

(2015) 05 CAL CK 0066
In the Calcutta High Court
Case No : F.M.A. 1436 of 2014

Dilip Kumar Dutta

APPELLANT

Vs

The Chief Executive Officer, West Bengal State Consumers"
Co-operative Federation Ltd. and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d)
West Bengal Co-operative Societies Act, 1983 — Section 102, 102(1)(d), 102(4),
2(17), 2(18)

Citation : (2015) 05 CAL CK 0066

Hon'ble Judges : Nishita Mhatre, J;Asha Arora, J

Bench : Division Bench

Advocate : Soumya Majumder and Krishnendu Bera, for the Appellant; Ashit Kumar Chakraborty and Subhajit Panja, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The question involved in the present appeal is whether the jurisdiction of the Civil Court is ousted when a claim for payment of money is made from a co-operative society registered under the West Bengal Cooperative Societies Act, for work done for and on behalf of the society. The appellant, a partnership firm, was appointed as the handling and transport contractor of the respondent co-operative society - West Bengal State Consumers" Co-operative Federation Ltd. and Ors. (hereinafter referred to as "CONFED"). The appellant was required to lift food-grains from the godowns of the Food Corporation of India and deliver them to the godown of CONFED and thereafter to appoint retailers of ration goods. An agreement was executed between the appellant and CONFED on 27th March, 1997 which was to be valid for three years from 1st April, 1997 to 31st March, 2000. A dispute arose between the appellant and the CONFED. As the agreement was neither renewed nor were the food-grains which were stored in the plaintiffs" godown, disposed of by CONFED. The food-grains putrefied and were rendered unfit for human consumption. CONFED neither

removed the rotten grain nor paid the damages or the godown rent.

2. The dispute between the CONFED and the appellant was referred for arbitration under the provisions of the West Bengal Co-operative Societies Act, 1983 (hereinafter referred to as "the Act"). By a judgment and award dated 14th November, 2008 the arbitrator decided the dispute between the parties under Section 95(2) of the Act read with Rules 176 and 177 of the West Bengal Co-operative Societies Rules, 1987. Under Clause 1 of the award the CONFED and the appellant were directed to arrive at mutually agreed amounts for payment of the handling, commission and transport bills and transport rebate bills. Clause 2 provided that CONFED was not responsible for payment of the godown rent. Clause 3 directed the CONFED to pay an amount of Rs. 6,050/- (Rupees six thousand and fifty) to the appellant for executing job of handling and transport contractor. Clause 4 directed the CONFED to refund the security deposit of Rs. 1 lac kept with CONFED by way of a National Savings Certificate to the appellant.

3. The appellant and the CONFED entered into an amicable settlement on 2nd September, 2009. Under the terms of this agreement CONFED agreed to pay an amount of Rs. 8,00,000/- (Rupees eight lacs) as godown rent for occupying the same till 31st August, 2009 against the claim made by the appellant for Rs. 26,40,000/- (Rupees twenty six lacs forty thousand) on account of godown rent. CONFED agreed to realise the security deposit immediately after the agreement was executed. It further agreed to pay Rs. 6,050/- (Rupees six thousand fifty) towards the transportation charges for the work done by the appellant before execution of the agreement. The CONFED also agreed to pay Rs. 4,99,024.17 (Rupees four lacs ninety nine thousand twenty four and seventeen paise) towards the transport rebate and commission to the appellant after getting the amount reimbursed by the Food and Supplies Department.

4. As the amounts were not forthcoming the appellant called upon CONFED to pay the total amount of Rs. 8,23,024.17 (Rupees eight lacs twenty three thousand twenty four and seventeen paise) by its letter dated 12th September, 2011 in terms of the agreement executed in September, 2009. It appears that CONFED then paid off all the other amounts except the amount of Rs. 4,99,024.17 (Rupees four lacs ninety nine thousand twenty four and seventeen paise) on account of transport rebate and commission and transportation charges. Therefore, by a letter dated 5th March, 2012 the appellant called upon the CONFED to make the aforesaid payment in terms of the settlement dated 2nd September, 2009.

5. Left with no alternative because of the obdurate behaviour of the CONFED the appellant filed a suit before the City Civil Court, Calcutta for recovery of the aforesaid amount and consequential reliefs.

6. The CONFED filed an application under Order 7 Rule 11 of the CPC before the Court, seeking rejection of the plaint on the ground that the dispute which had arisen between the parties could only be decided by the Registrar appointed

under the aforesaid Act. The Trial Court after considering the arguments submitted at the bar has accepted the contention of the CONFED and has rejected the plaint under Order 7 Rule 11(d) of the CPC. The Trial Court relied on several judgments including the judgment of the Special Bench of the Court in the case of Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others, AIR 1990 Cal 380 : (1991) 2 CALLT 17 : 94 CWN 515 , Sisirkana Guha and Others Vs. Ayakar Grihanirman Samabaya Samity Limited and Another, (2008) 2 CHN 428 : 113 CWN 451 and Bankura Wholesale Consumers" Cooperative Society Ltd v. West Bengal Essential Commodities Supply Corporation Ltd and Anr reported in 1991 (2) CHN 190.

7. Taking exception to the judgment of the Trial Court the appellant has preferred the present appeal. Mr. Soumya Majumdar, the learned Counsel appearing for the appellant, submitted that the Trial Court has erred in rejecting the plaint under Order 7 Rule 11(d) of the CPC. He submitted that there was no dispute which was required to be referred for adjudication before the Registrar, as the parties had executed an agreement in September, 2009 in terms of the award passed by the Arbitrator. Mr. Majumdar then submitted that since the arbitrator had already directed in the award that the parties should mutually arrive at an arrangement for making payment of various charges claimed by the appellant, the Registrar would have no dispute to adjudicate. He pointed out that all other payments except the disbursement in respect of the transport rebate and commission had been realised from the CONFED in terms of the aforesaid agreement. He submitted further that under Section 102 of the Act it is only those disputes which concern the management or business or affairs of a co-operative society which could be referred to the Registrar for settlement. Therefore, urged the learned counsel, the only remedy available to the appellant was to file a Civil Suit.

8. Per contra, Mr. Ashit Kumar Chakraborty, learned Counsel for the CONFED submitted that the Special Bench of this Court in the decision of Anjan Choudhury (supra) has already concluded this issue and a suit is not maintainable for recovery of money from a co-operative society if the money is to be paid in respect of business or management or affairs of the company. The learned Counsel has relied on the judgment in the case of Sisirkana Guha (supra) where the Division Bench of this Court decided the issue in terms of the judgment in Anjan Choudhury's case (supra). Another Division Bench in the case of Bankura Wholesale Consumers" Co-operative Society Ltd (supra) has relied on Anjan Choudhury (supra) and concluded that the dispute before the Court was required to be adjudicated by the Registrar.

9. The learned Counsel representing the State reiterated the submissions advanced on behalf of CONFED.

10. A "dispute" has been defined under Section 4(25) of the Act as "any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a co-operative society".

11. Section 102 of the Act refers to the disputes which are to be filed before the Registrar. It reads thus:

"102. Disputes to be filed before Registrar - (1) Any dispute concerning the management or business or affairs of a co-operative society other than the dispute relating to election in a co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises--

(a) among members, past member and persons claiming through members and deceased members or then sureties; or

(b) between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the co-operative society, its board or any officer, agent or employees of the co-operative society or liquidator, past or present; or

(c) between the co-operative society or its board and any past board, any officer, agent or employee or any past officer, past agent; or past employee or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the co-operative society; or

(d) between two co-operative societies or between a cooperative society and a liquidator of another cooperative or between liquidator of two different cooperatives or between a co-operative society and any person having transaction with it or between a cooperative society and its financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation.

(4) Any civil court or any Consumers' Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1).

(5) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed."

12. We are unable to accept the submissions of Mr. Muzumdar. It is true that an agreement was executed between the parties pursuant to the directions contained in the arbitration of award. However, the CONFED was apparently not agreeable to pay the amount of Rs. 4,99,024.17 (Rupees four lacs ninety nine

thousand twenty four and seventeen paisa) without certain documents being produced by the appellant. Thus there was certainly a dispute between the parties regarding the payment of the amount. Even if the amount had been settled between the parties under the agreement, a dispute had arisen about the manner in which the amount should be paid. Therefore, the argument that no dispute subsists between the parties is untenable.

13. The learned Counsel for the appellant had argued that even assuming there was a dispute, it must concern the management or business or affairs of the co-operative society and according to him this was not a dispute. In the present case the amount payable to the appellant was in respect of transport rebate and commission for the work undertaken by the appellant of handling and transport contractor for and on behalf of the co-operative society. The business of the cooperative society has been defined in its bye-laws. These include bulk procurement of consumer goods within the State and other States for supply to affiliated societies, arranging for the proper storage, packaging and transport of such goods and to sell the goods to public bodies, establishments and institutions.

14. The amount which was to be paid by the CONFED to the appellant was with respect to storage and transportation of goods. These amounts have been stipulated under the agreement. Therefore, in our opinion, the amount payable to the appellant is relatable to the business of the co-operative society. The dispute may not touch the management of the society. However, it certainly is with respect to the business or affairs of the society.

15. In Anjan Choudhury's case (supra), this Court had considered the provisions of the West Bengal Co-operative Societies Act, 1973 and the Act of 1983 which was then in vogue. The provisions of Section 102 of the current Act, i.e., the Act of 2006 is identical to Section 95 of the 1983 Act. The Court observed in paragraph 8 and 9 as follows:

"8. Having defined the term "dispute" as "any matter capable of being the subject of civil litigation", user of those very words purporting to qualify the expression, "dispute" in S. 95(1) of the New Act is obviously sheer tautology. But enactment of good law is good enough, even if the language may lack precision. Be that as it may, what must go to the Registrar under S. 95(1), and would go out of bounds of the Civil Courts, is a "dispute" which is "concerning" the "business of" or "is relating to the affairs of" a co-operative society. The expressions "concerning" and "relating" and the expressions "business" and "affairs" may sound synonymous and reference to the Lexicon may also go to support such an impression. Tautology again? We do not think so.

9. Anything concerning the business of a co-operative society is a matter relating to the affairs of the society. But everything relating to the affairs of the society may not be concerning the business of that society. Lending money to its members is obviously the business as well as the affairs of a "Co-operative Credit Society" as defined in S. 2(p) of the Act of 1973 and Section 2(17) of the Act of

1983. Providing its members with residential accommodation is obviously the business as well as the affairs of a "Co-operative Housing Society" as defined in S. 2(18) of the Act of 1983. But any dispute relating to the appointment or termination of service of any of the officers or employees of the society or any dispute relating to the holding or not holding the statutory meetings would be one relating to the affairs of the society, but not necessarily concerning its business. From that point of view, even though the two expressions business and affairs may very often be used synonymously, the expression affairs has a wider connotation or import than the expression business. As we have already indicated, disputes relating to the constitution of the society, or the election of its office-bearers, or the conduct of its general meeting and the like are obviously disputes relating to the affairs of the society, but may not be disputes concerning the business of the society, where the business of the society, as per its Rules and Bylaws, consists of, say, lending money to its members as in the case of Co-operative Credit Society, or providing accommodations to its members, as in the case of a Cooperative Housing society."

The Court further observed that for a dispute to fall within the purview of Section 95 of the 1983 Act and out of the jurisdiction of the Civil Courts it must be a dispute not just concerning or involving a cooperative society, but concerning the business or relating to the affairs of the society which it is authorised to conduct under its bye-laws.

16. In the present case the plaint clearly discloses that a dispute has arisen with respect to the business of the co-operative society, between the co-operative society and a person having transactions with it and therefore, falls within the ambit of Section 102(1)(d) of the Act. The appellant may not be a member of the society. However, that would not mean that he is not liable to file a dispute before the Registrar for recovery of his dues.

17. In our opinion, the Trial Court has by a well-reasoned judgment rightly concluded that the suit was not maintainable since the provisions of Section 102(4) bar the Civil Court from taking cognisance of such disputes. We affirm the decision of the Trial Court that the plaint was required to be rejected under Order 7 Rule 11(d) of the CPC.

18. The appeal is dismissed. No order as to costs. The concerned department is directed to send the LCR to the Trial Court.

19. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.