

(2013) 12 GUJ CK 0129
In the Gujarat High Court

Case No : Special Civil Application No. 7659 of 2013

Chinmay Premalkumar Gandhi and Others	APPELLANT
Vs	
Adarsh Multi State Cooperative Bank Ltd. and 1 Another	RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0129

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Baiju Joshi, for the Petitioners No. 1 - 3, for the Appellant;
Snthakkar, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.—Following question has arisen for the consideration of this Court.

What is the effect of merger of a co-operative society registered under the Co-operative Societies Act 1961 ("the Act" for short) with multi state co-operative society registered under the Multi State Co-operative Societies Act, 2002 (Central Act for short) on the pending proceedings of Lavad Suit instituted by the state co-operative society before the Board of Nominee for the disputes u/s - 96 of the Act.

Facts relevant for deciding the above question are as under:

2.1) Shri Deesa Nagrik Sahkari Bank Ltd., a co-operative society functioning as a co-operative bank filed Summary Suit No. 702/2005 against the petitioners for recovery of Rs. 31,78,681/- with interest at the rate of 19.5% per annum from 01/04/2004 till the said amount is recovered from the petitioners.

2.2) Shri Deesa Nagrik Sahkari Bank Ltd. decided to merge with Madhav Nagrik Sahakari Bank Ltd., multi state cooperative bank. The Registrar-Co-operative Societies, Gujarat State passed order dated 23/04/2009 u/s - 17 of the Act approving merger of Shri Deesa Nagrik Sahakari Bank Ltd. with Madhav Nagrik

Sahakari Bank Ltd. which subsequently changed its name to Adarsh Multi State Cooperative Bank, the respondent No. 1.

2.3) On account of the above development, Shri Deesa Nagrik Sahakari Bank Ltd. filed an application in summary suit for amendment in the name of plaintiff so as to read Adarsh Multi State Cooperative Bank as plaintiff in the suit. In response to such application, learned advocate for the petitioners-opponents in the suit submitted before learned Board of Nominee that as per the amendment, the plaintiff shall be multi state co-operative society and therefore, the Board of Nominee will have no jurisdiction to decide the suit of multi state cooperative society.

2.4) Learned Board of Nominee accepted such plea raised by learned advocate for the petitioners and passed order dated 10/08/2010 for return of the suit plaint to the plaintiff for presenting it before the competent authority.

2.5) The above order passed by learned Board of Nominee came to be challenged by respondent No. 1 by filing Appeal No. 24 of 2012 before the Gujarat State Co-operative Tribunal. The Tribunal heard and decided the said appeal with other appeals which were also filed against the order passed in other two suits. The Tribunal allowed all appeals by the order dated 30/01/2013 and set aside the orders made by learned Board of Nominee and directed learned Board of Nominee to accept the application for amendment preferred by the plaintiff bank, frame necessary issues and decide the suits on merits on the basis of evidence which may be led by the parties within three months from the date of the order.

2. The petitioners have challenged above said order passed by the Tribunal mainly on the ground that on Shri Deesa Nagrik Sahakari Bank Ltd. merging with Madhav Nagrik Sahakari Bank Ltd., now respondent No. 1, the Board of Nominee will cease to have jurisdiction to decide the summary Lavad Suit preferred by Shri Deesa Nagrik Sahakari Bank Ltd. and therefore learned Board of Nominee was justified in returning plaint to the plaintiff.

3. The petition is opposed on behalf of respondent No. 1 by filing affidavit in reply mainly contending that on merger of Shri Deesa Nagrik Sahakari Bank Ltd. with multi state cooperative society, the Board of Nominee would not be divested of its jurisdiction to decide the dispute in suit filed by the cooperative bank u/s 96 of the Act. It is also contended that learned Board of Nominee has no jurisdiction to return the plaint but was required to decide the question whether after merger of a cooperative society with multi state cooperative society, it would lose jurisdiction to decide the suit filed by the cooperative society.

4. Learned advocates appearing for the parties requested to decide the question about jurisdiction of Board of Nominee for the pending suit of the co-operative society after its merger with the multi state cooperative society and addressed the court on above question raised.

5. Learned advocate Mr. Joshi appearing with learned advocate Mr. Baiju Joshi for the petitioners submitted that learned Board of Nominee did not commit any error in returning the plaint as merger of Shri Deesa Nagrik Sahakari Bank Limited-original plaintiff with Madhav Nagrik Sahakari Bank Ltd. now respondent No. 1 would result into cancellation of the registration of Shri Deesa Nagrik Sahakari Bank Ltd. by virtue of Section 20 of the Act and the effect thereof would be that Shri Deesa Nagrik Sahakari Bank Ltd. would cease to be the cooperative society under the State and consequently the Board of Nominee would lose jurisdiction to decide the dispute pending before it.

6. Learned advocate Mr. Joshi submitted that on return of the plaint to the plaintiff, the plaintiff will not be left without any remedy but it can very well make reference u/s 84 of the Central Act.

7. Learned advocate Mr. Joshi submitted that the Board of Nominee gets jurisdiction to decide the disputes which fall within Section 96 of the Act. Section 96 provides for dispute between the member, past member, officers and cooperative society under the Act. Learned advocate Mr. Joshi submitted that on merger of Shri Deesa Nagrik Sahakari Bank Ltd. with respondent No. 1, the dispute pending before the Board of Nominee would cease to be the dispute between the cooperative society under the Act and the member and therefore the Board of Nominee will not be competent to decide the suit originally filed by Shri Deesa Nagrik Sahakari Bank Ltd.

8. Learned advocate Mr. Joshi submitted that once the Registrar of Cooperative Society approved merger of cooperative society under the Act with multi state cooperative society, the cooperative society would stand converted into multi state cooperative society for all purposes and therefore provisions of Sub Section 4 of Section 17 of the Act will have no application and if that is so the merger of Shri Deesa Nagrik Sahakari Bank would render legal proceedings initiated by it before learned Board of Nominee defective. Learned Board of Nominee therefore rightly ordered return of the plaint to the plaintiff.

9. Learned advocate Mr. Joshi submitted that allowing the proceedings of Lavad Suit to continue before learned Board of Nominee at the instance of the multi state cooperative society-respondent No. 1 would result into allowing learned Board of Nominee to pass final order without jurisdiction. Such final order of learned Board of Nominee would be then challenged by filing appeal either by the member or the society whoever may be the aggrieved party and even the order which may be passed finally by the Tribunal will be without jurisdiction as the Tribunal is not competent to entertain and decide any appeal either by or against multi state cooperative society. Learned advocate Mr. Joshi submitted that any order passed by either learned Board of Nominee or the Tribunal if in favour of the plaintiff which will be now the multi state cooperative society, the same can not be executed under the provisions of the Act.

10. Learned advocate Mr. Joshi submitted that the Tribunal was not justified in

interfering with the order made by learned Board of Nominee simply on the basis of the provisions of Section 17 of the Act without deciding the question about jurisdiction of Board of Nominee to decide the suit on merger of Shri Deesa Nagrik Sahakari Bank Ltd. with respondent No. 1 multi state cooperative society.

11. Learned advocate Mr. Joshi submitted that the amendment will bring multi state cooperative society as plaintiff and since the Board of Nominee has no jurisdiction to decide the suit of multi state cooperative society, it will not be competent to continue with the proceedings of Lavad Suit and therefore, the Tribunal was not justified in directing learned Board of Nominee to raise all issues and then decide the suit.

12. Learned advocate Mr. Joshi submitted that Hon''ble Division Bench of this Court in case of Jagdishbhai Ishwarbhai Rochani vs. Cosmos Co-operative Bank Ltd. and Ors. reported in 2013 (1) GLH 477, has held and observed that on cancellation of registration of the cooperative society, legal existence of such cooperative society stand cancelled and there upon it ceases to be body corporate u/s 37 of the Act and does not remain entitled to institute and defend the suit. Relying on the decision, learned advocate Mr. Joshi submitted that question raised in this petition is no longer res integra. Learned advocate Mr. Joshi thus urged to allow the petition.

13. As against the above arguments, learned advocate Mr. S.N. Thakkar appearing for respondent No. 1 submitted that by virtue of Sub Section 4 of Section 17 of the Act, the legal proceedings initiated by the state cooperative bank would continue before learned Board of Nominee even after its merger with multi state cooperative society.

14. Learned advocate Mr. Thakkar submitted that like Section 31 of Recovery of Debts due to Banks and Financial Institutions Act 1993, there is no provision for transfer of the suit pending before the Board of Nominee, on merger of the cooperative society with multi state cooperative society to the authority and/or the arbitrator u/s 84 of the Central Act. Learned advocate Mr. Thakkar submitted that in absence of any such provisions for transfer of the suit, if the contention raised on behalf of the petitioners is accepted, the plaintiff of the suit shall be rendered remedy less and non-suited and unscrupulous litigants will take undue benefit to escape from the liability of paying the dues of the bank by putting forth the contention about lack of jurisdiction of Board of Nominee on merger of the cooperative society with the multi state cooperative society. Learned advocate Mr. Thakkar submitted that on Registrar approving merger of the cooperative society under the provisions of Section 17(1) of the Act, the proceedings of the suit pending before learned Board of Nominee shall be governed by Sub Section 4 of Section 17 of the Act and therefore, the Tribunal cannot be said to have committed any error in setting aside the order passed by learned Board of Nominee and in directing learned Board of Nominee to raise all issues and decide the suit on its own merits. Learned advocate Mr. Thakkar submitted that if contention canvassed on behalf of the petitioners is accepted,

there will be complete hiatus. Learned advocate Mr. Thakkar submitted that reference u/s 84 of the Central Act by the respondent No. 1 may not be competent and it will also be time barred. Learned advocate Mr. Thakkar submitted that the interpretation of provisions of the Act should lean in favour of intention of legislature and reading the provisions of the Act and the Central Act, it appears that the legislature never intended to oust to jurisdiction of the Board of Nominee on merger of state cooperative society with multi state cooperative society. Learned advocate Mr. Thakkar relied on the decision of the Hon''ble apex Court in case of State of Kerala and Others Vs. Unni and Another, and urged to dismiss the petition.

15. Having heard learned advocates for the parties and having perused the record of the case, it appears that Shri Deesa Nagrik Sahakari Bank Ltd. filed Lavad Suit No. 702 of 2005 against the petitioners on 20/09/2005. Pending the said suit it resolved to merge with Madhav Nagrik Sahakari Bank Ltd., a multi state co-operative society, now respondent No. 1. There is no dispute about the fact that such merger was approved by the Registrar of the Cooperative Society of the State vide order dated 23/04/2009 u/s 17 of the Act with one of the conditions to continue with the legal proceedings initiated by Shri Deesa Nagrik Sahakari Bank Ltd. Condition No. 6 in the order also provides that on cancellation of registration of Shri Deesa Nagrik Sahakari Bank Ltd., Shri Deesa Nagrik Sahakari Bank Ltd. shall be known as Madhav Nagrik Sahakari Bank Ltd. and all assets and liabilities of Shri Deesa Nagrik Sahakari Bank Ltd. shall stand vested in Madhav Nagrik Sahakari Bank Ltd.

16. It appears that on account of above said development, the plaintiff sought amendment to change and substitute the name of plaintiff in place of Shri Deesa Nagrik Sahakari Bank Ltd. as Adarsh Cooperative Bank Ltd. Since such substituted party would be a multi state cooperative society as a plaintiff, learned advocate for the petitioners represented before the learned Board of Nominee that on account of change in the name of the plaintiff, the suit before learned Board of Nominee would not remain maintainable as learned Board of Nominee did not have jurisdiction to decide the suit of the multi state cooperative society. Accepting such submission of advocate of the petitioners, learned Board of Nominee passed the order dated 10/08/2010 to return the plaint to the plaintiff for presenting it before the competent authority. The said order was passed by learned Board of Nominee on the reasoning that the Board of Nominee has no jurisdiction to decide the suit of multi state cooperative and no material to confer authority to the Board of Nominee for deciding the suit of multi state cooperative society was produced, and therefore, the suit filed by the plaintiff was not maintainable. From the above reasoning, it appears that learned Board of Nominee has proceeded as if the suit was originally filed by the multi state cooperative society. Learned Board of Nominee has not discussed the question about the effect of merger of the state cooperative society with multi state cooperative society on the pending suit filed by the state cooperative society in the context of either provisions of the Act or the Central Act.

17. At this stage, Section - 17 of the Act needs to be referred. The same reads as under:

17(1) Subject to the provisions of the rules and the previous sanction of the Registrar a society may, by resolution passed by two-thirds majority of the members present and voting at a special general meeting held for the purpose, decide-

- (a) to amalgamate with another society;
- (b) to transfer its assets and liabilities, in whole or in part to any other society;
- (c) to divide itself into two or more societies;
- (d) to convert itself into another class of society;
- (e) to change its object.

(2) Where the amalgamation, transfer, division or conversion referred to in sub-section (1) involves a transfer of the liabilities of society to any other society, the Registrar shall not sanction the resolution of the society unless he is satisfied that-

(i) the society, after passing such resolution, has given notice thereof in writing to all its members, creditors and other persons whose interests are likely to be affected (hereinafter, in this section referred to as "other interested persons"), giving the option, to be exercised within one month from the date of the receipt of such notice, of becoming members of any of the new societies, or continuing their membership in the amalgamated or converted society, or of withdrawing their investments in its shares, their deposits and loans and demanding payment of their other dues, if any,

(ii) all the members and creditors and other interested persons, have assented to the decision, or are deemed to have assented thereto by having failed to exercise the option within the period specified, have been met in full.

(iii) All claims of members and creditors and other interested persons, who exercise the option within the period specified, have been met in full.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, in the event of division or conversion, the registration of the new societies or, as the case may be, of the converted society, and in the event of amalgamation, on the amalgamation the resolution of the societies concerned with amalgamation, shall in each case be sufficient conveyance to vest the assets and liabilities of the original society or amalgamating societies in the new societies or converted or amalgamated society, as the case may be.

(4) The amalgamation, transfer, division or conversion made under this section shall not affect any right or obligation of the societies so amalgamated, or of the society so divided or converted, or of the transferee, or render defective any

legal proceedings which might have been continued or commenced by or against the societies which have been amalgamated, or dividend or converted; and accordingly such legal proceedings may be continued or commenced by or against the amalgamated society, the converted society, the new societies or the transferee, as the case may be.

18. As stated above, the merger is approved by the State Registrar. It appears that legislature foresaw hurdles against the pending suit before the Board of Nominee on account of merger of state cooperative society with another society and therefore, by making provision in Sub Section 4 of Section 17 of the Act, it clearly intended and even mandates that the merger shall not "affect any right or obligation of the societies so merged/amalgamated or render defective any legal proceedings which might have been commenced by or against the societies which have been amalgamated and such legal proceedings may be continued or commenced by or against the amalgamated society; the converted society, the new societies or the transferee as the case may be.

19. Learned advocate Mr. Joshi, however, submitted that merger contemplated in Section 17 of the Act is only with state cooperative society and the same is the view of the Hon"ble Bench in the case of Jagdishbhai Ishwarbhai (supra) and therefore, the intention of the legislature to continue the pending legal proceedings is only by or against the state cooperative society and not the multi state cooperative society.

20. Such contention cannot be accepted in view of provision of Section 17(4) to continue all legal proceedings by or against the societies for which the amalgamation or the merger is made u/s 17 of the Act. Legislature has consciously incorporated phrase "transferee" in Sub-Section 4. The phrase "transferee" would include multi state cooperative society and other institution to which the assets and liabilities of the society get transferred on its merger. In order dated 23/04/2009, the Registrar has provided vesting of assets and liability of Shri Deesa Nagrik co-operative Society to Madhav Nagrik Sahakari Bank. The order of merger is not under challenged. Therefore, Madhav Nagrik Sahakari Bank Ltd. is a transferee Bank and as provided in Sub Section 4, it can continue the legal proceedings. Taking a view that on account of merger of the state cooperative society with multi state cooperative society, the legal proceedings initiated by the state cooperative society pending before the Board of Nominee would not be maintainable or would be rendered defective would amount to rewriting the provisions of Section 17(4) of the Act, especially when interpretation of the provisions of law should lean in favour of legislative intention.

21. Sub Section 4 of Section 17 of the Act would also cover a case where member of the state cooperative society filing a suit against the society. If pending such suit the society is merged with multi state cooperative society and an objection is raised against continuation of legal proceedings initiated by member of the cooperative society on the similar ground, such objection will not

be tenable because not only the member would be non-suited and rendered remedy less but when the suit is filed against the state cooperative society there is a lis between the member and its cooperative society for which the legal forum is of Board of Nominee like one when the suit is instituted by the cooperative society against its member. The merger of state cooperative society with multi state cooperative society cannot take away the lis between the member and its cooperative society. The Board of Nominee, therefore, would continue to have jurisdiction to decide the dispute between the two.

22. Under the provisions of Section 96 read with Section 98 and 99 of the Act the Board of Nominee is under obligation to hear and decide the dispute referred to it between the member and cooperative society in the suit filed u/s 96 of the Act. Such jurisdiction available with the Board of Nominee under the statutory provisions to decide the pending suit would not stand revoked simply because the state cooperative society merges with multi state cooperative society. Merger of the state cooperative society pending the suit cannot be taken as conversion of the state cooperative society into multi state cooperative society with effect from the date of filing of the suit so as to render the proceedings of the suit filed by the state cooperative society defective as if such suit was filed by multi state cooperative society before the learned Board of Nominee. On interpreting Sub Section 4 of Section 17 of the Act, it clearly legislative intention is to continue the legal proceedings before the Board of Nominee even after the merger of state cooperative society with multi state cooperative society.

23. It is required to be noted that there is no specific provision for transfer of the suit pending before the Board of Nominee on merger of State Cooperative Society with Multi State Cooperative Society like Section 31 of Recovery of Debts due to Banks and Financial Institutions Act 1993 for transfer of the suit to the Debt Recovery Tribunal. In absence of such provision, the Board of Nominee would continue to have jurisdiction to decide the suit pending before it even after the merger of state cooperative society.

24. In the Central Act, there appears to be no provision for merger of state cooperative society with multi state cooperative society. Section 17 of the Central Act provides for transfer of the assets and liabilities of multi state cooperative societies or division of multi state cooperative society into two or more multi state cooperative or amalgamation of multi state cooperative society into multi state cooperative society or division of multi state cooperative society into two or more cooperative societies. Thus, there is no provision for merger of the state cooperative society into multi state cooperative society in the Central Act. Section 22 of the Central Act provides for conversion of cooperative society to multi state cooperative society. As stated above, the plaintiff, cooperative society has merged into multi state cooperative society u/s 17 of the Act and therefore, the effect of such merger on the proceedings of the suit pending before the Board of Nominee could be considered as per the provisions of Sub Section 4 of Section 17 of the Act as per which legal proceedings instituted by the state

cooperative society on its merger with the multi state cooperative society would not be rendered defective.

25. Section 84 of the Central Act provides for referring the dispute between members, past members etc. of the multi state cooperative society and the multi state cooperative society to arbitration. It further provides that such arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act 1996. Thus, Section 84 of the Act does not provide for reference of dispute to arbitration between the member of the state cooperative society and the multi state cooperative society. There is no provision pointed out for treating the member of state cooperative society as member of multi state cooperative society on merger of state cooperative society into multi state cooperative society. Under the circumstances, even the reference u/s 84 of the Central Act at the instance the multi state cooperative society against the member of the state cooperative society after its merger with multi state cooperative society, for dispute against the state cooperative society may not be competent. Not only this but such reference is to be made within time limit as provided u/s 85 of the Central Act.

26. Thus, considering the provisions of Section 17, Section 96 read with Section 98, 99 of the Act with the provisions of Section 17, 22 and 84 of the Central Act, it clearly appears that learned Board of Nominee would not cease to have jurisdiction over the pending suit even after merger of the state cooperative society with the multi state cooperative society.

27. In the case of Jagdishbhai Ishwarbhai (supra), following question fell for the consideration of Hon''ble Bench.

If a State Co-operative Bank registered under the Gujarat State Co-operative Societies Act, 1961 has obtained a money decree and subsequently the State Cooperative Bank merges with a Multi-State Co-operative Bank registered under the Multi-State Co-operative Societies Act, 2002, then under such circumstances, whether it is permissible for the Registrar under the Multi-State Co-operative Societies Act, 2002 to execute such a money decree under the provisions of the Gujarat State Co-operative Societies Act, 1961.

28. Considering the provisions of Section 20 and 37, Hon''ble Division Bench observed that by virtue of Section 20 of the Act of 1961, the legal existence of State Cooperative Society would stand cancelled and thereupon would cease to be a body corporate u/s 37 not to be entitled to institute and defend suits or other legal proceedings. In the said decision, the Court has not held that the merger of the state cooperative society approved u/s 17 of the Act would render the proceedings of the pending Lavad Suit defective. In the said decision the Court examined that when the cooperative bank registered under the Act has merged with the multi scheduled bank registered under the Central Act, whether Registrar under the Multi State Cooperative Society Act, 2002 could be permitted to execute the money decree under the provisions of the Act. In the context of

such question, the Court examined the effect of cancellation of registration of the cooperative society u/s 20 read with Section 37 of the Act after it merged with multi state cooperative society and held that it would cease to exist and lose its status as body corporate and therefore, the decree passed in its favour under the provisions of the Act cannot be executed by the multi state cooperative society by resorting to the provisions of the Act. In my view the said decision has no application to the facts of the present case.

29. There is no dispute about the fact that the requisites u/s 17(1) of the Act are complied with for the merger of Shri Deesa Nagrik Sahakari Bank Ltd. with Madhav Cooperative Bank Ltd. Therefore, Sub Section 4 of Section 17 would apply to the suit proceedings instituted by Shri Deesa Nagrik Sahakari Bank Ltd. before the Board of Nominee. Section 20 of the Act does not take away the effect of Sub Section 4 of Section 17. Sub Section 1 of Section 20 first mandates the Registrar to make an order of cancellation of registration of the society if it transfers the whole of its assets and liabilities to another society or amalgamate with another society. Sub Section 3 thereof provides for deemed dissolution of such society and even mandate that it shall cease to exist as a corporate body. Therefore, on merger, the registration of the said cooperative society shall be cancelled and it would stand dissolved and cease to exist as a corporate body. However, the legislature in its wisdom have taken enough care to save the pending proceedings instituted by such society before the Board of Nominee or before the Authority by providing in Sub Section 4 of Section 17 that such proceedings may be continued or commenced by or against amalgamated society, the converted society, the new societies or the transferee as the case may be. Therefore, on happening of the events contemplated by Section 20 and 37, the proceedings pending in the name of the merged society could be continued by or against the merged society or the transferee. In absence of any provisions either in the Act or in the Central Act to render the pending proceedings initiated by the state cooperative society defective and in view of the specific provision for continuing such proceedings by or against the merged society or the transferee as per Sub Section 4 of Section 17 of the Act, Section 20 and Section 37 cannot be read to hold that learned Board of Nominee would lose or cease to have jurisdiction to decide the suit filed by Shri Deesa Nagrik Sahakari Bank Ltd.

30. Learned advocate Mr. Thakkar was right while submitting that absence of provisions for transfer of the suit on merger of state cooperative society into multi state cooperative society, would create hiatus if the contention raised by the petitioners about losing of jurisdiction by the Board of Nominee on merger of the society is accepted. In fact, when specific provision is made for continuation of legal proceedings after merger especially with the phrase "transferee", the legislature clearly intended to continue legal proceedings by or even against other kind of the society on merger of the state cooperative society. Such being clear intention of the legislature emerging from Sub Section 4 of Section 17 of the Act the Tribunal could be said to have come to correct conclusion on

interpretation of Section 17 of the Act that the Board of Nominee committed grave error in returning the plaint to the plaintiff. No interference in such order of the Tribunal is called for in exercise of powers under Article 226/227 of the Constitution of India. For the reasons stated above, the petition is thus dismissed.