
(2003) 09 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 130 of 2000

Hari Chand Jai Ram Shah	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 3 ShimLC 108

Hon'ble Judges : Kuldip Chand Sood, J

Bench : Single Bench

Advocate : V.D. Khidta, for the Appellant; D.C. Pathik, Additional A.G. for Respondent Nos. 1 to 4, S.S. Mittal and Arvind Sharma, for Respondents No. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Chand Sood, J.—Respondent No. 5, H.P. State Co-operative Bank Ltd., is a Co-operative Society registered under the Himachal Pradesh Co-operative Societies Act, 1968, hereinafter referred to as "The Act". This Bank has a Branch at New Subzi Mandi, Azadpur at Delhi.

2. In the year 1992-93, the Petitioner M/s. Hari Chand Jai Ram Shah became a member of the Society and opened a current account with the Bank's Branch at Azadpur. Overdraft facilities were extended to the Petitioner. The amount due from the Petitioner to the Bank remained unpaid. The Bank approached the Registrar of the Co-operative Societies for initiation of arbitration proceedings for the recovery of the amount due to it under Sections 72 and 73 of the Act.

3. Section 72(1) provides for the dispute to be referred for arbitration. Sub-section 2(a) of Section 72 stipulates that a claim by a surety for any debt or demand due to it from a member or any employee, or the nominee, heir or legal representatives of a deceased member or an employee whether such debt or demand be admitted or not shall be deemed to be dispute touching the

constitution, management or the business of a co-operative society within the meaning of Section 72(1) of the Act. Section 73 provides the settlement of the dispute either by the Registrar himself or by the arbitrator appointed by him. Section 75 stipulates that the award of the arbitrator or a decision by the Registrar or the person invested with the power to decide disputes u/s 73 of the Act, shall be final and not questionable in any Civil or Revenue Court.

4. The Arbitrator made his award on July 7, 1995 against the Petitioner. The Petitioner was saddled with a liability of rupees 25,88,881.59 paise with interest at the rate of 25%.

5. Dis-satisfied, the Petitioner carried an appeal to the Government u/s 93 of the Act, which was dismissed on October 30, 1999. Aggrieved, the Petitioner is in this petition under Article 226/227 of the Constitution.

6. The only contention raised by Mr. Khidta, learned Counsel for the Petitioner is that the Respondent Bank is deemed to be registered in Delhi and, therefore, the law relating to the Co-operative Societies in Delhi is applicable and not the Act. Mr. Khidta relying upon *The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya*, submits that as the objects of the Respondent Bank were not confined to Himachal Pradesh and it is not disputed that its commercial activities were spread in Delhi, therefore, u/s 2 of the Multi Unit Co-operative Societies Act, 1942 (Central Act for short), the Respondent Bank would be deemed to have been registered in Delhi and in view of the provisions of Sub-section (2) and (3) of Section 2 of the Central Act, the law relating to the co-operative societies in force in Delhi is applicable. The dispute in question in the circumstances was not referable to an Arbitrator u/s 72 of the Act.

7. In *Kasargode Panduranga Mallya*, the Appellant was a Co-operative Society registered in Bombay under the Bombay Act. The Head Office of the Society was in Bombay and Branch at Mangalore. Appellant made a claim u/s 54 of the Bombay Act in respect of a transaction which took place in Mangalore against the Respondent who was resident of Kasargode, and a member of the Appellant Society. Both these places were in Madras Presidency at the relevant time. The Deputy Registrar of the Co-operative Society, Bombay gave an award regarding a claim. When the award was sought to be executed, an objection was raised by the Respondent that Deputy Registrar Co-operative Societies Ltd. had no jurisdiction to make the award. The objection was upheld by the Executing Court. The execution petition was dismissed. The decision was affirmed in appeal by the High Court. The matter landed up in the Supreme Court. The Apex Court reading the provisions of Section 2 of the Central Act held that as the objects of the Appellant Society were not confined to one State, therefore, it was governed by the provisions of the Central Act and the reading of Sub-section (1) of Section 2 of the Central Act makes it clear that if the objects of the Cooperative Society registered in a State "A" extends to State "B", Society shall be deemed to be registered in State "B" under the law in force in State "B" relating to Co-operative Societies. The deemed registration in State "B" would be for the

purposes of registration, control and dissolution. In these matters, Society was to be subjected to law relating to Co-operative society in State "B".

8. The ratio of Shamrao Vithal is not available to the Petitioner. I notice that the Central Act was repealed and replaced by Multi-State Co-operative Societies Act, 1984, hereinafter referred to "1984 Act".

Section 110 of 1984 Act reads : 110. Repeal?The Multi-Unit Co-operative Societies Act, 1942, is hereby repealed.

9. Learned Counsel for the Petitioner is unable to point out any provision in 1984 Act similar to Section 2 of the Central Act. In fact, Section 6 of 1984 Act specifically provides for the registration of Multi-State Co-operative Society under an application to the Central Registrar.

10. The Petitioner admittedly was a member of the Society and therefore, in the absence of any other law, he is subject to the jurisdiction of the H.P. Co-operative Societies Act under which the Respondent Bank is registered. Therefore, the reference of the dispute relating to the claim of the Society against the Petitioner for the debt to an Arbitrator u/s 73 of the Act and decision thereof by the Registrar cannot be said to be illegal or dehors the provisions of the Act. No other point is urged.

11. In result, the petition fails and is dismissed.

12. No costs.