
(2020) 02 JH CK 0070
In the Jharkhand High Court
Case No : W.P. (C) No. 115 of 2015

Dhanbad Central Co-operative Bank Ltd	APPELLANT
Vs	
Prabir Kumar Chatterjee	RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 48, 57

Citation : (2020) 02 JH CK 0070

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Krishna Murari, Shailesh

Final Decision : Dismissed

Judgement

1. Heard Mr. Krishna Muarai, learned counsel appearing for the petitioner and Mr. Shailesh, learned counsel appearing for the respondent.

2. The petitioner has preferred this writ petition for quashing the order dated 04.08.2014 passed by learned Civil Judge (Senior Division)-I, Dhanbad in Title Suit No. 03 of 2013, whereby, preliminary objection filed by the present petitioner has been rejected by the trial court.

3. Mr. Krishna Murari, learned counsel appearing for the petitioner submits that in the year 2009 when the respondent was posted as Zila Parishad Branch, he committed some omission and commission in transaction of various accounts of one society namely Shri Bachat and Sakh Swavalambi Sahkari Samiti, which was holding cash credit, consumer loan account etc., by irregular entry and thereby the Bank sustained loss of Rs.6.5 Lakhs. Consequently after preliminary fact finding, enquiry etc. coupled with audit report, the Management of the Bank passed an order simplicitor dated 30.03.2012 within the meaning of Rule 22(vii) of the Service Rule of the Cooperative Society, whereby, the respondent was directed to undo the loss by depositing firstly Rs.2.35 Lakhs. He further submits that the said amount was paid by the respondent by cheque. By way of referring

Annexures-3 and 4, he submits that the respondent has accepted the fact that certain amount is due and that is why he has paid the amount in question, but at the same time he has requested not to proceed for recovery for further one year and if the rest amount in question is not deposited within the said period after realizing from the defaulter, rest of the amount may be deducted from his retiral dues. On these facts, Mr. Murari, learned counsel for the petitioner submits that suit filed by the respondent is not maintainable in view of Bihar Co-operative Societies Act, 1935 (hereinafter to be read to as 'the Act, 1935'). He has placed reliance upon Sections 48 and 57 of the Act, 1935. By way of referring Section 57 of the Act, 1935, he submits that civil court's jurisdiction has been barred. By way of referring Section 48 of the Act, 1935, he submits that there are exceptions and in view of Section 48, suit can be maintainable if there is only disciplinary proceeding and in that view of the matter, there is no disciplinary proceeding against the respondent and the amount in question has been recovered by simplicitor order in view of Rule 22(vii) of the Service Rule . Thus, the civil court has got no jurisdiction to proceed with the suit and that is why petition for preliminary issue has been raised before the court below. He further submits that there is illegality in the impugned order and the trial court has not looked into exception under Section 48 of the Act, 1935 with regard to disciplinary proceeding, whereas, there was no disciplinary proceeding against the respondent and as per Sections 48 read with 57 of the Act, 1935, the trial court is not competent court to decide the lis, whereas, Registrar is competent to decide the lis under Section 48 of the Act. 1935. To buttress his argument, he relied upon the judgment rendered by the Patna High Court in the case of Bihar Co-operative Bank Employees Union v. Ranchi-khunti Central Co-operative Bank Limited, reported in 2000 (4) PLJR 179. By way of referring this judgment, he submits that law is well settled and in view of the said provisions under Sections 48 read with 57, suit is not maintainable and that is why the impugned order is illegal, which requires interference of this Court.

4. Paragraph 8 of the said judgment is quoted herein below:

"8. The expression disciplinary action has a well known connotation in service jurisprudence. By disciplinary action is meant an action whereby the employer punishes an employee on the ground of proved misconduct in order to enforce discipline in the organisation. Such disciplinary action is normally not general in nature but it is an action on specific and proved charges in respect of individual employees on the ground of misconduct and in accordance with the prescribed procedure and the rules which permit reasonable opportunity to the employee to defend himself against such an action."

5. Mr. Murari, learned counsel appearing for the petitioner further submits that it is well settled proposition of law that if the court has got no jurisdiction and the party has approached the jurisdiction of the court, the suit has been decided, it does not amount that the issue cannot be challenged before the competent court of law. He further submits that the issue can be challenged before any court. He

relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Chief Engineer, Hydel Project v. Ravinder Nath, reported in (2008) 2 SCC 350.

6. Paragraph 24 of the said judgment is quoted herein below:

"24. In our considered opinion, it cannot be said that there was no question of law involved as we have pointed out that the issues squarely fell in the area covered by the Industrial Disputes Act and were, therefore, specifically barred. The question is whether this issue regarding the jurisdiction could be allowed to be raised before us. The question of jurisdiction came up before this Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. The Court therein was considering the question raised whether the Court had jurisdiction under Section 16(d) CPC to deal with the matter in question. In short the Court was considering whether the amendment could have been allowed raising objection to the territorial jurisdiction. This Court in para 30 observed as under:

"30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."

7. Per contra Mr. Shailesh, learned counsel appearing for the respondent submits that in view of Rule 23 of the Service Rule of the Cooperative Society, dispute in question is with regard to disciplinary proceeding. He further submits that Section 48 of the Act, 1935 speaks about action not disciplinary proceeding. He further submits that recovery has been sought from the respondent from his retiral benefits and in view of Rule 23, it is crystal clear that any pecuniary loss or otherwise to the Bank is defined as disciplinary proceeding under Rule 23(1) of the said Service Rule of the Cooperative Society. He further submits that in another suit filed by the respondent, there is direction of recovery from the defaulter of the Bank and in that view of the matter if word 'proceeding' is missing in entire facts, it does not mean that there is no proceeding and there is action against the respondent with regard to his service.

8. Having heard learned counsel for the parties, this Court has perused Section 48 as well as Section 57 of the Act, 1935. Section 48 is with regard to disputes and explanation is regarding disciplinary action taken by the society or its managing committee against a paid servant of the society. Section 57 of the Act, 1935 is with regard to bar of jurisdiction of court if it falls under Section 48 of the

said Act, 1935. From perusal of Rule 23 of the Service Rule of Cooperative Society, it transpires that in a pecuniary loss, it amounts to disciplinary proceeding. The judgment relied by Mr. Murari, learned counsel for the petitioner is distinguishable to the facts of the present case. The judgment relied by Mr. Murari is regarding withholding the payment of pensionary dues, whereas, in the present case there is allegation of loss and recovery from the respondent-plaintiff. Thus, it transpires that there is dispute with regard to disciplinary action against the respondent. Further, it has been submitted at Bar by the learned counsel for the parties that the suit has already been proceeded and in that suit the petitioner has already filed written statement and the parties have also adduced evidences and now the suit is pending for argument on behalf of both the parties. In that view of the matter, no interference is required by this Court. Accordingly, this writ petition stands dismissed.

9. However considering the fact that suit is at an advanced stage and it is pending for argument, the parties are at liberty to raise all the law points, which have been raised before this Court in this writ petition. The trial court will consider that aspect of the matter without prejudice to the observations made by this Court in this writ petition.

10. Accordingly, this writ petition stands dismissed.