

(1984) 07 GUJ CK 0019
In the Gujarat High Court
Case No : First Appeal No. 830 of 1976

Dhrangadhra Taluka Sahakari Kharid Vhechan Sangh Ltd.	APPELLANT
Vs	
Rampratap Hakimchand and Company, Bombay and Others	RESPONDENT

Date of Decision : 13-07-1984

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 100, 152, 166, 96, 96
Limitation Act, 1963 — Section 14

Citation : AIR 1985 Guj 78 : (1984) GLH 1128

Hon'ble Judges : N.H. Bhatt, J;M.B. Shah, J

Bench : Division Bench

Advocate : P.M. Raval, for the Appellant; S.S. Belsare, for the Respondent

Judgement

Shah, J.—The appellant had filed Special Civil Suit No. 16 of 1971 for recovering Rs, 1,89,630-93 from the respondents contending that the plaintiff Co-operative Society was producing salt and was selling it. The defendant had agreed to purchase the salt from the plaintiff on 7-4-64 at the rate agreed between the parties. As there was breach of contract between the parties and also the defendants were not paying the remaining price of the goods, the plaintiff had filed the aforesaid suit for recovery, of the amount is stated in the plaint.

2. In the plaint itself the plaintiff has averred that previously they were bona fide prosecuting proceeding before the Board of Nominees under the Gujarat Co-operative Societies Act. 1961. Before the Registrar they had filed Levadi Suit No. A. B. N. 194 of 1965 on 17-1-65 for this very purpose. Finally the said proceedings were terminated by the judgment of the Gujarat High court on 29th September 1970 wherein it was held that the dispute being between a co-operative society and a third party, the provision giving exclusive jurisdiction to the authority constituted under the Act is not applicable and the authority has no jurisdiction to deal with it. Subsequently therefore they have filed the aforesaid suit before the court on 12th April 1971. The suit was dismissed by the learned judge on a preliminary issue that it was barred by the period of limitation and he

held that the provisions of S. 14 of the limitation Act would not be applicable in the present case as the Registrar's Nominee was not a Court and S. 14 of the Limitation Act was applicable only to the proceedings before the Court. Against this judgment and decree the plaintiff has preferred the aforesaid appeal.

3. In our opinion, whether S. 14 of the Limitation Act, 1963 would be applicable or not to the present proceedings is directly Covered by the judgment of the Division Bench of this High Court in the case of M. G. Patel &Co. v. Alka Co-operative Housing Society Ltd., reported in 1981 Guj LH 311, wherein the Court in para 15 has held as under:

"Mr. Oza had then urged that both the suits were barred by limitation and S. 14 of the Limitation Act did not intervene to save their being dismissed as time-barred. Mr. Oza urged that the Registrar acting under S. 96 of the Co-operative Societies Act is not a Court and, therefore, the time spent by these plaintiffs in prosecuting their remedy before the Registrar cannot be excluded by recourse to S. 14 of the Limitation Act. We do not agree. What S. 14 requires is that the plaintiff must be prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant. The proceedings prosecuted by the plaintiff before the Registrar's Nominee was a civil proceeding. They do not say that the civil proceedings must have been prosecuted in a Court as such. All that section 14 says is that a civil proceeding, whether it is prosecuted in the original forum or in appellate or revisional forum, is a proceeding, the time taken to prosecute which, will be excluded from Computing the period of limitation."

In view of this clear pronouncement by the Division Bench of this Court, the point does not require any further discussion Therefore on this short ground the appeal requires t be allowed.

4. However, the learned advocate for the respondents submitted that the proceedings before the Registrar's Nominee under the Gujarat Co-operative Societies Act cannot be said to be civil proceeding and before the, "Court" as contemplated Linder S. 14 of the Limitation Act. In our opinion, this contention of the learned Advocate is of no Substance in view of the aforesaid decision.

5. Further, under the Gujarat Co-operative Societies Act the Registrar is empowered to decide any dispute touching the constitution, management or business of a society as contemplated under S. 96 of the Act. The Registrar or his nominee would have exclusive jurisdiction to deal with or decide the said dispute. The Civil Court's jurisdiction is expressly barred under S. 166 of the Act. It states that no Civil or Revenue Court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar or his nominee or Board of Nominees for decision. It further provides that the decision or award passed in accordance with the Act or rules subject to the provisions for appeal or revision in the Act would be final and no such order, decision or award shall he liable to be challenged, set aside, modified revised or declared void in any, Court upon

merits or upon any other ground whatsoever except for want of jurisdiction. Section 97(2) provides that the period of limitation in the case of, any dispute other than those mentioned in sub-section (1) Which are required to be referred to the Registrar under S. 96 shall be regulated by the provisions of the Limitation Act, 1908, as if the dispute were a suit and the Registrar a Civil Court. Section 98 of the Act empowers the Registrar to refer the said disputes for disposal to the Nominee or Board of Nominees appointed by the Registrar. Under S. 99 of the Act the procedure for deciding the dispute is provided. It provides as under: -

"99. (1) The Registrar, or his nominee or board of nominees, hearing a dispute under S, 98 shall hear the dispute in the manner prescribed, and shall have power to summon and therefore attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the Same means and as far as possible in the same manner as provided in the case of a Civil Court by the CPC 1908."

Section 100 provides for attachment before award and it in terms says that such attachment shall have the same effect as if made by a competent civil court. Under S. 150 an appeal is provided to the co-operative Tribunal and under. S. 152 of the Act the Tribunal has same powers as are vested in court as stated in the said section. In view of the aforesaid provisions it is clear that the Registrar or his Nominee or Board of Nominees while exercising power under S. 90 are discharging the duties which would otherwise be required to be discharged by ordinary Civil and Revenue Courts of the State. Under S. 99 the Registrar or his Nonninee or Board of Nominees is given the same powers as are given to ordinary Civil Courts of the land by the CPC including the power to summon and enforce attendance of witnesses and to compel them to give evidence and to compel the production of documents by the same means and as far as possible in the same manner as provided in the case of a Civil Court by the Code of Civil Procedure. Section 97 specifically lays down that the period of limitation in the case of any dispute other than those mentioned in sub-section (I) which are required to be referred to the Registrar tinder section 96 shall be regulated by the provisions of the Limitation Act as if the dispute were a suit and the Registrar a Civil Court. The Registrar is also entitled to pass an order for attachment before award and such attachment shall have the same effect as if made by a competent Civil Court. Therefore, the Registrar while adjudicating the dispute referred under S. 96 of the Act is for all intents and purposes a Court discharging the same functions and duties in the same manner as a Court of law is expected to do and, therefore, the Registrar or his Nominee or Board of Nominees would be a Court, Admittedly, the dispute which is decided is a civil dispute and, therefore, it would be a civil proceeding. From the provisions of S. 166 of the Act it is clear that all orders, decisions or awards passed in accordance with the provisions of the Act or the rules are final subject to the provisions for appeal or revision in the Act. Therefore, the essential conditions to constitute a Court in the strict sense of the term that the Court should have, apart from having some trappings of a Judicial Tribunal, power to give a decision or definitive judgment,

which has finality and authoritativeness which are essential tests of judicial pronouncement, are fully satisfied. Hence section 14 of the Limitation Act would be clearly applicable in the present case.

6. The learned advocate for the appellant for his contention that S. 14 of the Limitation Act could be applicable as the Registrar or -his Nominee or Board of Nominees will be a Court and the proceeding before him will be a "civil proceeding", has relied upon the case of *Thakur Jugal Kishore v. Sitamarhi Central Co-op. Bank* AIR 1967 SC 149. In the said case after considering the provisions of the Bihar and Orissa Co-operative Societies Act, 1935 the Court has held that an Assistant Registrar discharging the function of Registrar under S. 48 read with S. 6(2) of the Act is a Court. After considering the provisions of the Bihar and Orissa Co-operative Societies Act which are to a large extent similar to the provisions of the Gujarat Co-operative Societies Act the Supreme Court in Para 11 has held as under:

"The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary Civil Courts of the land by the CPC including the power to. summon and examine witnesses on oath, the powers to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S. 151 of the Civil P.C. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S. 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."

7. However, the learned advocate for the respondents relied upon the decision in the case of *Rama Rao and Another Vs. Narayan and Another*, wherein the Supreme Court has held that Nominee of Registrar appointed under S. 95 of the Maharashtra Co-operative Societies Act is not a "Court" within the meaning of S. 195, Cr. P.C. In the said decision the Supreme Court has held that the Nominee has the power to summon witnesses, to compel them to produce documents and is required to hear the dispute in the same manner prescribed by the Code of Civil Procedure. Thereby he is required to act judicially i. e. fairly and impartially, but the obligation to act judicially will not necessarily make him a Court within the meaning of S. 195, Cr. P.C. The Court has further observed that the position of a Nominee of the Registrar is analogous to that of an arbitrator designated under a statutory arbitration to which the provisions of S. 47 of the Arbitration Act, 1940 apply, The learned Advocate for the respondents heavily relied upon the observations of the Supreme Court in para 25 which read as under:

"After carefully considering the powers conferred and the source of authority of the nominee, we have no doubt that the nominee exercising power to make an award under S. 96 of the Maharashtra Co-operative Societies Act, 1960, derives his authority not from the statute but from investment by the Registrar in his individual discretion. The power so invested is liable to be suspended and may be withdrawn. He is therefore not entrusted with the judicial power of the State he

is merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him."

In our view, the said decision is mainly based upon the definition of word "arbitrator" in S. 2(2) of the Maharashtra Co-operative Societies Act, 1960. Under S. 2(2) of the said Act "arbitrator" is defined as meaning "a person appointed under this Act to decide disputes referred to him by the Registrar and includes Registrar's Nominee or Board of Nominees." It is, therefore, clear that by a specific inclusion of the Registrar's Nominee or Board of Nominees in the definition of the word "arbitrator", the position of the Registrar's Nominee or Board of Nominees would be that of arbitrator. In the Maharashtra Co-operative

Societies Act the caption of the Chapter IX is "Disputes and Arbitrations" while Chapter IX given in the Gujarat Co-operative Societies Act provides procedure for deciding disputes. Further there is no similar definition of the word "arbitrator" under the Gujarat Co-operative Societies Act, which would include Registrar's Nominee or Board of Nominees. In this view of the matter, in our view the Registrar's Nominee cannot be said to be an arbitrator. Section 3 of the Gujarat Co-operative Societies Act specifically provides

that for carrying out the purposes of this Act the State Government shall appoint to assist the Registrar in his functions under the Act such number of Additional Registrars, Joint Registrars, Deputy Registrars, Assistant Registrars and other persons with such designations as it may think fit. Sub-sec. (3) Provides that the State Government may, by general or special orders confer on a person or persons appointed under sub-sec. (2) All or any of the power's of the Registrar under the Act and under sub-section (4) he shall work under the general guidance and the superintendence and control of the Registrar. Section 2(17) defines "Registrar as under:

"2(17) "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act; and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar;"

It is an inclusive definition and for the purposes i of the Act Registrar's Nominee would also be" included in view of this definition of "Registrar". In our view, therefore, considering the provisions of the Gujarat Co-operative Societies Act and the ratio laid down by the Supreme Court in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, the Registrar's Nominee would be a "Court" for the purposes of S. 14 of the Limitation Act and the dispute before him would be a civil proceeding. A Registrar or Registrar's Nominee therefore for all intents and purposes is invested with- all the powers of the Court and he has to decide the dispute finally by pronouncing a judgment after taking into consideration the evidence, if adduced, and hearing the arguments advanced and disposing of the dispute as per the law, Section 166 bars the jurisdiction of Civil Court in respect of any dispute required to be

referred to the Registrar or his Nominee or Board of Nominees for decision. Therefore, to that extent ordinary Civil Court's jurisdiction is taken away and conferred upon the Registrar or his Nominee or Board of Nominees.

8. It is an admitted fact that the plaintiff Co-operative Society was prosecuting in good faith and with due diligence the previous proceedings before the Registrar's Nominee, before the Co-operative-Tribunal and before the High Court on the ground that the Registrar's Nominee had jurisdiction to decide or deal with the said question. Hence the said period is required to be excluded in computing the period of limitation for filing the present suit under S. 14(2) of the Limitation Act.

9. In the result, the appeal is allowed with costs. The learned Civil Judge (S. D.) Surendranagar is directed to decide the suit within six months from the date of the receipt of the record from the High Court.

10. Appeal allowed.