

ISSN 0973-7480

Annual Subscription Rs. 1,200/-

**ORIENT**  
**JOURNAL OF LAW AND**  
**SOCIAL SCIENCES**  
(A MONTHLY JOURNAL)

VOLUME - V, ISSUE - 3

**FEBRUARY 2011**

Edited, Printed and Published by  
**Dr. A. M. ABDUL RUB**

Owned by  
**Dr. ABDUL RAYEES KHAN**

From :  
**R. K. PRINTING PRESS AND PUBLICATIONS CENTRE**  
# 12-13-103, Street No. 3, Tarnaka, Secunderabad - 500 017.  
Andhra Pradesh - INDIA

## CIVIL PROCEDURE CODE VIS-à-VIS ANDHRA PRADESH CO-OPERATIVE SOCIETIES ACT<sup>1</sup> - A STUDY

By

**Dr. Mukund Sarda\***

A special machinery has been crated under the 'Act' for the settlement of Cooperative Societies disputes. The jurisdiction of the civil courts in these Disputes has been barred.<sup>2</sup> However, it will not affect the writ jurisdiction of High Court.<sup>3</sup>

The Registrar or any person authorized by him is treated as a 'civil court' by conferring the powers under the Civil Procedure Code, while exercising the various powers under the Act.<sup>4</sup> This position of law makes it quite clear, that the various authorities, whether administrators or adjudicators should have the basic knowledge of the Code of Civil Procedure.

Litigants have a right to institute a civil suit in civil court of competent jurisdiction, unless the jurisdiction is expressly or impliedly barred by law. In other words, in the absence of any specific provision barring the jurisdiction of civil courts, a civil suit is always maintainable in civil courts, which shall have the power to hear the decide the case with due regard to its pecuniary value and territorial limits, depending on the subject-matter of litigation. However, the consent of the parties cannot either take away or confer the jurisdiction on the civil courts. This position of law is made quite clear, when the Supreme Court ruled, "A defect of jurisdiction ... Strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by the consent of the parties."<sup>5</sup>

A distinction has to be made between "irregular exercise of jurisdiction" and "lack of jurisdiction". In the former case, the Court has the jurisdiction to decide, whether right or wrong but in the latter case, the decree is a nullity in law.<sup>6</sup> Depending on the nature of the case, the Court, at the very initial stage, has the power to determine the question of jurisdiction.

The jurisdiction of the Court is subject to dual condition. Firstly, that the suits must be of a civil nature, and secondly, the cognizance of the suit is not barred either

<sup>1</sup> A.P. Co-operative Societies Act, 1964, hereinafter referred to as "Act' throughout this study.

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<sup>2</sup> See Sec. 12 of A.P. Co-operative Societies Act which states thus:

"No order passed, decision or action taken or5 direction issued under the Act by arbitrator, liquidator, Registrar or an officer or person authorized or empowered by him, the tribunal or the Government or any office subordinate to him shall be liable to be called in question in any Court ..."

<sup>3</sup> See Art. 226 of the Constitution of India.

<sup>4</sup> See Sec. 72 of the A.P. Co-operative Societies Act.

<sup>5</sup> Karan Singh v. Chaman Pasawan AIR 1954 SC p. 340.

<sup>6</sup> Ujjan Bhai v. State of U.P. AIR 1962 SC p.1621.

impliedly or expressly. Suits of a civil nature involve the determination of civil rights and enforcement thereof. In other words, the matter is solely depended upon the subject-matter of the suit, such as the suits relating to property, specific performance of the contract, wrongful dismissals and others, and the suits should not have been barred like Co-operative Societies At, Bar Council etc.

Courts of concurrent jurisdiction are prevented from simultaneously entering or adjudicating upon the parallel litigation i.e., when the same subject-matter, same relief or same cause of action arises.<sup>7</sup> This provision is aimed at, towards prevention of multiplicity of suits or getting contradictory decisions. The plain reading of Sec. 10 of Civil Procedure Code is not a nullity but considered valid in the execution proceedings. Similar would be the effect in cooperative adjudications as well, when the adjudicators decide a dispute. In order to avert such a situation, one of the adjudicators decide a dispute. In order to avert such a situation, one of the adjudicator must stay the proceedings with the other adjudicator.

The doctrine of 'Res-judicata' which gives conclusiveness of the judgment of the court on the issues already decided by the court, between the same parties by a court of competent jurisdiction in subsequent suits. The essence of the doctrine is that it prevents the parties from re-agitating the issues for the second time i.e. to end the litigation and that the parties shall not be exposed to multiplicity of suits and the resultant consequence of harassment and costs including expenses. This doctrine, which recognizes the principle of 'one decisions in one dispute', applies with equal force in cooperative adjudications. This view gets fuller strength from the Rule 49-A of A.P. Cooperative rules which states that all proceedings in arbitration and settlement of disputes ... shall be summary and shall be governed by the provisions of Code of Civil Procedure.

In accordance with the provisions of Sec. 80 of the Civil Procedure Code, which requires a notice of 60 days to be given to the Government, before a suit is filed against the Government, a similar provision is made in the Act.<sup>8</sup> This statutorily notice is intended to enable the authorities or society to settle the just claims, without dragging the society to courts and to cut short the scope of litigation. A suit without notice is not maintainable.<sup>9</sup>

The Act provides that the authorities adjudicating, shall have the powers to summon witnesses and requisition documents, which a civil court possesses, while trying a suit under the Civil Procedure Code,<sup>10</sup> in respect of the following matters:-

- (i) Summoning and requiring the attendance of any person and examining him on oath or affirmation;

<sup>7</sup> See Se. 10 of Civil Procedure Code which recognizes the doctrine of Res-Subjudice.

<sup>8</sup> See Sec. 126 of the A.P. Co-operative Societies Act

"No suit shall be instituted in respect of any act, touching the Constitution; management or business of a society, until the expiry of (60) days, next after notice is delivered to the Registrar of Cooperative Societies."

<sup>9</sup> Karimnager Dist. Cooperative Central Bank Ltd. V. Mogila Bakka Veerayya AIR 1981 A.P. p.180.

<sup>10</sup> See Sec. 120 of the A.P. Co-operative Societies Act.

- (ii) Compelling the production of any book, account, record or other document, cash security or other property;
- (iii) Issuing a commission for the examination of any witness; and
- (iv) Receiving evidence on an affidavit and other matter specified.

The cooperative adjudicators also can receive additional evidence.<sup>11</sup>

The Act provides that the Registrar of Co-operative Societies is treated as a civil court, in matters such as execution of a decree,<sup>12</sup> Sec 72 of the Act states thus:-

"Every order or decision made under Sec 60, Sec. 71 Sec. 76 Sec. 77 or Sec. 78 for the recovery of any amount, may be executed in the following manner:-

- (a) by the civil court having local jurisdiction on a certificate signed by the Registrar or any person authorized by him, in his behalf, as if the order or decision were a decree of that Court;
- (b) By the Collector, on an application made to him within 12 years from the date fixed for payment in the order or decision, and if no such date is fixed, from the making of the order or decision, along with a certificate signed by the Registrar or by any person authorized by him, in his behalf, as if the amount due under the order or decision were an 'arrear of land revenue'; or
- (c) By the Registrar or any person authorized by him in his behalf, in the manner provided under sub-section (1) of Sec. 70 of Co-operative Societies Act.

Sec. 72 of Co-operative Societies Act provides that the Registrar or person authorized by him, in his behalf shall be deemed, when exercising any power under the Act for the recovery of any amount by the attachment and sale or sale without attachment of any property or attachment before judgment,<sup>13</sup> or when passing any orders on an application made to him for recovery, to be a Civil Court for the purposes of Art. 182. of the First Schedule to the Indian Limitation Act.

Sec. 73 of Co-operative Societies Act provides for attachment of property before decision or order. It states thus:-

"If the Registrar of the Co-operative Societies, on an application, report, inquiry or otherwise, that any person with intent to delay or obstruct the enforcement of any decision or order that may be made against him, under the provisions of this Act,

- (a) Is about to dispose of the whole or any part of the property;
- (b) Is about to or remove the whole or any part of the property from the jurisdiction of the Registrar, arbitrator or liquidator, as the case may be,
- (c) He may, unless adequate security is furnished, direct the attachment of the said property and such attachment shall have the same effect, as if made by competent Civil Court". This corresponds to order 38 Rule 5 of Civil Procedure Code. Further Rule 52(5) (0) of the A.P. Co-operative Rules

<sup>11</sup> See Order 41, Rule 27 of Civil Procedure Code which is not strictly applicable.

<sup>12</sup> See for details Sec. 72 of A.P. Co-operative Societies Act.

<sup>13</sup> See Order 38 Rule of Civil Procedure Code.

provides that the, "movable properties exempted from attachment under Sec. 60 of Civil Procedure Code, shall not be liable for attachment or sale.<sup>14</sup> These exemptions are cumulative and the judgment debtor may claim the benefit of more than one clause, if he is qualified to do so.

The State Government has the power to exempt agricultural produce from attachment or sale, which sustains that agriculturist can continue agricultural operations, even after the execution of a decree.<sup>15</sup>

The Civil Procedure Code provides for the arrest and detention in civil prison of the judgment-debtor but the judgment-debtor should be given the opportunity to show cause, why he should not be detained. This provision<sup>16</sup> is mainly aimed at the recovery of amounts due from the judgment-debtor, but it is subject to the conditions such as that no order of detention can be passed where the amount does not exceed Rs. 500/- and no women, or minor or legal representative of the deceased judgment-debtor may be detained.

The Civil Courts have the power to stay the execution.<sup>17</sup> Revival of execution proceedings is provided<sup>18</sup> the executing court can decide all questions relating to execution of a decree. Additional powers are exercised by the civil court such as power to award interest<sup>19</sup>, power to award costs, <sup>20</sup> General Costs,<sup>21</sup> miscellaneous costs <sup>22</sup> and compensatory costs for vexatious or false claims <sup>23</sup> these powers of the civil court can be exercised by the Cooperative adjudicators as well.

In Conclusion, it may be suggested that cooperative adjudicators have to exercise the powers conferred by the Civil Procedure Code, effectively to decide the cases within a time framework of three months from the date of reference. Increasing use should be made of affidavit procedure which could enable the authorities to settle the disputes expeditiously. When statutory notice of (60) days is given, the authorities should avail of the period, to settle the claim quickly to avoid any prospective litigation rather than inaction which could germinate the litigation with consequent delay and costs and other unavoidable bad features of litigation. Cooperative institutions have to concentrate on development activities and cannot afford to waste the time in litigations. Cooperative adjudicators must periodically equip themselves in matters of latest development in Civil Procedure Jurisprudence.

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<sup>14</sup> Some of properties exempted are:

(Such as necessary wearing apparel, cooking vessels, beddings, tools of artisans, implementing of husbandry, houses of agriculturalist, wages, salaries, pensions and gratuities, compulsory deposits, right to future maintenance etc.

<sup>15</sup> See for details Sec. 61 of the Civil Procedure Code.

<sup>16</sup> See for details Sec. (c) of the Civil Procedure Code.

<sup>17</sup> Rule 26, 27 and 29 of Order 21 of the Civil Procedure Code.

<sup>18</sup> See Rule 26.

<sup>19</sup> See Sec. 34 of Civil Procedure Code.

<sup>20</sup> See Sec. 35, Sec. 35-A and Order 20-A of Civil Procedure Code.

<sup>21</sup> See Sec. 35 of Civil Procedure Code.

<sup>22</sup> See Sec. 20-A of Civil Procedure Code.

<sup>23</sup> See Sec. 35-B of Civil Procedure Code.