

(2010) 09 BOM CK 0167
In the Bombay High Court
Case No : First Appeal No. 873 of 2010

Ganesh Raghunath Mamidwar

APPELLANT

Vs

Devgiri Sahkari Sakhar Karkhana Ltd. and Regional Joint
Director

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 6, 9
Industrial Disputes Act, 1947 — Section 2
Limitation Act, 1963 — Article 7, 3
Maharashtra Co-operative Societies Act, 1960 — Section 101(1), 135, 137(1), 152A, 154

Citation : (2011) 2 ALLMR 709 : (2011) 3 BomCR 826

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : V.V. Bhavthankar, for the Appellant; M.M. Joshi, for the Respondent

Judgement

S.V. Gangapurwala, J.—Heard.

2. Admit.

3. This Court vide its order dated 21.4.2010, had passed an order that the parties are put to notice that the appeal would be heard finally at the stage of admission. Record and proceedings is received by this Court. As such with the consent of the parties the First Appeal is taken up for final hearing.

4. The present appellant is the original plaintiff. The plaintiff had filed a suit for recovery of an amount of Rs. 3,73,266/- (Rupees three lacs seventy three thousand two hundred sixty six) against the defendants/present Respondents towards difference of salary, leave salary, unpaid salary, annual increments, Provident fund, gratuity etc. The plaintiff contended that he worked as a Chief Accountant/Incharge Managing Director with the defendant No. 1 Sugar Factory. As the defendant did not pay the amount claimed by him inspite of issuance of notice, the plaintiff filed the suit.

5. The defendants appeared in the suit and denied the claim of the plaintiff. Along with other contentions, the defendants also raised the contention of jurisdiction contending that the plaintiff is workman and as such the jurisdiction lies with the Labour Court. The Civil Judge (Senior Division), Aurangabad, vide its judgment and decree dated 6.2.2010, held that plaintiff is entitled for arrears of Rs. 3,73,266/- (Rupees three lacs seventy three thousand two hundred sixty six) but dismissed the suit on the ground that the Civil Court does not have jurisdiction to try the suit in view of Section 91 of the Maharashtra Cooperative Societies Act and only the Cooperative Court or the Registrar of Cooperative Societies shall have the jurisdiction. The plaintiff has assailed the said judgment before this Court.

6. I have heard Mr. V.V. Bhavthankar, learned Counsel for the appellant and Mr. M.M. Joshi, learned Counsel for the Respondent. Mr. Bhavthankar, learned Counsel canvassed following propositions:

(a) The plaintiff was working as Chief Accountant and his claims for arrears of salary, unpaid salary etc. would not come within the purview of the expression "business of the society" and the Civil Court shall have jurisdiction to try and entertain the suit of the present nature. To buttress his submission, the learned Counsel relied on the judgment of the Apex Court in the case of Morinda Cooperative Sugar Mills Ltd. Vs. Morinda Coop. Sugar Mills Workers Union, .

(b) The Court had come to the conclusion that the plaintiff is entitled for the said amount of claim, as such ought to have granted the decree.

7. Per contra, Mr. M.M. Joshi, learned Counsel for the Respondent submitted:

(a) The provisions of Section 91 of the Maharashtra Cooperative Societies Act would encompass the dispute of the present nature. The term "business of the society" would have a wider connotation and can not be given a restrictive meaning. The trial Court has come to the right conclusion that it has no jurisdiction to pass a decree. To buttress his submission he relied on the Division Bench judgment of this Court in case of Pralhad Vithalrao Pawar Vs. Managing Director and Another, .

(b) The defendant had to recover an amount of Rs. 99,769,43 Ps. (Rupees ninety nine thousand seven hundred sixty nine and paise forty three) from the plaintiff. This aspect has not been considered by the Court below.

8. With the assistance of the learned Counsels for the respective parties, I have gone through the record and proceedings, so also the pleadings of the parties. Before advertng to the contentions raised by the learned Counsels, it would be appropriate to reproduce the relevant 6 provisions:

Section 91 of the Maharashtra Cooperative Societies Act-

91. Disputes

(1) Notwithstanding [anything contained] in any other law for the time being in

force, any dispute touching the constitution, [elections of the committee or its officers other than elections of committees of the specified societies including its officer], conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, [to the cooperative Court] if both the parties thereto are one or other of the following:

(a) a society, its committee, any past committee, any past or 7 present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the official Assignee of a de-registered society].

(b) a member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society [or a person who claims to be a member of the society];

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restriction or regulations have been imposed, made or prescribed under Sections 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed u/s 45. whether such surety or person is or is not a member of the society;

(e) any other society, or the Liquidator of such a society [or-deregistered society or the official Assignee of such a de-registered society.

[Provided that, an industrial dispute as defined in Clause (k) of Section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society u/s 73IC or a society specified by or u/s 73G, or refusal of admission to membership by a society to any person qualified therefore [or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under Sub-section (1) or (2) of Section 101 or Sub-section (1) of Section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under Sub-section (1) of Section 156,][or any orders, decisions, awards and actions of the Registrar against which an appeal u/s 152 or 152A and revision u/s 154 of the Act have been provided,] shall not be deemed to be a dispute for the purposes of this section]

(3) Save as otherwise provided under [Sub-section (2) to Section 93] no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in Sub-section (1).

Explanation 1. - A dispute between the Liquidator of a society [or an official

Assignee of a deregistered society] and [the members (including past members, or nominees, heirs or legal representative or deceased members)] of the same society shall not be referred [to the cooperative Court] under the provisions of Sub-section (1).

Explanation 2. - For the purposes of this Sub-section, a dispute shall include:

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a 11 member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not:

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment.

Section 9 of C.P.C.

9. Courts to try all civil suits unless barred. - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation (I) A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding 13 that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II. - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

Article 7 of the Limitation Act.

9. It is a trite law that ouster of jurisdiction of Civil Court is not to be readily inferred. A Court is said to have jurisdiction of the subject matter of a particular controversy if the Court has authority to hear and decide 14 causes of a class to which the particular controversy belongs. The jurisdiction of Civil Courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by Civil Court. Any such exception can not be readily inferred by the

Courts. The Courts would lean in favour of a construction that would uphold the retention of jurisdiction of Civil Court and shifts the onus of proof on the party who asserts that Civil Court's jurisdiction is ousted.

10. In all types of Civil disputes, the Civil Court has inherent jurisdiction as per Section 9 of the C.P.C. unless a part of that jurisdiction is curbed out from such jurisdiction expressly or by necessary implication by any statutory provision and conferred on any other Tribunal or authority. The Courts generally construe the provision of exclusion of jurisdiction of Civil Court strictly. The statute ousting the jurisdiction of Civil Court has to be strictly construed.

11. It is well settled that jurisdiction of the Court is to be determined on the basis of allegations made in the plaint. The pith and the substance of the plaint allegations have to be kept in mind so also the pith and substance of the relief sought.

12. Perusal of the plaint, it is manifest that the plaintiff was claiming his unpaid salary, arrears, increments, gratuity etc. The expression "business of society" would be concerned with the conduct of its business and attainment of its object. The right to claim the salary is a Civil right. The object of the defendant society is to carry on manufacture of sugar, sugar products and other ancillary products. The defendants have not been in a position to show that the payment of salary, its arrears etc. is the object of the society. The word business in Section 91 has been used in a narrower sense and it 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 the Rules and its bye-laws. The claim for arrears of salary, gratuity, increments, would not be covered within the ambit and purview of the expression "touching the business of the society". As such the Registrar of the Cooperative Societies or the Cooperative Court would not be in a position to grant the said relief. The Apex Court in a case of "Morinda Coop. Sugar Mills Ltd. v. Morinda Coop. Sugar Mills Workers' Union" referred supra, taking stock of the various judgments delivered by the Apex Court in this regard has held that alterations in the conditions of the service of the workmen would not be covered by the term "business of the society".

13. The judgment of the Division Bench of this Court in a case of "Pralhad Vithalrao Pawar v. Managing Director, Kannad Sahakari Sakhar Karkhana Ltd. and Anr." referred supra as relied by the learned Counsel for Respondent would not be of any assistance to the Respondent. The said judgment would not be squarely applicable to the facts of the present case. There the question was with regard to validity of the termination of the employees and same was held to be a dispute "touching the management of the society".

14. In light of the above, I hold that the Civil Court shall have jurisdiction to try and entertain the present dispute.

15. While going through the pleadings in the plaint, it was observed by me that the plaintiff has claimed the arrears of salary from the year 2001. The suit is filed

in the year 2005. As per Article 7 of the Limitation Act, the wages can be claimed for past three (3) years. The Court below has overlooked this aspect. Even if the defendants have not pleaded about limitation, still, as per Section 3 of the Indian Limitation Act, where on the face of it could be seen that the part of the claim is beyond limitation and the plaintiff has not pleaded anything about the extension of period of limitation as is required Under Order 7 Rule 6 of the C.P.C. then in such circumstances, the Court ought to have considered the aspect of limitation. The trial Court has failed to consider this aspect. The issue of limitation is a mixed question of law and fact. The trial Court shall frame the issue of limitation and decide the same after giving opportunity to the parties.

16. As far as claim of the defendants is concerned, the same is rightly not considered as the defendants have not set up counter claim or set off.

17. As the Court has not considered the issue of limitation, I remit the matter to the trial Court for deciding the dispute between the parties afresh by keeping all points open and holding that the Civil Court has jurisdiction to try and entertain the present suit.

18. In the result, the First Appeal is partly allowed. The parties are relegated to the trial Court for deciding the dispute afresh. The trial Court is also directed to frame issue of limitation. The parties are at liberty to adduce further evidence. The parties to appear before the Civil Judge (Senior Division), Aurangabad in Special Civil Suit No. 179 of 2006 on 18.10.2010. The Civil Judge (Senior Division), Aurangabad, thereafter shall decide the said suit in accordance with the observations made herein above within a period of six (6) months.