

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 05TH DAY OF FEBRUARY 2020 / 16TH MAGHA, 1941

WA.No.217 OF 2019

AGAINST THE JUDGMENT IN WP(C) 14893/2010(J) OF HIGH COURT
OF KERALA

APPELLANT/PETITIONER:

M.SASIDHARAN,S/O KANDAKUTTY
MANAKKAL HOUSE, P.O. PANTHEERANKAVE,KOZHIKODE.

BY ADVS.

SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

RESPONDENTS/RESPONDENTS:

- 1 THE KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM.
- 2 JOINT REGISTRAR(GENERAL) OF CO-OPERATIVE
SOCIETIES.
- 3 PANTHEERANKAVU KSHEEROLPADAKA CO-OPERATIVE
SOCIETY LTD.NO.9(D) ,
REPRESENTED BY ITS SECRETARY,
PANTHEERANKAVU.P.O, KOZHIKKODE.

R3 BY ADV. SRI.R.SUDHISH
R3 BY ADV. SMT.M.MANJU
R3 BY ADV. SMT.NIVEA LIZ PETER FERNANDEZ
SR.G.P.-SRI.RENIL ANTO KANDAMKULATHY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
05.02.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

“C.R”

JUDGMENT*Ravikumar, J.*

This intra court appeal is directed against judgment dated 01.02.2018 in W.P.(C).No.14893 of 2010. The unsuccessful petitioner is the appellant. He moved the said writ petition assailing Ext.P4 judgment passed by the Co-operative Tribunal in A.P. No.27 of 2008. The appeal was filed against Ext.P1 award passed in ARC No.70 of 1993, which was moved by the third respondent herein. The third respondent viz., the Pantheerankavu Ksheerolpadaka Co-operative Society Ltd.No.9(D) filed the said arbitration case for realisation of the amount mentioned therein with interest on the allegation that the appellant/petitioner, while functioning as the Secretary of the third respondent society for the period from 1985 to 1992, misappropriated an amount of Rs.3,99,046.57. After appreciating the evidence and considering the rival contentions, the Arbitrator passed Ext.P1 award directing the petitioner to pay an amount of Rs.3,99,046.57 with simple interest @ 12% per annum from 7.6.1993 till realisation. The appellate Tribunal modified the award and reduced the liability by

deducting a sum of Rs.1,11,032.18. In all other respects, the award was confirmed by the appellate Tribunal. In other words, only an amount of Rs.2,88,014.39 with interest @ 12% was allowed to be recovered by the Tribunal. It is feeling aggrieved by the said order that the captioned writ petition was filed by the appellant herein. As per the impugned judgment, the learned Single Judge, interfered with the judgment of the Appellate Tribunal to the extent of reducing the rate of interest from 12% to 6% p.a. It is dissatisfied with and aggrieved by the said judgment that this appeal has been preferred.

2. We have heard the learned counsel for the appellant and the learned Government Pleader. Narration of facts or factual consideration based on re-appreciation of evidence is uncalled for, rather impermissible in the case on hand in view of the factual and legal position obtained in this case.

3. A perusal of the impugned judgment would reveal that the learned Single Judge declined to interfere with the judgment of the appellate Tribunal modifying the order in ARC No.70 of 1993 on the ground that sufficient evidence was available on record for the

Arbitrator and the appellate Tribunal to conclude with the findings and in such circumstances, this Court could not interfere with the findings on facts. The said view taken by the learned Single Judge is the correct legal position in view of the settled position of law. The main relief sought for by the appellant in the writ petition is to issue a writ in the nature of certiorari quashing Ext.P4. In the decision in **Hari Vishnu Kamath v. Ahmad Ishaque and others [AIR 1955 SC 233]**, the Hon'ble Apex Court held that writ jurisdiction is supervisory and the court exercising it, in proceedings for certiorari, is not to act as an appellate court. In the decision in **Union of India v. R.V.Swamy [AIR 1997 SC 2069]**, the Hon'ble Apex Court held that the writ court would not re-appreciate evidence and substitute its own conclusions of fact for that recorded by the adjudicating body below. In the decision in **Indian Overseas Bank v. I.O.B Staff Canteen Workers Union [AIR 2000 SC 1508]**, the Apex Court laid down the relevant principle on the scope of interference in proceedings for certiorari on the ground of insufficiency or inadequacy of material evidence to sustain the finding of fact recorded by an adjudicating body, as follows:-

“The findings of fact recorded by a fact finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly one taken.”

At the same time, we may hasten to state that findings of facts based on 'no evidence' or purely on surmises and conjectures, or which are perverse, may be challenged through certiorari as such findings may be regarded as an error of law. (See the decision in *Union of India v. Mustafa & Najibbai Trading Co.* reported in AIR 1998 SC 2526). In the decision in **Appolo Tyres Limited, Chalakudy v. Industrial Tribunal, Palakkad [2014 (3) KHC 429]** this Court held that High Court would interfere with the findings of the Tribunal if it finds that they were not based on any evidence or a misreading of evidence or were perverse or resulted in manifest injustice or were such that no reasonable persons would have come to such conclusions. In the case on hand, the findings of the Arbitrator was interfered with, on

appreciation of evidence by the Appellate Tribunal and the learned Single Judge also recorded availability of evidence to conclude on facts. When some evidence is there and the appellate Tribunal also entered into findings relying on the evidence in exercise of its appellate jurisdiction, this Court cannot again sit as an appellate authority to re-appreciate the evidence. In short, on scanning the impugned judgment, the judgment of the Kerala Co-operative Tribunal and the award in ARC No.70/93 and also the grounds raised in this appeal, we do not find any scope for interference by this Court in invocation of the power under section 5 of the High Court Act. As a last ditch effort, the learned counsel for the appellant contended that on finding that the rate of interest of 12% is excess, the learned Single Judge ought to have reduced the rate of interest below 6%. In this context, it is to be noted that the claim in the ARC was interest at the rate of 18% per annum. The learned Single Judge interfered with the rate of interest and brought it down to 6% p.a. from the date of order of the Arbitrator. In such circumstances, we are of the view that there is no scope for any further interference with the judgment passed by

the appellate Tribunal confirming the order under section 69 of the Kerala Co-operative Societies Act passed in ARC No.70 of 1993 on the interest aspect, as well. The upshot of the discussions is that this appeal must fail and consequently, it is dismissed.

Sd/-

C . T . RAVIKUMAR

JUDGE

Sd/-

N . NAGARESH

JUDGE

spc/