
(1961) 06 CAL CK 0016
In the Calcutta High Court
Case No : A.F.A.D. No. 406 of 1956

Himangshu Bhusan Chakrabortti

APPELLANT

Vs

Nirmal Kumar Das

RESPONDENT

Date of Decision : 20-06-1961

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1962 Cal 488

Hon'ble Judges : Bhattacharya, J

Bench : Single Bench

Advocate : J.N. Bakshi, B.B. Das Gupta and A.T. Ganguly, for the Appellant; Khitindra Kumar Mitter, for the Respondent

Final Decision : Dismissed

Judgement

1. The defendant is the appellant in the second appeal. He was the Secretary of the Co-operative Urban Bank Limited, Malda. The plaintiff respondent Normal Kumar Das was a member of the above bank. The bank brought a money suit against the plaintiff Nirmal Kumar Das and another. In course of his deposition before the Court the, plaintiff is alleged to have made certain defamatory statement against the defendant Himangshu Bhusan Chakrabortti. The statement in, question was to the following effect "Himanshu is defalcating bank money and so I am not in good feeling as I protested". Thereafter the defendant filed a petition before the Assistant Registrar, Co-operative Society, Malda, claiming damages to the tune of Rs. 5000/- on tie allegation that in course of deposition the plaintiff respondent had made a false and mischievous defamatory statement, calculated not only to lower him (defendant) in the estimation, of the public but also to bring into disrepute the bank. The matter was referred to an Arbitrator u/s 86 of the Bengal Co-operative Societies Act, 1940, read with Section 87 (1) (c) of the Act. The arbitration proceedings are still pending before the Arbitrator, because the plaintiff brought a suit in the Civil Court for a permanent injunction restraining the defendant from proceeding with the case

before the Arbitrator and for recovery of costs alleged to have been incurred by the plaintiff in connection with the illegal arbitration proceedings together with a prayer for declaration that the Registrar or the Assistant Registrar or the Arbitrator had no jurisdiction and that the order passed by the Assistant Registrar in the matter of arbitration was illegal and ultra vires. Both the Courts refused the plaintiff's claim for permanent injunction and his claim for costs in the arbitration proceedings. Whereas, however, the trial Court held that the declaration sought for, could not be granted in the absence of any consequential relief, the learned lower appellate Court granted this declaration.

2. On behalf of Himangshu Chakraborty defendant appellant, two points have been urged, first, that the Courts below should have held that as the matter was one for a decision by the Assistant Registrar or the Arbitrator only, coming as it did within the purview of Section 86 of the Act and consequently within the meaning of Section 133 (1) (c), the Civil Court had no jurisdiction to grant the declaration prayed for; and, secondly, that the Court below should not have granted the declaration, in the absence of any consequential relief.

3. The learned Advocate for the appellant has urged that the dispute touched the business of the Co-operative Society and that consequently Section 86 of the Act be brought into operation. The section in its relevant portion is to the following effect, namely:

"Any dispute touching the business of a Co-operative Society (other than, a dispute regarding disciplinary action taken by a Society or its managing committee against a paid servant of the society) or of the liquidator of a society shall be referred to the Registrar if the parties thereto are among the following, namely:-

* * * * * (b) a member, past member or person claiming through a member, past member or deceased member of the society; * *"

4. Section 87 (1) (c) speaks of reference by the Registrar for disposal to one or more arbitrators to be appointed by the Registrar.

5. u/s 133,

"Save as provided in this Act no Civil or Revenue Court shall have any jurisdiction in respect of

(c) any dispute required u/s 86 to be referred to the Registrar;....."

6. The question now is whether the alleged defamatory statement was one "touching" the business of the Co-operative Society or the bank in question. As pointed out above, the words complained against are "Himanshu is defalcating bank money *****". It has been contended on behalf of the appellant that the allegation about the defendant defalcating bank money will shake the credit of the bank in the eyes of the public and that in that sense it maybe deemed to be "touching" the business of the bank. Mr. Bakshi has contended that the object of

legislation was to make the co-operative Societies an autonomous body, so to speak, so far as internal administration goes, and that internal disputes should be finally settled out of Court without interference of the ordinary courts of the land. According to him the word "touching" should be read as tantamount to "affecting". In support of his contention he has referred to a Full Bench decision of the Madras High Court in the case of M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, , wherein it was laid down inter alia that the words "touching the business of a society" must be given their full import, bearing in mind the object of the legislation, and that taking the dictionary meaning of the word "touching", it indicated that the dispute need not directly arise out of the business of the society but that it was enough that it should have reference to, or concern, the business of the society. The decision related to a dispute about the election of Director of a Co-operative Bank. In the instant case the facts and circumstances are altogether different. It is one thing to state that "touching" may be synonymous with "concerning" and another thing to contend that "touching" would be equivalent to "affecting" howsoever remote it might be. Here a member or a former member, as the case may be, is alleged to have defamed the Secretary. Mr. Bakshi's contention is that this defamation will affect the business of the bank in question and consequently the dispute would come within, the meaning of Section 86 of the Act. Obviously the consequences are too remote in relation to words of alleged defamation used. Such remoteness, in the opinion of this Court, was not intended to be covered by the word "touching". To give an extended meaning to the expression "touching the business of the society" in circumstances like these, would be to open wide the door for the contention that in all matters of a Society, howsoever remote they may be, and howsoever unconnected they may be with the business of the Society, no action would lie in any Court of law. What the legislation intended was clearly to restrict the members or the ex-members, as the case may be, to the forum created by the Act of 1940 in cases directly covered By Section 86 of the Act. On an anxious consideration of the facts and circumstances of the case, it is held accordingly that the Suit of the respondent was maintainable as primarily and essentially and for all practical purposes the cause of action was a personal one between the two parties and not one that concerned the Bank, and, as such, it was not a matter which could be heard exclusively by the Registrar or the Arbitrator appointed by him. In this view the judgment of the learned lower appellate Court cannot but be maintained.

7. Next it has been contended that a mere declaration should not have been granted by the Court below which refused the prayer for injunction and also that for damages. But, in the opinion of this Court, in the special circumstances of the case, such a declaration must be deemed to have been properly given specially because the declaration was inextricably connected with the question of jurisdiction of the Civil Court to entertain the suit. Section 133 (1) (c), referred to above, seeks to oust the jurisdiction of the Civil Court in a matter which comes

with in the purview of Section 86 of the Act. In course of examining the question, directly or indirectly, as to whether the Civil Court had jurisdiction to entertain the suit, such a declaration would be relevant and consequently, the appellant will not be heard to say that a mere declaration should not have been given by the learned Court below.

8. In the result the appeal is dismissed. In the circumstances there will be no order as to costs here.

9. Leave to appeal under Clause 15 of the Letters Patent is prayed for and refused.