

(1986) 05 KAR CK 0004
In the Karnataka High Court
Case No : W.P. No. 4677/85

Chigateri Brothers

APPELLANT

Vs

Karnataka Industrial Co-operative Bank Ltd., and Others

RESPONDENT

Date of Decision : 28-05-1986

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 70

Citation : (1987) 1 KarLJ 291

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-The petitioner is a partnership firm represented by one of its partner Veeranna Chigateri. The petitioner is aggrieved by the order of the Karnataka Appellate Tribunal, Bangalore, (hereinafter referred to as the Tribunal) made in Revision Petition No. 68/1984. The said order was made on 28th February, 1985. The Tribunal rejected the revision petition holding that the Arbitrator, the Assistant Registrar, had jurisdiction to pass an order impleading the petitioner-firm as one of the respondents in Dispute No. 165/78-79 on the file of the Deputy Registrar of Co-operative Societies, Chitradurga. The Tribunal also rejected the argument that the petitioner being a firm and not a member of the 1st respondent Co-operative Bank could not be impleaded as a party having regard to Sec. 117 of the Karnataka Co-operative Societies Act, 1959, (hereinafter referred to as the Act).

2. The brief facts that may be stated to appreciate the contention of the petitioner in this Court are as follows: One Jayavaibhava Chigateri borrowed a sum of Rs. 2,21,000/- from the 1st respondent-Bank as a loan agreeing to repay the same on or before 31-1-1978. The loan was sanctioned on 31-1-1977. He did not repay the loan. In the result, the dispute was raised and the dispute was referred to the Deputy Registrar, Chitradurga. While the dispute was pending before the Deputy Registrar, an application was made by the Bank to implead the petitioner-firm and a few others, namely, the partners of the firm also as parties to the dispute. A notice in regard to the application was sent to the proposed respondents by the Arbitrator. The proposed respondents entered appearance

and filed their objections. At that point of time, the petitioner (the firm) filed an application to transfer the dispute to another Arbitrator, as the Deputy Registrar hearing the dispute at that point of time was at one time working for the plaintiff-Bank on deputation and therefore would be biased against the counter-petitioners. That prayer for transfer came to be allowed and the dispute was transferred to the Assistant Registrar of Co-operative Societies, Davanagere Sub Division, Davanagere, Chitradurga District. The Assistant Registrar on 11-12-1984 passed orders on the impleading application allowing the same accepting the argument? submitted by the Counsel for the plaintiff-Bank and rejecting the written and oral arguments submitted by the Counsel for the petitioners. It was on account of that order that the revision was preferred to the Tribunal which has come to be disposed of in the manner I have indicated earlier.

3. In this Court it is contended by Mr. B.H. Patil that the entire dispute as against the petitioner-firm is without jurisdiction for the reason that reference is made beyond the period of limitation for reference of dispute, having regard to the fact that the petitioner must be presumed to have been impleaded only on 11-12-1984 well after six years from the date of the cause of action which accrued to the Bank on 31-1-1978 and further that the Tribunal erred in not noticing that the firm not being a member of the Society could not be made a party to the dispute.

4. The first of the contentions is without sufficient foundation in law. The application to implead was made and notice thereof was taken to the proposed respondents as far back as in the year 1981. Therefore, the relevant date for purpose of computing the period of limitation in regard to reference of a dispute is not the date on which the Arbitrator passed the order allowing the impleading application but the date on which the application itself was made. If the application was made well within six years from the date of the cause of action then the parties proposed cannot make a grievance that it is barred by limitation.

5. Similarly, the second contention should not detain me very long. Clause (a) of sub-sec. (3) of Sec. 117 of the Act specifically empowers the Arbitrator appointed to add such parties who have acquired interest in the property of the member against whom a dispute is raised. A perusal of the cause title of the plaint found in the records produced by the learned Government Pleader clearly indicates that counter-petitioners 3(a) to 3(f) are none other than brothers or other close relatives of the principal debtor Jayavaibhava Chigateri. All of them happen to be partners of the 2nd counter-petitioner, the firm, which is Jayavaibhava Company. The allegation is not denied, that the firm became guarantor for the repayment of the loan at some point of time after the loan was advanced. Therefore, that the firm has acquired some kind of interest in the properties of the principal debtor and partner of the firm is apparent. If that is so, then clearly if the dispute resolution involves adjudication of the liabilities of the principal debtor namely, the first counter petitioner Jayavaibhava Chigateri, It becomes necessary to adjudicate the extent of liability of the guarantors whether

they be members of the society or not. I would venture to state that the action of one partner of the firm binds the other members of the firm and if one or more of them came forward to stand guarantee for repayment of the loan, then the firm shall necessarily become a party.

6. Reliance placed on the decision of this Court in the case of Guljanasa Narayanasa Habib and others v S.S.K. Co-operative Bank Ltd. (1972(1) Karnataka Law Journal, 365) is not of much assistance to the petitioner-firm. On the other hand, the view taken there supports the stand of the respondent-Bank. In the said decision, this Court took the view that a suit filed against the defendant-firm and others who are not members of the Co-operative Bank, would not divest the Civil Court of its jurisdiction having regard to Sec. 70 of the Act. In other words, what the decision really lays down is that the dispute was not strictly between the member and the Co-operative Bank. The only proper forum for realising the debt was the Civil Court and not the Arbitration proceedings contemplated under Sec. 70 of the Act. As already held by me that decision is of no assistance for the reason I have already given.

7. In the result, this petition is misconceived and is liable to be rejected and it is so rejected. But it is made clear that it will be open to the petitioner-firm to urge all such contentions before the Arbitrator which are open to it in order to absolve itself of its liability to repay the debt.