(2009) 06 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No''s. 3088 and 4302 of 2008

Gondia District Central Cooperative Bank Ltd. APPELLANT

Vs

State of Maharashtra and Others
 Smt. Rukminidevi Shankarlal Agrawal and Others Vs State of Maharashtra and The Chairman, Central Cooperative Bank RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 22, 23(2), 25, 30, 30(1)
Maharashtra Co-operative Societies Rules, 1961 — Rule 22, 23, 25, 25(3)

Citation : (2009) 4 BomCR 657

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : M.V. Samarth and A.S. Jaiswal, for the Appellant; A.S. Jaiswal and M.V. Samarth, for the Respondent

Final Decision : Allowed

Judgement

C.L. Pangarkar J.

1. Both these Writ Petitions can be decided by a common judgment since the parties to the petitions are identical and the questions involved are also identical.

2. Rule. Returnable forthwith. Heard finally with consent of parties.

3. The Writ Petition No. 4302 of 2008 has been preferred by the Gondia District Central Cooperative Bank against the order passed by the Joint Registrar Cooperative Societies on 10.09.2007. Petitioner is a District Central Cooperative Bank and a society registered under the Maharashtra Cooperative Societies Act 1960. The petitioner being a federal bank of all the primary cooperative societies in the district is also governed by the provisions of Banking Regulation Act 1949. In view of this the Reserve Bank of India has powers to issue directions in the public interest and in the interest of banking sector to the petitioner bank. The petitioner submits that those directions are binding on the bank. Reserve Bank of

India in accordance with the recommendations of the Rural Credit Survey Report directed the Registrar of the Cooperative Societies to take a policy decision to discourage individual membership. It was also directed by the Reserve Bank of India that the membership of central financial agencies should be kept at minimum and no fresh individuals should be admitted or given membership of the bank. The said letter was circulated to all Chairmen of the District Central Cooperative Banks. Accordingly District Central Cooperative Bank i.e. the petitioner had made a provision in the byelaws for redemption of the share capital held by the individuals. The petitioner submits that the petitioner is therefore bound to see that individual membership is discouraged and the individual membership is reduced to minimum. Petitioner contends that one Shankarlal Agrawal held 20 number of shares of the petitioner bank. He died on 05.09.2005. His heirs who are the respondents herein applied for transfer of the shares in their name and to give membership to them. The petitioner according to policy that no new members should be admitted and there should be redemption, informed the respondents that the respondents should take back their share money. Respondents felt aggrieved by that and they preferred an application before the Joint Registrar of the Cooperative Societies at Nagpur. Joint Registrar directed the cooperative bank, i. e. the petitioner to give membership to the respondents and being aggrieved by that the District Central Cooperative Bank Gondia has preferred Writ Petition No. 4302 of 2008 while the Writ Petition No. 3088 of 2008 is preferred by the heirs of Shankarlal Agrawal since there is no direction to transfer the shares. I have heard the learned Counsel for the petitioners and the respondents.

4. Following few undisputed facts may be noted first. Shankarlal Agrawal held 20 shares of the petitioner bank. He died on 05.09.2005. Respondents No. 4 to 15 applied for transfer of those 20 shares in their name in proportion as mentioned against their names. The petitioner bank passed a Resolution refusing to transfer the shares as instructed by the Commissioner of Cooperation by letter dated 05.07.2000. Respondents 4 to 15 then approached the Joint Registrar who passed the impugned order.

5. Shri Samartha learned Counsel for the petitioner submits that the bank had taken decision not to transfer the shares as per the policy laid down by the Reserve Bank of India. He submits that the Reserve Bank of India had laid down the policy that individual membership should be discouraged and individual membership should be reduced to minimum. He submitted that in order to reduce the membership as instructed it is necessary to refund the amount to the respondents 4 to 15 and dismember them. Annexure ''A'' is the letter written by the Registrar Cooperative Societies to the Chairman of the District Cooperative Bank. It would be necessary to reproduce here the contents of the letter dated 28.09.1960:

You are already aware that ac cording to the recommendations of the Rural Credit Survey Report and as advised by the Reserve Bank of India many times, individual membership of the Central Financing Agencies is to be discouraged and they are expected to work as federal bodies for their affiliated cooperative only. It is therefore, necessary to see that not only the existing membership of the Central Financing Agencies is reduced to a minimum but also no fresh individuals are admitted to the membership of the Banks. Necessary instructions in this behalf have already been given to the Banks from time to time but it is observed that instead of taking action in reducing their individual membership of the Central Financing Agencies according to the accepted sound principle new members in a large number are still being enrolled by some of the Central Cooperative Banks which is definitely neither desirable nor fitting in with the principles laid down by the Department. All the Central Cooperative Banks are, therefore, requested to pay immediate attention to this important matter right earnestly and take necessary steps to implement the above suggestion by reducing the individual membership and making a firm policy not to admit any new individual members to the membership of the Bank.

There is no doubt that the Reserve Bank of India has instructed to see that an individual membership is reduced to minimum. It seems however to me that the instructions were required to be issued because of the fact that instead of putting the individual membership static the banks were admitting new members defeating the objective. What, therefore, essentially was expected that no new members should be admitted and as far as possible existing membership should be reduced. The existing membership can however be reduced by persuading individual to accept price of the share on giving up the membership. Even the Reserve Bank of India would not have a right to issue instructions not to transfer the shares to the heirs of the deceased. It cannot even prohibit transfer of shares of those members who may be alive and wish to transfer their share inter viros. That can be done by the legislative act alone and not by administrative instructions. However, individual will have a right to transfer the share unless prohibited by law. Therefore, where a death of a member holding share occurs the share upon proof of heirship would certainly be entitled to have them transferred to them. Endeavor to reduce membership does not necessarily mean compulsory redemption. The share can be compulsorily redeemed inter viros or by an act of legislature and not otherwise. At page 18 and 19 of the petition the byelaws are reproduced. They are as follows:

Model byelaws regarding individual membership of Central Financing Agencies.

Under the heading ''Capital''

3(A): The Bank may by a special Resolution of its Board or Directors in that behalf and with the previous sanction of the Registrar pay off shares issued to individual members at a sum representing the value of the shares as ascertained in accordance with the provisions in the Bombay Cooperative Societies Act 1925 and Rules thereunder.

Under the heading the powers and duties of the Board.

31(22):to call in and redeem shares in the Bank held by individual members with previous sanction of the Registrar in accordance with the provisions of the Bye laws No. 3(A).

Bye law No. 31(1): To deal with applications for membership and to allot shares subject to the provisions contained in bye law No. under the heading "membership."

Under the heading "membership"

Bye law No. 9(B): Notwithstanding any thing contained in this bye law or any other Bye laws no fresh shares should be issued to the existing individuals would be admitted to the membership of the Bank without express previous permission of the Registrar therefore.

There is nothing in these bye laws which says that upon death of a Member the shares would be compulsorily redeemed in favour of the heirs. What they say is that no new member would be admitted.

6. Shri Samartha learned Counsel for the petitioner submits that there is difficulty in transferring the shares to the respondents. He submits that the shares cannot be transferred unless they first become member of the bank. He invited my attention to Section 30 of the Maharashtra Cooperative Societies Act. Section 30 reads as follows:

30. Transfer of interest on death of member

On the death of a member of a society, the society shall transfer the share or interest of the dece3ased member to a person or persons nominated in accordance with the rules, or, if no person has been so nominated to such person as may appear to the committee to be the heir or legal representative of the deceased member.

Provided that, such nominee, heir or legal representative, as the case may be, is duly admitted as a member of the society:

Provided further that, nothing in this Sub-section or in Section 22 shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a dec3eased member in a society.

Notwithstanding anything contained in Sub-section (1), any such nominee, heir or legal representative, as the case may be, may require the society to pay to him the value of the share or interest of the deceased members, ascertained in accordance with the rules.

A society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

All transfers and payments duly made b y a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Proviso to Section itself says that upon admission of heirs as members the shares may be transferred. Shri Samartha learned Counsel submits that respondents must first apply u/s 23 for becoming members and if the bank refuses to admit them as members the person has a right to prefer an appeal u/s 23(2) to the Registrar. Section 23 to my mind would apply only to the members who desire to be admitted as new members. Section 23 does not apply to the heirs. A distinction has to be made between the persons who seeks to become a member and the heirs upon whom shares as a property devolve. To my mind every heir of a dead member would automatically become a member. It is so because the Cooperative Societies Act provides for transfer of shares. Section 25 would not come in the way as is held by this Court in Virendra Bhanji Rathod and Others Vs. Anand Vihar Co-operative Housing Society Ltd. and Others, . There may however be restrictions on number of heirs becoming member, for the bye laws may require a person to hold a minimum number of shares for becoming a member. In that case the heirs will have to decide who amongst them should be treated as member but where there is no such restriction ... every heir would automatically become a member. Each of them would be entitled to separate membership. Rule 25 of the Maharashtra Cooperative Societies Rules reads as follows:

25. Nomination of persons.

(1) For the purpose of transfer of his share or interest under subsection (1) of Section 30, a member of a society may, by a document signed by him or by making a statement in any book kept for the purpose by the society nominate any person or persons. Where the nomination is made by a document, such document shall be deposited with the society during the member''s life time and where the nomination is made by a statement, such statement shall be signed by the member and attested by one witness.

(2) The nominations made under sub rule (1) may be revoked or varied by any other nomination made in accordance with that sub rule.

(3) (i) Where a member of a society has not made any nomination, the society shall on the member''s death, by a public notice, exhibited at the office of the society, invite claims or objections for the proposed transfer of the share or interest of the deceased within the time specified in the notice.

(ii) After taking into consideration the claim or objections received in reply to the notice or otherwise, and after making such inquiries as the committee considers proper in the circumstances prevailing, the committee shall decide as to the person who in the opinion is the heir or the legal representative of the deceased member and proceed to take action u/s 30.

The instant case to my mind will fall in Sub-rule (3) of Rule 25. It is thus clear that the bank has to follow the procedure laid down in Rule 25 and take steps according to Section 30. It is in fact bound to transfer the shares of the deceased to the heirs. No doubt subject to the provisions of Rule 22, 25, 23. The bank would no doubt also have a right to make enquiry as to the status of the persons seeking transfer as heirs of the deceased.

7. Shri Samarth learned Counsel submits that Joint Registrar could not have entertained an application against the Resolution passed by the bank. He submits that an appeal could be preferred to the Registrar against the order of the bank refusing to admit the respondents as members u/s 23. I have already observed that Section 23 has no application to the present case since it applies to members who seek new membership. Decision in President Nagarpalika Prathamik Shala Shikshak Servants Cooperative Credit Society Ltd. Buldhana v. Ramchandra Damidar Umalkar and Ors. 1967 Mh LJ 473 would have no bearing on the case at hand. It would be necessary to look into the provisions of Section 79 of the Cooperative Societies Act. Shri Jaiswal learned Counsel submits that Section 79 in fact authorises the Registrar to enforce compliance of the provisions of the Act, Rules and Bye Laws. According to him Section 30 read with Rule 25 puts an obligation on the bank to transfer the shares and its refusal would entail an action u/s 79. Section 79 reads as follows:

Section 79. Registrar''s power to enforce performance of obligations

(1) The registrar may direct any society or class of societies, to keep proper books of accounts with respect to all sums of money received and expended by the society, and the matters in respect of which the receipt and expenditure take place all sales and purchases of goods by the society, and the assets and liabilities of the society, and to furnish such statements and returns and to produce such records as he may require from time to time; and the officer or officers of the society shall be bound to comply with his order within the period specified therein.

(2) Where any society is required to take any action under this Act, the rules or the byelaws, or to comply with an order made under the foregoing subsection, and such action is not taken

(a) within the time provided in this Act, the rules or the bye laws, or the order as the case may be, or the Registrar may himself, or through a person authorised by him, take such action, at the expense of the society; and such expense shall be recoverable from the society as if it were an arrear of land revenue.

(3) Where the Registrar takes action under subsection (2), the Registrar may call upon the officer or officers of the society whom he considers to be responsible for not com plying with the provisions of this Act, the rules or the byelaws, or the order made under Sub-section (1) and after giving such officer or officers an opportunity of being heard, may require him or them to pay to the society the expenses paid or payable by it to the State Government as a result of their failure to take action and to pay to the assets of the society such sum not exceeding twenty five rupees as the Registrar may think fit for each day until the Registrar''s directions are carried out.

Particularly Sub-section 2 of Section 79 clothes the Registrar with a power to ensure compliance. Registrar, therefore, can give direction u/s 79 to the bank and transfer the shares albeit subject to the provisions of Act and Rules. Circular/ Letter of the Registrar dated 28.09.1960 cannot come in the way of transferring shares to the heirs and granting them membership being heirs of the original member or direct on to bank to grant membership cannot therefore be faulted. I have already observed that the bank has a right to decide upon the basis of bye laws and rules as to who can become member if number or members is to be registered or if there is a restriction on holding a minimum number of qualifying shares. With these observations the Writ Petition No. 4302 of 2008 is liable to be dismissed and rule discharged, while Writ Petition No. 3088 of 2008 succeeds. The same is allowed. Respondent bank shall transfer shares and grant membership to the petitioners subject to provisions of Section 30 and 25 or any other Rule applicable and after following procedure as laid down. No order as to costs.

