(2013) 04 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Gujarat Scheduled Caste Development Corporation APPELLANT

Vs

Ahmedabad Mahila Nagrik Co -operative Bank Ltd., The Incharge Chairman Ahmedabad Mahila Nagrik Co -operative Bank Ltd. and Kum. Ritaben Shah RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Citation : 2013 3 CPJ 181

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition dismissed

Judgement

1. THE key question which falls for consideration is "Whether Section 112 of Gujarat Co -operative Societies Act, 1961, which runs as follows: - 112. Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act; and when a winding up order has been made, no suit or other legal proceedings shall lie or be proceeded with against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose: Provided that, where the winding up order is cancelled, the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as liquidator.

the absence of ''leave'' of the Registrar strikes a snap in proceeding further -. We are of the considered view that in view of this provision of law, here lies a rub in proceeding further, in these two above said cases. This is the Law of Land and we must respect it, though this is for the benefit of few Directors and detrimental to the public at large. These cases also reveal how, our so -called politicians leave no stone unturned in leading the gullible people up the garden path.

Now, the facts deserve a look. This order shall decide the above said two complaint cases which are between the same parties but the branches of the respondent Bank are different and employees are different. The same entail similar questions of law. Consequently, both the complaints are being decided by one judgment.

2. GUJARAT Scheduled Caste Development Corporation, the Complainant is an autonomous body created under the Gujarat State Development Act, 1985 and its object is to strive towards upliftment of the Members of the Schedule Caste Community. Ahmedabad Mahila Nagrik Co -operative Bank Ltd., is registered under the provisions of Co -operative Societies Act, 1961, OP1, the Incharge Chairman, OP2, and Kum Ritaben Shah, Incharge Manager, OP3, the employees of Bank situated at Naranpura have been arrayed as OPs in OP 277/1998, while Ahmedabad Urban Co -operative Bank Limited, OP1, Sh. S.N. Rajput, Managing Director and Chairman, OP2, Sh. Jayendra R. Shah, OP3 and Sh. Naishad S. Shah, OP4, the employees of the Sarangpur Branch, have been arrayed as OPs in OP 278/1998. In both the cases, OP2 informed the higher authorities of the complainant that they were offering the services of paying higher rate of interest at 13.5% p.a., and 15%, p.a., respectively, in each of the cases, if fixed amount is deposited with them for a period of three/six months. As per decision dated 09.09.1996, taken by the Special Committee, the complainant deposited a sum of Rs. 50,00,000/ - @ 13.5% p.a. with OP1 Bank in Case No. 277/1998 for a period of three months, on 18.09.1996, vide FDR No. 9169. The complainant further deposited a sum of Rs. 1.00 crore on 28.09.1996 in the same case, vide FDR No. 9170. Likewise, the complainant deposited Rs. 50.00 lakh for a period of six months, @ 15% p.a. vide FDR No nil, which will, however, be referred to as FDR No. 3, with OP1 in Case No. 278/1998. The complainant imposed a condition that no loans were to be given out of the said deposited amount and the OPs were to return the said deposited amounts, along with interest, on the date of maturity.

3. ON 18.12.1996, the complainant Corporation, through its Chief Accounts Officer, addressed a letter to Kumari Ritaben Shah, with the request that the maturity amount along with interest be sent to the complainant, after maturity in respect of FDR No. 9169. It did not evoke any response. Thereafter, another letter was written to Kumari Ritaben Shah by the complainant with the request to refund Rs. 50.00 lakh, along with interest. It was also requested that FDR No. 9170 dated 28.09.1996 for Rs. 1.00 crore had also matured on 28.03.1997 and since the Corporation was in need of money, therefore, the said amount, along with interest be sent to the complainant. Copies of both the letters have been annexed as Annexures A and B, respectively. However, those letters were not replied by OPs. Another letter dated 03.01.1997, Annexure -C, was also sent by the complainant. To this letter, OP3 sent a reply on 31.12.1996 informing that OP2 had made a representation to the Hon''ble Chief Minister of Gujarat to renew the FDRs of various Boards and Corporations of Gujarat Government and the Chief Minister had assured the same to OP2. Therefore, Kumari Ritaben Shah requested the complainant Corporation to return the FDRs to her for renewal of the same. She also requested the complainant to contact the Hon''ble Chief Minister of Gujarat, in this context, copy of which is annexed as Annexure -D.

4. THE complainant was not satisfied with this explanation. It again sent another letter dated 17.01.1997 to refund the total amount of Rs. 1,50,00,000/ -, with interest. It also warned the OPs that if the said amount was not returned, it would take legal action against them, vide letter annexed as Annexure -E. Thereafter, reply was sent by Kumari Ritaben Shah, wherein it was stated that the Chairman and the other office bearers of OP1 were making sustained efforts for the purpose of return of aforesaid amount as well as collecting deposits and the matured fixed deposit amount with interest would be refunded by the end of March, 1997. The said letter is annexed herewith as Annexure -F. However, the said amounts were not refunded, subsequently, as well.

Thereafter, a request was made to the Reserve Bank of India vide letter dated 23.04.1997 by the complainant to give proper directions to OPs, copy of which is annexed as Annexure -G. The Reserve Bank of India sent a reply to the complainant stating that they are trying to collect the necessary information and would thereafter, take necessary action, if necessary, vide letter dated 19.05.1997, copy of which is annexed as Annexure -H. However, no action was taken by the Reserve Bank of India, till date.

5. SH . Gopalbhai Solanki, Chairman of the complainant wrote another letter dated 06.05.1997 to OP2, wherein, a request for refund of the amount was made. Copy of the said letter is annexed as Annexure -I with the complaint, but the OPs did not care to reply to it. Another letter was sent on 19.05.1997 by the Chief Accounts Officer, to OP3, copy of which is annexed as Annexure -J. The Chief Accounts Officer wrote another letter dated 22.09.1997 wherein request for refund of the amount was made, copy of which is annexed as Annexure -K, along with the complaint. Ultimately, the present complaint cases were filed with the prayer to refund Rs. 1,50,00,000/ -, with interest @ 13.5% p.a. from the date of deposit till its realization, and exemplary damages of Rs. 75.00 lakh be paid to the complainant. It was further prayed that OPs 1 to 3 be directed to pay Rs. 50,000/ - each, as costs in OP 277/98. In the second case, (OP 278/1998) it was prayed that the OPs be directed to refund Rs. 50.00 lakh with interest @ 15% from the date of deposit, till actual realization, exemplary damages of Rs. 25.00 lakh and to pay costs of Rs. 50,000/ - to the complainant.

6. DEFENCE : The OPs enumerated the following defences in their written statement. They have denied all the allegations. It is alleged that the complaints are barred by limitation and provisions of Consumer Protection Act, 1986. The jurisdiction of this Commission has also been called into question. It is submitted that the complaints are barred by the principles of delay, laches, estoppel and acquiescence. The OPs are not expected to render any service. They do not manufacture or sell any goods. There is no relationship of a Trader and Consumer or Buyer between the parties. The complainant is not a ''consumer''. The complainant is not a ''person'' as defined under the Act. The complaints are barred by plurality of remedies. This is not a consumer dispute, but it is in essence of civil suit. The OPs are not aware about the ''constitution'', ''status'' or

''objects'' of the complainants. The complainants are guilty of gross misconduct. As a matter of fact, the complainant has failed and neglected to discharge its duty and obligations and to achieve its objects under the Gujarat Schedule Caste Development Act, 1985.

Op1 is a Co -operative Society, registered under the Gujarat Co -operative Societies Act. Op2 is an honorary Chairperson and is not a ''person'' or a ''trader'' as defined under the said Act. The relationship between the parties are governed by a contract that of a ''borrower'' and ''lender''. This is a monetary contract/ transaction simpliciter between the parties. The Ops, except Op1, have been wrongly joined as parties. Payment of interest or borrowing funds are purely financial transactions. The Ops were not aware of any alleged decision or deliberation or discussion dated 09.09.1996 taken by the alleged Special Committee or any other Committee of the complainant. The complainant Corporation is a statutory corporation and it has its own rules and regulations and other legal provisions regarding its affairs and financial affairs and management. It is alleged that some of the office bearers of the complainant, out of personal greed and some other considerations, have entered into the contract with Op1 to lend money at higher rates than usually offered by Ops.

7. THE OPs have further alleged that according to the complainants, it seems that the complainants had lent and advanced a sum of Rs. 50.00 lakh to OP1 at higher rate of interest than prevailing in the Co -operative Banking Sector. It is alleged that complainant and its office bearers have taken unfair advantage and adopted unfair trade practice by extracting higher rate of interest from a poor Co -operative Society, which was facing financial crisis. The complainant itself admitted that aforesaid amount was lent for three months from 09.09.1996 to 08.12.1996. It further seems that the complainant had lent and advanced Rs. 1.00 crore to OP1 on 28.09.1996 on payment of interest at higher rate. The complainant had requested to refund the amount of Rs. 1,50,00,000/ - with interest, on or before 01.01.1997, vide its letter dated 30.12.1996, but the OPs could not pay as requested on account of circumstances beyond the control of the OPs. The alleged default has taken place as early as on 18.12.1996 and 30.12.1996 and the present complaint cases have been filed after more than one year, i.e. in 1998 and thus the same are not tenable and deserve to be dismissed forthwith, being barred by limitation.

8. THE OP further submitted that the Government of Gujarat has issued a directive to all the Statutory Corporations of the Government of Gujarat on 09.10.1997 and resolved to extend the period of fixed deposit of government Statutory Corporation for the period of two years from the date of maturity. RBI had also looked into the affairs of the Bank under Section 35 of the Banking Regulations Act and made its report, dated 18.09.1998, the relevant portion of which reads as under: - VII. That the non -performing assets of the Bank as on 31.03.1998, 99.7 of its total advances i.e. Rs. 2535.57 lakh. That the erosion in the value of Bank Assets are estimated at Rs. 1614.85 lakh.

The present Board of Directors was constituted in February, 1998. They are trying to recover the dues and reduce the non -performing assets. However, the picture is quite hazy. No salary or remuneration was paid to the staff members or the Board of Directors, since about one year. The written statement was filed on 15.02.1999. There has been gross mismanagement and negligence of Board of Directors, many irregularities are committed, amounting to criminal misappropriation of funds, conspiracy, fraud, tampering with record, fabrication of evidence, etc. The OPs have also approached the Government of Gujarat to grant protection as OP1 is a Co -operative Society and the object of the said Society was for upliftment and advancement of the women in general and economically backward class, in particular. In pursuance of the said approach, the Government of Gujarat has issued a Resolution and directed all the Statutory Corporations under the Gujarat Government for automatic extension of deposit for a further period of two years. According to OPs, the deposits have matured as early as on 18.12.1996 and on 01.01.1997. The complaints have been filed on 09.10.1998, therefore the complaints are barred by time. The complainant, being a Government Statutory Corporation, repeatedly intimated and threatened the OPs and its office bearers to take coercive measures. The complainant also threatened to take unlawful means against the office -bearers of OPs for the alleged claims of the complainant.

9. THE order sheet goes to show that this Commission was informed as back as on 10.09.2008 that the Bank had gone into liquidation and an Administrator has been appointed. Thereafter the complaint was dismissed in default. Subsequently, it was restored. Vide order dated 04.02.2011, Liquidator was arrayed as one of the OPs. On 03.03.2011, the complainant stated that the Liquidator had been appointed under Section 110 of the Gujarat Co -operative Societies Act, 1961 and the complainant had sought permission from the Registrar to grant ''leave'' to proceed with the complaint, which application is still pending. The case was adjourned to 22.09.2011. It is clear that till the pendency of this case, no permission was granted by the Gujarat Co -operative Society. On 06.03.2013, we passed the following order: Mr. Swapnil Chauhan, Proxy counsel for the Complainant present. He is from Gujarat. He submits that the main counsel Mr. D.M. Ahuja is lying sick as he is suffering from fever and has not appeared in Gujarat High Court or any other Court for the last two days. It is very strange that the counsel for the petitioner is not interested to argue the case. We have perused the last date order when the other''s counsel were present, he did not appear. He appeared subsequently when the other counsel had gone. The other''s counsel have come all the way from Ahmedabad. It was his duty to tell the counsel not to go to Delhi and waste the time and money. So he is liable to pay cost to Ms. Manisha C. Shah. This question is kept open and will be decided on the next date of hearing.

It is also transpired that the complainant has to take permission from the Registrar of the Cooperative Societies. It is stated that now he is taking the permission. The full details that when he applied for the permission and what is the status of the permission, it should be placed before this Commission on 08.04.2013. No other opportunity shall be granted.

10. WE have heard learned counsel for the parties. Counsel for the Liquidator, Ms. Manisha C. Shah pointed out that they are paying the money to the complainant on ''pro -rata'' basis. They have already paid a sum of Rs. 1.00 lakh to the complainant. She submitted that they will not shirk to pay the amount to the complainant as per its share. Counsel for the OPs have raised no dispute about the payment of the above said amount. If the interest is on the higher side, that is the result of the agreement entered into between the parties. The agreement does not appear to be illegal, unconscionable or brought through fraud. The Liquidator has already paid Rs. 1.00 lakh towards the amount claimed in the complaints. The Liquidator has also showed the Commission that the complainants will further pay the amount as per ''pro rata'' basis. We have already referred to Section 112 of Gujarat Co -operative Societies Ac 1961. This Act clearly puts a bar in proceeding with these cases. The application with the Registrar of the Gujarat Societies is pending for the last four years. It appear that he is reluctant to grant permission. The complainants should seek the permission from the Registrar and then they can institute the cases, or the complainants should wait until the winding up order is cancelled in their favour.

11. AGAIN , Section 166 (2) of the said Act, runs as follows: - 166 (1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of -

(a) xxxx

(b) xxxx

(c) xxxx

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar, and subject to such terms as he may impose.

12. MOREOVER , Section 167 of the said Act, further lays down as under: - Save as otherwise provided in this Act, no suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the 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, the name, description and place of residence of the plaintiff and the relief which he claims, and the plant shall contain a statement that such notice has been so delivered or left.

In view of these circumstances, it appears that the complaint cases are pre - mature. We, therefore, dismiss both the complaints but allow the complainants to file fresh suits/complaints after serving the requisite notices, before the appropriate forum, including the consumer forum, and the exclusion of time spent in these proceedings before this Commission as well as in the liquidation proceedings shall be considered in view of Apex Court''s authority reported in Laxmi Engineering Works Vs. P.S.G. Industrial Institute - : (1995) 3 SCC 583.

