

(2012) 08 CAL CK 0014
In the Calcutta High Court
Case No : C.O. No. 2659 of 2012

Hooghly Co-Operative Credit Bank Ltd.	APPELLANT
Vs	
Gobinda Chandra Saha	RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2012) 5 CHN 596

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Shaikh Kamaluddin, for the Appellant; Asish Chandra Bagchi, Prabir Kumar Mishra and Ratan Das for the Opposite Party No. 1, for the Respondent

Judgement

Sanjib Banerjee, J.—The revisional petition is directed against an order refusing to reject a plaint under Order 7 Rule 11 of the Code. The plaintiff, an employee of the second defendant, obtained credit facilities from the first defendant-bank which is a co-operative society governed by the West Bengal Co-operative Societies Act, 2006. Following the alleged default on the part of the plaintiff in repaying the loan, the petitioner-bank sought to realise the payment from the salary of the plaintiff and issued a notice to the plaintiffs employer in such regard. The plaintiff thereafter carried the suit to the City Civil Court at Calcutta, claiming a declaration that the plaintiff was entitled to accounts and seeking a mandatory and permanent injunction directing the defendants to not deduct any amount from the plaintiff's salary on account of any claim of the petitioner herein.

2. The petitioner, as the first defendant to the suit, cited section 145 of the 2006 Act for the purpose of demonstrating that the suit was barred by law. section 145(2) of the Act, in its material part, provides that no Civil Court shall have jurisdiction in respect of anything done or any action taken or any order passed under the said Act, inter alia, in regard to any dispute required to be referred to the Registrar u/s 102 of the Act. Section 102(1) of the Act mandates that any

dispute concerning the management or business or affairs of a co-operative society, other certain excepted matters which are irrelevant in the present context, shall be filed before the Registrar for settlement if it pertains to, inter alia, a matter between a cooperative society and any person having transaction with it. The expression "having transaction with it" must necessarily imply a transaction in connection with the authorised purpose of the co-operative society. The petitioner here is authorised to accord credit facilities. It is also not in dispute that the subject matter of the suit is the loan transaction between the petitioner herein and the plaintiff.

3. The petitioner has relied on a Full Bench judgment of this Court reported at Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and others, where section 134(2)(d) of the previous Act of 1983, which appears to have been in pari materia with section 145(2)(d) of the present Act, fell for consideration and it was held that any matter covered by clause Id) of the relevant section could not be carried to a Civil Court. Section 95 of the old Act was slightly different from how section 102 of the present Act reads, but there is no material difference in the two provisions for the purpose relevant in the present context. Though the plaintiff suggests that the second defendant in the suit has been sued in his capacity as a surety, the mere presence of the second defendant would not permit the plaintiff to indirectly do what the plaintiff could not directly do by virtue of section 145(2)(d) of the said Act of 2006.

4. It is trite law that on an application under Order 7 Rule 11 of the Code the Civil Court has to go by a meaningful reading of the plaint and not be weighed down by technicalities or be taken in by the illusion of a cause of action presented by crafty pleading. The cause of action of the plaintiff in the suit arises out of the action taken by the petitioner herein requiring the plaintiffs employer to deduct a certain amount from the salary of the plaintiff and make over the same to the petitioner herein. It was a matter that the plaintiff could have referred u/s 102 of the Act to the Registrar for settlement. The plaintiff did not choose to do so.

5. In view of the Full Bench dictum on such aspect of the matter, the plaintiff could not have carried the dispute to a Civil Court in derogation of the provisions of section 102 of the Act.

6. The order impugned dated June 4, 2012 passed in Title Suit No. 1269 of 2011 is set aside and the plaint relating to the suit is rejected. Nothing in this order shall be deemed to be a pronouncement on the merits of the plaintiffs claim and the plaintiff will be entitled to take appropriate steps in accordance with law.

7. CO No. 2659 of 2012 is allowed accordingly without any order as to costs. Urgent certified photocopies of this order, if applied for, will be made available to the parties subject to compliance with all requisite formalities.