(2015) 02 RAJ CK 0302

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 1287 of 2014 in Civil Writ Petition No. 4144 of 2010

Chandra Prakash Paliwal and Others — APPELLANT

Vs

The Registrar, Co-Operative Societies and Others — RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10

Citation : (2015) 4 CDR 1698 : (2015) 4 RLW 2777

Hon'ble Judges : Sunil Ambwani, Actg. C.J. and Prakash Gupta, J.

Bench : Division Bench

Advocate : S.D. Khaspuria, for the Appellant

Judgement

Sunil Ambwani, Actg. C.J.

1. The cause shown for condonation of delay is good and sufficient. The application for condonation of delay is allowed. This Special Appeal arises out of judgment of learned Single Judge dated 05.05.2014, by which he has dismissed the writ petition, raising a dispute with regard to the elections of the Board of Directors of the Rajasthan Urban Cooperative Bank Limited, held on 08.06.2009, on the ground that the duly enrolled members, holding requisite number of shares for participating in the elections as voter, they were not allowed to vote. The writ petition was dismissed on the ground that the petitioner had challenged the elections before the Arbitrator in a dispute bearing No. 40/2009, in which no interim order was passed, and now since the arbitration award has been passed on 06.11.2012, the writ petition has become infructuous as the order of the Arbitrator can be challenged in an appeal under Section 105 of the Rajasthan Cooperative Societies Act, 2001 (for short, ''the Act of 2001''). The writ petition was thus dismissed on the ground of alternative remedy.

2. Learned counsel appearing for the appellants states that whereas the writ petition was dismissed on the ground that the appellants/petitioners had raised the dispute before Arbitrator, the Arbitrator had, in his order dated 6.11.2012,

had failed to consider the matter on merits. He dismissed the dispute raised by the appellants on the ground that appellants had initially filed a Civil Suit, in which an application for temporary injunction was filed and in which, an application under Order 7 Rule 10 CPC was accepted on 3.6.2009, and the plaint was returned, to be presented before the competent authority. The appeal filed against the order was thereafter dismissed by the Addl. District & Sessions Judge No. 3, Jaipur City, Jaipur on 9.6.2009, along with the stay application. The Arbitrator further observed that a writ petition being Writ Petition No. 4144/2010 (giving rise to this Special Appeal), is still pending in the High Court. He rejected the application on the ground that since the only prayer of the petitioners was, to stay the elections, and that the elections have already been held, the relief claimed by the petitioners did not survive.

3. Learned counsel appearing for the appellant submits that the respondents have played a fraud with the existing shareholders. There were total 4706 shareholders holding shares in the cooperative bank. The elected Board of the Bank was dissolved on 21.07.1997, on which an Administrator was appointed in the Bank, who started functioning on 22.07.1997. Mr. Rafiq Ahmed was appointed as a last Administrator of the Bank, who was occupying both the posts of the Arbitrator and the Managing Director of the Bank in his last tenure, in view the directions received from the Reserve Bank of India vide letter dated 30.08.2005, in which financial irregularities were observed in the Bank by the Reserve Bank of India.

4. The Administrator/Managing Director took an administrative decision on 27.11.2008, before holding the elections, in which he decided that since on the partial restriction placed by the RBI on 30.08.2005, the main business of the Bank has come to an end, it is necessary to increase the share capital to restart the Bank. The share capital could only be increased by either increasing the number of shares of the existing members, or by enrolling new members. He decided to increase the share capital of the Bank by asking each member to purchase minimum 150 shares of Rs. 100/- each, so that sufficient share capital can be raised to continue with the business.

5. It is stated that the administrative decision dated 27.11.2008, was not approved by the General Body of the Cooperative Society, nor the approval of the Registrar was received to increase the share capital, which also required the bye-laws for Cooperative Bank to be amended. The share capital of the Bank could not be increased by an administrative order passed by the Administrator/ Managing Director or the bank unilaterally. The order was passed to increase the share capital only to takeover the management by a few members, who could participate in the elections.

6. It is submitted that on the eve of elections, the appellants came to know that the entire electoral list of 4706 members has been revised, and in which except 51 members, all other members were removed on the ground that they had not deposited Rs. 15,000/- to purchase the 150 shares of Rs. 100/- each, in

pursuance to the administrative decision dated 27.11.2008. He submits that Section 18 of the Act of 2001, was not attracted inasmuch as there was no change in the bye-laws approved by the Registrar under Section 10 of the Act of 2001, and unless the bye-laws were approved for increasing the share capital, the members could not be required to purchase 150 shares of Rs. 100/- each in pursuance to the administrative decision dated 27.11.2008. They could not be disqualified from holding the membership, and to participate in the elections.

7. It is submitted by learned counsel appearing for the respondents that in order to increase the share capital, a valid administrative decision was taken to increase the share capital, in pursuance to which only those shareholders who had purchased 150 shares of Rs. 100/- each, to increase the share capital, could participate in the elections. The rests were disqualified to participate in the elections under Section 18 of the Act.

8. Learned counsel for the appellants has also submits that out of 51 members, who were included in the final electoral list, many of them belong to the same family, as is evident from their addresses where they are living. It is submitted that the members shown at S. Nos. 16, 18, 19, 20, 21, 25, 26, 29, 31 and 32, are all resident of 5462, KGB Ka Rasta, Johari Bazar, Jaipur, and similarly, members at S. Nos. 33, 34, 35 and 36, are resident of J-123, Ramanuj Path, Shyam Nagar, Jaipur, and the members at S. Nos. 40, 41, 42 and 44, are residing at 2, Mysore House, Civil Lines, Jacob Road, Jaipur. It is submitted that a conspiracy was hatched by the 51 members, to oust the remaining 4645 members, on the false pretext that they had not deposited Rs. 15,000/- for purchase of 150 shares of Rs. 100/- each, in pursuance to the administrative decision, which was taken on 27.11.2008. The decision was not carried out by way of amendment in the bye-laws, nor did it have any approval from the Registrar under Section 10 the Act.

9. We are informed that the term of elections held in the year 2009, came to an end in the year 2014, and that in the fresh elections also, 4645 valid members were not allowed to participate.

10. It is submitted that against the elections held in the year 2014, a representation was made, which has been referred by the Registrar, Cooperative, Societies, Rajasthan, Jaipur, on 21.07.2014, to an Arbitrator, who is seized of the matter for last about five months, and has not arbitrated over the dispute.

11. We have examined the contentions of the parties, and find that learned Single Judge failed to appreciate that in the elections held in the year 2009, 4645 members were ousted and deprived to vote on the false pretext in failing to contribute Rs. 15,000/- each. An administrative decision of the Administrator/ Managing Director of the Bank, was not carried out in the bye-laws for increasing the share capital, nor the decision had any approval of the Registrar of the Societies. The decision therefor could not have been implemented, and that any person who had not deposited an amount of Rs. 15,000/-, to purchase 150

shares could not be held to be defaulter, to be deprived voting rights in the elections for electing the Board of Directors.

12. The Special Appeal is consequently allowed. The impugned order of learned Single Judge is set aside. We have taken notice of the subsequent events, in which the elections held in the year 2014 on 11.06.2014, are under challenge in a Reference, made by the Registrar on 21.07.2014, before the Arbitrator. We are informed that except for minor change, most of the members are the same and that the Managing Director of the Bank is continuing to be the same person. The Registrar of the Cooperative Societies will consider to appoint an Administrator of the Society, who will continue until the reference made by the Registrar on 21.07.2014, is decided by the Arbitrator. The Arbitrator will take note of the observations made in the judgment, and will decide the dispute, expeditiously, and so far possible, within a period of three months, from the date a copy of the judgment is produced before him.

