loan to the petitioner and though the amount had become due, it had failed to pay the same. Hence, it was constrained to initiate the proceedings under Section 70 of the Act. During the pendency of these WP.37004/2013 proceedings, the petitioner has filed an application as per Annexure-C invoking Order VI Rule 5 CPC seeking a direction to the 2nd respondent to furnish certain particulars to enable the petitioner to file the written statement/objections to the main dispute. 'Better Particulars' sought are in the form of queries regarding disbursement of loan amount, the year during which the loan was sanctioned, the total amount due and also as to whether the respondent - Federation had kept any amount paid by the petitioner under suspense account and if so, when it had been so kept and how much amount had been kept in the suspense account, etc.
3. The Additional Registrar of Co-operative Societies has rejected this application holding that the petitioner could not have requested the information by way of interrogatories and therefore, the application did not merit favourable consideration.
4. Aggrieved by the order passed by the 1st respondent, the petitioner has preferred a revision petition before the Tribunal. The Tribunal has dismissed the revision petition holding that in terms of Section 11 of the Karnataka Appellate Tribunal Act and Section 117 of the Act (wrongly mentioned as Section 17 by WP.37004/2013 the Tribunal) only some of the provisions of the Civil Procedure Code have been made applicable to the proceedings before the Registrar of Co-operative Societies enabling the Registrar to summon certain public documents from public offices or to compel the attendance of the witness to produce documents and adduce evidence and therefore, the present application filed seeking 'better particulars' in the form of interrogatories was not maintainable.
5. Learned counsel for the petitioner contends that the application was filed only to enable the petitioner to secure necessary information regarding the loan transaction, so as to narrow down the controversy before the Additional Registrar and also to enable the petitioner to take up appropriate defence in the form of evidence during the course of enquiry.
6. Learned counsel appearing for the respondent - Federation and also the learned Additional Government Advocate submit that what is provided

under Section 117 of the Act is that the Registrar has the power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of WP.37004/2013 documents by the same means and as far as possible in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908. It is submitted that no such power is given to the Registrar to direct the 2nd respondent - Federation to answer the interrogatories given by the petitioner.

7. Upon hearing the learned counsel for both parties and on careful perusal of the provisions contained under Section 117 of the Act, I find that while conducting an enquiry into a dispute referred for decision under Section 70 of the Act, the Registrar is clothed with powers to summon and enforce the attendance of witnesses and to compel the production of documents in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure. Under Order XI Rule 14 CPC, it is stated that it shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. Therefore, one thing is clear that either of the parties can WP.37004/2013 request the Registrar for a direction to produce certain documents which are necessary for the case.
8. However, in the instant case, the petitioner has not made any such application for production of documents, but has sought for certain answers to the interrogatories. As rightly contended by the counsel for the respondents, this procedure provided under the Civil Procedure Code is not made applicable to the proceedings under Section 70 of the Act. I find that as per Section 117 of the Act, a limited power is conferred upon the Registrar in the matter of compelling the parties to produce certain documents as contemplated in the Civil Procedure Code.
9. Therefore, reserving liberty to the petitioner to seek the particulars by way of production of documents which may be necessary for the case, this writ petition is dismissed declining to interfere with the orders passed by the Court below. It is made clear that if at all the petitioner intends to make such an application, the same shall be made within a period of three weeks from today. This direction is issued as an apprehension is expressed by the 2nd respondent - Federation that the proceedings are likely to be unduly protracted, if such a liberty WP.37004/2013 is given to the petitioner. If such an application is filed, the same shall be considered by the Additional Registrar of Co- operative Societies in accordance with law. Sd/- JUDGE
PKS