

(2003) 03 BOM CK 0125

In the Bombay High Court

Case No : Civil Revision Application No. 840 of 1997

District Central Co-operative Bank Ltd. and Others

APPELLANT

Vs

Heminath Balbhim Shinde

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Citation : (2003) 4 ALLMR 537 : (2003) 5 BomCR 841

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : G.S. Godbole, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard the learned advocate for the petitioner. None present for the respondent. Perused the records.
2. The Petitioner challenges the judgment and order dated July 17, 1997 passed by the trial court answering in affirmative the issue of jurisdiction while answering the negative the issue of necessity of notice u/s 164 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter called as "the said Act").
3. Few facts relevant for the decision are that the Respondent herein filed Special Civil Suit No. 25 of 1998 claiming various reliefs for recovery of damages as well as arrears of wages, etc. Undisputedly, the Respondent was employee of the Petitioner-bank and his services were terminated on the ground of misconduct arising from alleged misappropriation of the funds of the bank. The Petitioner-bank had lodged a criminal complaint with the police station at Pandnarpur. Pursuant to the same, investigation was carried out and the matter was referred to the Judicial Magistrate, F.C. and after holding the criminal trial, the Respondent was acquitted. Thereupon, the Respondent filed the said suit. The Petitioner in his written statement, while contesting the claim of the Respondent raised two preliminary issues that the Civil Court has no jurisdiction to try and

entertain the suit considering the relationship of employer and employee between the Petitioner and the Respondent and, therefore, the matter being relating to the business of the society, the same will have to be adjudicated u/s 91 of the said Act and secondly that in the absence of the prior notice in terms of Section 164 of the said Act, no suit could have been filed and, therefore, the same is not maintainable.

4. As regards the first ground of challenge, the court below while dealing with the issue of lack of jurisdiction, accepting the contention of the Petitioner as regards the claim pertaining to the wages, Provident fund and gratuity being beyond the jurisdiction of Civil Court, has struck off the claim in respect thereof and the suit has been ordered to proceed only in relation to the claim based on the alleged false prosecution and vexatious departmental enquiry. As regards, the second ground of challenge, the contention is that since Section 164 of the said Act provides that no suit shall be instituted against a society in respect of any act touching the business of the society until expiration of two months, next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, name, description and the place of residence of the plaintiff and the relief which is claimed, and the plaint containing the statement about delivery of such notice, admittedly, in the case in hand, there has been no notice served and the suit is, therefore, to be held as not maintainable.

5. It is pertinent to note that Section 91 as well as Section 164 of the said Act uses the expression "any act touching the business of the Society". Undisputedly, the matters relating to or concerning the employer employee relationship between the society with employees or pertaining to the dues of such employee would be an act touching the business of the society within the meaning of the said expression contained in Section 91 of the said Act. The trial court, therefore, has rightly excluded the claim regarding the loss of wages, provident fund and gratuity, as such claim can arise only when there exists relationship of employer and employee and certainly the liability of and the claim in relation to the payment of money on account of wages, provident fund and gratuity will be a matter touching the business of the employer and viewed from that angle, the trial court has excluded the claim in relation to the said items from the suit as they fall within the exclusive jurisdiction of the Co-operative Court u/s 91 of the said Act.

6. As regards compensation for false prosecution and vexatious departmental enquiry, the same being in relation to liability in torts alleged by the Respondent and compensation being claimed on the basis of such liability, by no stretch of imagination it can be said to be in any manner relating to an act touching the business of the society. Initiation of false prosecution or vexatious departmental enquiry can never be an act touching the business of the society. Whether the prosecution or departmental enquiry was really false or vexatious is to be decided on merits in a suit. The issue raised in the matter has to be decided on the basis of pleadings in the plaint. Considering the same, the claim in the suit

being based on alleged liability in torts and the same does not fall within the ambit of scope of Section 91 of the said Act, no fault can be found with the finding on the point of jurisdiction of the civil court to deal with the matter.

7. As regards the second ground of challenge, as observed earlier, Section 91 as well as Section 164 uses the expression "an act touching the business of the society". The Apex Court in the matter of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, has ruled that the expression "business" in Section 91 of the said Act does not mean affairs of the society and it has been used in narrower sense and means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and rules and its bye-laws. It is well settled that when similar expression is used at different places in a Statute it carries the same meaning, unless contrary intention is disclosed. Section 164 speaks of a requirement of advance notice in cases of suits against the society relating to an act touching the business of the society. Section 91 of the said Act speaks of any dispute touching the business of the society. As observed above, institution of illegal prosecution or vexatious departmental enquiry can by no stretch of imagination be said to be either an act touching the business of the society or a dispute touching the business of the society, which is capable of being resolved by the Co-operative court in terms of Section 91 of the said Act. Being so, mere difference in words-dispute and act, used in Section 91 and Section 164 respectively will not create difference in the meaning of expression or the word "business". It is to be borne in mind that the Apex Court while arriving at the said conclusion has taken into consideration the meaning of the term "touching" in wider sense as appearing in Section 91. Being so, the expression "any act touching the business of the society" in Section 164 has also to be understood in relation to the actual trading or commercial or other similar business activity of the society. Hence, the finding is arrived at by the court below that considering the claim, based on the liability in torts, the same would not in any way attract the provisions of Section 164 of the said Act and, therefore, there is no question of suit being held as not maintainable under the said provision of the said Act.

8. Attention was also drawn to the judgment of Division Bench of this court in the matter of Mohan Meakin Ltd., Bombay v. The Pravara Sahakari Sakhar Karkhana Ltd., reported in 1987 Mh.L.J. 503 and more particularly the observation therein to the effect that "in our opinion Section 164 of the Maharashtra Co-operative Societies Act must apply to every suit in respect of any act touching the business of the society whether founded on contractual liability or in torts." It is pertinent to note that as rightly observed by the trial court, the said observation was made in the facts of that particular case. In the said case both the plaintiff and the defendant were engaged in the business of manufacture of alcoholic drinks and in an action against passing off brought out by the plaintiff without notice u/s 164 of the said Act the contention of the plaintiffs that the bye-laws of the defendant-society did not permit the manufacture and sale of alcoholic drinks was rejected considering that the claim for compensation was on account of

alleged infringement of the plaintiff's trademark in a manner it was alleged in the plaint, and being in the course of the business of the defendant/society, the said observation was made and it was not in relation to the liability in torts. Being so, the said decision, as rightly observed by the trial court is of no assistance to the Petitioner in the case in hand.

9. In the circumstances, there is no case made out for interference in the impugned order, and the Revision Application, therefore, fails and is hereby dismissed. Rule is discharged with no order as to costs.