
(1982) 10 CAL CK 0013
In the Calcutta High Court
Case No : C. R. No. 1017 of 1981

Eastern Railway Employees Co-Operative Bank Ltd. APPELLANT
Vs
Saroj Nath Dhar Gupta and Others RESPONDENT

Date of Decision : 05-10-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10

Citation : 86 CWN 156

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : R.N. Das and R.N. Sil, for the Appellant; Sailendra Nath Roy for Opposite Party No. 1, for the Respondent

Judgement

Chittatosh Mookerjee, J.—The plaintiff opposite party, Saroj Nath Dhar Gupta had instituted Title Suit No. 417 of 1975 in the First Munsifs Court, Asansol against the petitioner Eastern Railway Employees Cooperative Bank Ltd and the Divisional Superintendent, Eastern Railway, Asansol interafia, for a decree declaring that the defendants were not entitled to realise any amount from the plaintiff in respect of the loan taken by the principal borrower, Srikrishna Chatterjee in January, 1968 and that it was the liability and responsibility of the defendants to realise the said dues from the said principal borrower and that the realisation was time barred. The said plaintiff has also prayed for permanent injunction restraining the defendants from realising any amount from the plaintiff's salary towards repayment of the said loan taken by the principal borrower from the defendant No. 2.the Co-operative Bank. The defendant No. 2, the Eastern Railway Employees Co-operative Bank Ltd. in its written statement filed in the trial court, interalia, claimed that the Civil Court had no jurisdiction to try the Suit because of clause (d) of sub-section (2) of section 132 read with clause (q) of section (2) and sub-clauses (6) and (e) of sub section (1) of Section 86 of the West Bengal Co-operative Societies Act, 1973. It is not necessary to set out the other averments in the said written statement.

2. The learned Munsif, 1st Court, Asansol by the order complained of has overruled the objection of the defendant No. 2 about the maintainability of the aforesaid suit and has held that he has jurisdiction to try the said suit. Being aggrieved, the petitioner has obtained the present Civil Rule.

3. The plaintiff opposite party in paragraph (1) of his plaint has averred that while he was engaged as Head Train Examiner, Eastern Railway, Gomoh, he stood as a Surety for one Srikrishna Chatterjee, Assistant security Officer, Eastern Railway, Dhanbad for a loan taken by the latter in January, 1968. The plaintiff's case in the aforesaid suit is that the amount of the said loan outstanding has become time barred and the said sum could not be realised from making deductions of the plaintiff's salary.

4. In my view, the learned Munsif has committed an error apparent on the face of the record in holding that the instant suit is barred by section 132(2) clause (d) of the West Bengal Co-operative Societies Act, 1963 and that he has jurisdiction to try the suit.

5. Under sub-section (2) of section 132 of the West Bengal Co-operative Societies Act, 1973 the Civil Court's jurisdiction has been barred in respect of the matters specified in clause (a) to (e) of the said subsection (2). The subject-matter of dispute in the instant suit brought by the plaintiff opposite party is clearly covered by clause (d) of sub-section (2) of section 132 of the said Act. The said clause (d) is in the following language "Any dispute required u/s 86 to be referred to the Registrar".

6. The expression "dispute" according to section 2(q) of the West Bengal Co-operative Societies Act, 1973 means "any matter capable of being a subject-matter of litigation and includes a claim in respect of any sum payable to or by a co-operative society whether such claim be admitted or not." By filing the instant suit the plaintiff opposite party has in effect denied and disputed the claim of the defendant Co-operative Bank Ltd. to recover the balance sum of the loan taken by Srikrishna Chatterjee from the plaintiff who allegedly stood Surety for the said borrower, Srikrishna Chatterjee. Unless the civil court's jurisdiction has been excluded the said matter would be certainly capable of being subject matter of civil litigation. But the said claim of the co-operative bank, the petitioner, in respect of the sum payable is covered by section 86(1) of the West Bengal Co-operative Societies Act, 1973. The dispute was among the two parties, one of whom was the Bank and the other was the plaintiff, who was allegedly a Surety of a member past member of the Society (the Co-operative Bank). Thus both the plff. and the defdt. No. 2 Bank, were persons who have been specified in clause (c) of sub-section (1) of section 86 of the said Act. The expression relating to the affairs of a Cooperative Society has been generally widely interpreted. The instant claim of the defdt, No. 2 Co-operative Bank to recover the loan from the plff. was directly connected with the business or activities of the said Bank. I have already pointed out that the subject-matter of the litigation was a claim in respect of a sum allegedly payable by the plaintiff to Co operative Bank and was

covered by the definition of the word "dispute" in section 2(q) of the said Act. Therefore, the same was a dispute relating to the affairs of the petitioner Bank which is a co-operative society and the same ought to be referred to the Registrar for settlement in the manner laid down in Chapter X of the West Bengal Co-operative Societies Act, 1973.

7. The learned Munsif was patently wrong in relying upon sub-section (2) of section 86 of the said Act which lays down that any dispute mentioned in sub-section (1) other than a dispute relating to the recovery of money shall be referred to the Registrar within one month from the date of the cause of action. Thus, sub-section (2) of section 86 prescribes the time limit for making a reference under sub-section (1) of section 86 in case of disputes other than a dispute relating to the recovery of money. In other words, sub-section (2) of section 86 has not prescribed the time limit of one month in case of a dispute relating to the recovery of money. I conclude that the dispute in question is required to be referred to the Registrar and accordingly the court below has no jurisdiction in respect of the said dispute.

8. There is another provision in the West Bengal Co-operative Societies Act, 1973 relating to the payment and recovery of dues of a co-operative society, I may refer to section 126 of the said Act. Section 126 of the said Act is in following terms:

Notwithstanding anything contained in Chapter X, the Registrar or such other person as may be prescribed may, on his own notion or on the written requisition of a co-operative society or financing bank for the recovery of any loan due by a defaulting member, after such inquiry as he considers necessary or expedient, make an award directing payment by such member or by the surety of such member (whether such surety is or is not a member of the society) of the amount found to be due.

9. The opening words "Notwithstanding anything contained in Chapter-X" in section 126 of the Act indicate that in case of any loan due by a defaulting member, the cooperative society or a financing bank may also avail of the provisions of section 126 for the recovery of the said dues from the member or the surety of such member.

10. For the foregoing reasons, I hold that the suit brought by the opposite party is barred by section 132(2)(d) of the West Bengal Co-operative Societies Act, 1973 and the plaint of the suit ought to be returned. I express no opinion on the merits of the case. Therefore, this order will be without prejudice to the rights and contentions of the parties in any other proceeding according to law. Accordingly, I make this Rule absolute set aside the order complained of and direct that the plaint of the suit in question be returned to the plaintiff under Order 7 Rule 10 of the Civil Procedure Code. There will be order as to costs. Let the records be sent down expeditiously.