

Date of decision: 22-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S. K. KESHOTE, J
(22-12-1995)

ORAL JUDGMENT:

None present for the petitioner.

Mr. J.V.Mehta for Mr. S.I.Nanavati appears for the respondents.

The petitioners were admittedly members of A.C.C.Kuarry Kamdar Sahakari Shrafi Mandli Ltd., a cooperative society registered under the provisions of the Gujarat Cooperative Societies Act, 1961. It appears that the elected Board of the Society was superseded by the Registrar of Cooperative Societies of the State of Gujarat and Administrator of the society was appointed. The administrator, on his appointment, filed recovery cases against the petitioners for the amounts outstanding against their names in the record of the Society. Individual cases have been filed, but in most of the cases ex parte decree has been passed by the Board of Nominees. The petitioners had filed appeals against the said orders of the Board of Nominees before the Cooperative Tribunal. The appeals have also been dismissed, may be for absence of the petitioners and their advocates. When the decreed attained finality, the Administrator put the same in execution.

2. As it happens, the real difficulty of the decree holder arises only when he puts the decree in execution, which, in fact, happened in the present case also. It appears that the petitioners also have not appeared in the execution proceedings. Taking into consideration the fact that the petitioners are workmen in the A.C.C. Lime Quarry, it has been decided by the executing Court to recover the amount from them in monthly instalments of Rs.50/-. When the recovery order was sought to be given effect to, this writ petition is filed by the petitioners before this Court. This court granted interim relief and stayed the recovery.

3. In the writ petition the petitioners very conveniently avoided giving all the basic, relevant and material facts. This is a joint writ petition which has been filed by the petitioners. Though the Court may not go into technicalities in the writ petition, sitting under Article 226 of the Constitution, in certain cases the Court has to consider whether a joint writ petition is maintainable and, if it is filed, whether it should be entertained.

4. Where there is individual cause of action which is indisputably there, the petitioners' joint writ petition is not maintainable. Here is a case where individual recovery cases have been filed and separate decrees have been passed by the Board of Nominees. Appeals have also been filed. In the facts of the case, joint writ petition could have been

filed only by those persons who have been joined by respondent No.2 in the recovery cases. Joint writ petition by 64 persons, where it is not their case that they were jointly made party in the case and no separate case has been filed against them, is not maintainable. It is individual cases for recovery of amounts of loan outstanding in the accounts of the Society against the petitioners. These facts were required to be given out for consideration. This casual drafting of writ petition without giving any basis, without giving details of the cases which have been filed, the date or dates on which decrees have been passed, and other particulars of the appeals which have been filed before the Tribunal, with all necessary details of the date of dismissal, etc., is highly deprecated. The writ petition exhibits poor standard of drafting. It is settled law that whosoever approaches this Court by resorting to the extraordinary jurisdiction under Article 226 of the Constitution is expected to disclose all the material and relevant facts faithfully in the writ petition. After going through the contents of the writ petition it is too difficult for the Court to get the facts of the case and what really is the case against the petitioners and the judgment which has been given both by the Board of Nominees as well as by the appellate authority.

5. Mentioning of all the relevant and material facts facilitates the Court to appreciate the griev..R

petitioner as well as to decide the matters in correct perspective. In the present case I am constrained to say that the counsel who filed this writ petition has adopted perceptibly casual approach as is evident from the filing of incomplete and inaccurate pleadings lacking in all respects, and from his absence from the court when the matter was called out.

6. Though on the aforesaid ground the writ petition deserves to be dismissed, certain other aspects need reference in this regard. In para 9 of the writ petition the petitioners prayed for the reliefs as follows:

"9. It is therefore prayed that on the above grounds,

(a) The deduction of Rs.50/- per month from the wages of the petitioners being illegal and void, the opponent No.1 be restrained from deducting any amount from the wages payable

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(b) That pending hearing and final disposal of this writ petition, stay may be granted in the interest of justice to restraining the opponent No.1 or his officer, to deducting any amount from the wages payable to the petitioners.

(c)

(d) Your Lordship be pleased to pass order that opponent No.1 should pay back the deducted wages to the petitioners.

(e) "

The petitioners' only grievance is against the order of recovery of the amount, irrespective of the decrees having been passed by the Board of Nominees and confirmed by the Tribunal, in monthly instalment of Rs.50/-. The petitioners have not challenged the decree passed by the Board of Nominees in respect of the amounts which stood outstanding against them in the account of the Society. Not only this, the order which has been passed by the Tribunal in appeal filed by the petitioners against the award of the Board of nominees has also not been challenged. Recovery of the amount at the rate of Rs.50/-per month is only a consequential order and when the petitioners have failed to successfully challenge the award of the Board of nominees, this writ petition against the consequential order is therefore not maintainable. When the main award is not challenged, the petitioners have no cause whatsoever to challenge the order of recovery of the amount. From the document which has been filed by the petitioners in the writ petition it comes out that the award has been passed in 1970s and at no point of time the petitioners have felt aggrieved of those awards. Otherwise they could have approached this Court. Only at this stage when the deduction of the amount was commenced from their wages, this writ petition has been filed in 1982.

7. Taking into consideration the aforesaid facts and circumstances this writ petition is wholly misconceived and no relief whatsoever can be granted to the petitioners. This is because though the petitioners have taken amounts of loan from the Society, they have not paid the amounts and when the Administrator, on his appointment, started the proceedings for recovery of the amounts, they slept over their rights by not choosing to appear in those proceedings. Not only this, thereafter they filed appeals, but again, allowed those appeals to be dismissed for non prosecution. Now in the writ petition a plea is advanced that the Secretary of the Society has misappropriated huge amount of

the Society and he has debited the amounts to the petitioners who are illiterate workers. The petitioners further stated that the Secretary of the Society has taken false thumb impressions and false signatures of the petitioners. This sort of pleas are normally taken after the awards have been passed and recovery proceedings have been started. If the facts, as stated earlier, were correct, then the petitioners ought to have contested the case filed against them by the Administrator before the Board of Nominees. These are questions of facts on which full-fledged inquiry has to be made. These questions of facts need to be proved by producing cogent and material evidence. The petitioners have not disputed that the amounts in respect of which the awards have been passed against them are outstanding in the accounts of the Society against them. When the petitioners have admitted this position and now they want to take the plea that false thumb impressions and false signatures were taken in the accounts books of the Society, the burden lies upon them to prove and establish the same. The petitioners may be very poor and illiterate persons. But that cannot be a ground for this Court to accept what they stated in the writ petition to be correct. Sitting under Article 226 of the Constitution of India, this Court can only correct the errors or illegality committed by the lower authorities while passing the judgments and awards. The Court will not come to the rescue of the petitioners by holding rowing and fishing inquiry.

8. In the result this writ petition fails, and the same is dismissed. Recovery of the amount was stayed by the interim order passed by this Court on 13-7-1982. It is hereby ordered that the petitioners shall pay interest on the outstanding amounts at the rate of 12% per annum from 13th July, 1982. Respondent No.2 is directed to calculate the amount of interest and realise the same from the petitioners by reasonable monthly instalments not exceeding Rs.50/- per month. The petitioners are directed to pay Rs.100/- each by way of cost to respondent No.2. Rule discharged. Ad-interim relief granted earlier stands vacated.

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