

(1965) 09 BOM CK 0017

In the Bombay High Court

Case No : Special Civil Application No. 1001 of 1964

Dharamchand Premchand

APPELLANT

Vs

Kopargaon Taluka Kapus Ginning and Pressing Society Ltd.
and Another

RESPONDENT

Date of Decision : 16-09-1965

Acts Referred:

Citation : AIR 1967 Bom 124 : (1966) 68 BOMLR 177 : (1966) ILR (Bom) 414 : (1966) MhLj 417

Hon'ble Judges : Chainani, C.J;Kotval, J

Bench : Division Bench

Advocate : Sharad Manohar and U.R. Lalit, for the Appellant; R.W. Adik and G.N. Vaidya, for the Respondent

Judgement

1.Respondent No. 1 is a co-operative ginning and pressing society registered under the Co-operative Societies Act. The society purchases cotton from its members and sells it to other persons. On 25-11-1962 an auction was held by the respondent-society. At that auction the petitioners offered the highest bids for three lots of cotton. They also paid, Rs. 11,000 in part payment of the price of the cotton. As the petitioners did not take delivery of the cotton or make further payments the society approached the Registrar, Co-operative Societies, u/s 91 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the Act, for the dispute being decided under the provisions of the Act . The Registrar referred the dispute to his nominee u/s 93 of the Act. Before the nominee an objection was raised that the dispute did not come within the purview of section 91 as the petitioners were not members of the respondent society and that consequently the nominee had no jurisdiction to decide it. The nominee referred the matter to the Registrar for deciding the question u/s 91(2). The Assistant Registrar, who heard the matter, was of the opinion that the transactions between the petitioners and the society were under the provisions of S. 45 and consequently clause (c) in sub-section (1) of section 91 applied to them. he, therefore, held that there was a dispute within the meaning of sub-

section (1) of section 91 and sent back the matter to the nominee for his decision. That order is being challenged before us. Before this order was made the petitioners had also filed a civil suit against the society for the return of the amount of Rs. 11,000 which they had paid to the society

2.Sub-section (1) of section 91 of the Act provides that notwithstanding anything contained in any other law for the time being in force, any dispute touching, the business of a society shall be referred by any of the parties to the dispute, to the Registrar, if both the parties thereto are one or other of persons mentioned in clauses (a) to (e) in this sub-section. The petitioners are not members of the respondent society. The only clause which can apply to them is clause (c) which is as follows:

"(c) a person other than a member of the society, who has been granted a loan by the society, or within whom the society has or had transactions under the provisions of section 45, and any person claiming through such a person;"

Section 45 states that save as is provided in the Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed. The word "prescribed" is defined in clause (21) of section 2 to mean "prescribed by rules". This section does not empower a society to enter into transaction with persons other than members. It empowers the State Government to make rules prescribing the restrictions under which a society may enter into transaction with non-members. No society can, therefore, enter into any such transaction unless it is in accordance with the prescribed restrictions. The power to enter into such transactions is, however, conferred by section 36, which states that the registration of a society shall render it a body corporate by the name under which it is registered with power to enter into contracts and to do all such things as are necessary for the purpose for which it is constituted. No transactions are, therefore, entered into u/s 45. The effect of this section only is to prohibit a Society from entering into transactions with persons other than members except in accordance with such restrictions as may be prescribed under this section. Literally construed, therefore, the words "transactions under the provisions of section 45" in clause (c) of sub-section (1) of section 91 convey no meaning. No words in a statute should, however, be deemed to have been used without some purpose and the Court should not hold any words to be redundant unless it is not possible to give any meaning to them. We must, therefore, try and ascertain with what object the above words have been used and what meaning can reasonably be given to them.

3.Three different constructions of the said words "transactions under the provisions of section 45" have been canvassed before us. The first is that the word "under" should be read as "in accordance with"; Transactions effected in accordance with the restrictions prescribed by section 45 will then be covered by clause (c). Also where no restrictions have been prescribed u/s 45, every transaction between a society and a person other than a member, will come under this clause. The other meaning suggested is that the word "under" should

be construed to mean "referred to". Every transaction referred to in the section 45 i.e., every transaction in respect of which restrictions could be imposed u/s 45 will then fall within the scope of clause (e). The third interpretation and this is the one which has been urged on behalf of the petitioners is that only those transactions, in respect of which restrictions have been prescribed u/s 45, can be said to be transactions under the provisions of section 45. Where no such restrictions are prescribed, clause (c) of sub-section (1) of section 91 will not apply.

4. The difficulty in accepting the first two views is that the material word used in clause (c) is "under" and not "in accordance with" or "referred to". Sub-section (1) of section 91 also contains intrinsic evidence to indicate that all transactions with non-members were not intended to be dealt with under this section. Sub-section (1) of section 43 states that a society shall receive deposits and loans from members and other persons only to such extent, and under such conditions, as may be prescribed, or specified by the by-laws of the society. Sub-section (2) of the section empowers the Registrar to impose additional conditions on any society or class of societies. Sub-section (1) of section 44 states that no society shall make a loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member. Sub-section (2) states that notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit. Sub-section (3) invests the State Government with the power to prohibit, restrict or regulate the lending of money by any society or class of societies on the security of any property. The marginal note to section 45 is "Restrictions on other transactions with non-members". This marginal note and the words "Save as is provided in this Act" in the opening part of section 45 suggests that the transactions referred to in section 45 are transactions other than those covered by sections 43 and 44. These three sections between them cover all transaction between a society and a person other than a member, Section 43 deals with deposits and loans received by a society, while section 44 provides for loans advanced by a society. Section 45 refers to other transactions of a society with a person who is not a member. Persons to whom loans have been advanced by a society are referred to in clause (c) sub-section (1) of section 91. There is no provision in this section in regard to persons who have deposited moneys with or advanced loans to a society. Mr. Vaidya has, therefore, urged, and there is force in his argument, that such transactions are outside the scope of section 91. clauses (d) and (e) in sub-section (1) of section 91 are as follows:

"(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society u/s 45, whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society."

These three clauses (c), (d) and (e) specify the classes of person, who are members of a society, disputes between whom and the society are to be

determined by arbitration under the provisions of the Act. The fact that the categories of non-members, disputes with whom must be resolved under the provisions of the Act. have been specified in sub-section (1) of section 91, makes it clear that the Legislature did not intend that the procedure laid down in the Act should be resorted to in respect of every transaction with a non-member.

5. There is also some difficulty in accepting the third construction suggested and that is caused by the words "if any" in section 45. Government is, therefore, not bound to prescribe restrictions under this section. But while this difficulty is undoubtedly there, it seems to us that on the whole this construction should be preferred, having regard to the fact that all transactions with persons other than members were not intended to come within the scope of section 91. According to Webster's Dictionary, one of the meanings of the word "under", is "suffering restriction, restraint, or control by". It will, therefore, be reasonable to hold that the words "transactions under the provisions of Section 45" in clause (c) in sub-section (1) of section 91 means transactions in respect of which restrictions have been prescribed u/s 45. If no restrictions have been prescribed, the question of applying section 45 will not arise and in such cases the transaction with a person other than a member cannot be said to be a transaction under the provisions of this section. where however restrictions have been prescribed. Section 45 will operate and the transactions with persons other than members can only be effected subject to those restrictions. Such transactions will be transactions u/s 45 and disputes arising out of or in connection with such transactions will fall under Clause (c) in sub-section (1) of Section 91.

6. It is admitted that no restrictions have been prescribed in regard to transactions of the kind entered into between the petitioners and the respondent society. The dispute between the petitioner and the respondent society cannot therefore, be the subject of a reference u/s 91.

7. Accordingly we set aside the order made by the Assistant Registrar and direct that the application made by the respondent society for a reference u/s 91 should be rejected. There will be no order as to costs.

8. In *I. R. Hingorani v. Pravinchandra* 67 Bom LR 306 we had observed that the words "with whom the society has or had transactions under the provisions of Section 45" in Clause (c) in sub-section (1) of Section 91 do not seem to be appropriate to bring out the intention of the Legislature. Government May, therefore, consider whether the Act should not be amended so as to make clear as to what transactions or class of transactions between a society and a person other than a member of the society will fall within the ambit of Section 91.

9. Petition allowed.