(2003) 04 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2939 of 2001

Jamna Prasad Chourasia APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 25-04-2003

Acts Referred:

Citation : (2003) ILR (MP) 368 : (2004) 1 MPHT 400 : (2003) 4 MPLJ 398

Hon'ble Judges : Uma Nath Singh, J;Dipak Misra, J

Bench : Division Bench

Advocate : S.A. Dharmadhikari and Gopi Chourasiya, for the Appellant; S.K. Yadav, Government Advocate for Respondent No. 1 and P. Yadav, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

In invocation of the extra-ordinary jurisdiction of this Court the petitioner, a member of the Jila Sahakari Kcndriya Bank Maryadit, Sagar a co-operative society, has prayed for issue of a writ of certiorari for quashment of the order dated 27-11-2000 (Annexure P-1), passed by the Madhya Pradesh State Co-operative Tribunal (in short ''the Tribunal'').

The facts as have been adumbrated in the writ petition and discernible from the impugned order are that the petitioner availed a loan of Rs. 88,000/- from the aforesaid society for the purpose of purchasing a vehicle in the year 1987. He had deposited more than Rs. 24,000/- by end of the Ninth decade of the last century. In spite of the aforesaid deposit the bank forcibly took possession of the vehicle, a car, on 3-7-90 and instead of disposing the same kept it in an open space exposed to the vagaries of nature, as a result of which the value of the car got depreciated. Apart from the aforesaid loss the petitioner was of daily income of Rs. 350/-. The car was valued at Rs. 85,000/-but the same was sold at Rs. 52,000/-. The society, the respondent No. 3, did not take any steps for more than a year to auction the vehicle in question, as a consequence of which the petitioner had to suffer a loss of Rs. 350/- per day.

According to the writ petitioner, the Bank gave notice to him treating him as a defaulter on 9-5-1990 and filed a dispute u/s 64 of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as ''the Act''). The petitioner filed his written statement in the form of a counter claim enumerating the facts and agitating his grievance and further praying for restoration of possession of the car or the market value thereof. In addition, he also claimed damages to the tune of Rs. 50,000/- for the loss sustained because of deprivation of the business. The competent authority passed the order on 24-6-1997 in favour of the Bank determining the outstanding loan of Rs. 1,24,000/- and further granted interest at the rate of 13.5% per annum on the sum due. In the said order the counter claim of the petitioner was totally ignored.

Being dissatisfied with the aforesaid verdict the petitioner preferred an appeal before the Joint Registrar, Sagar who rejected the claim of the petitioner vide order dated 23-2-1999. In that order it was directed that the value of the vehicle be treated as Rs. 85,000/- as per the valuation and the same should be adjusted towards the loan amount.

The petitioner as well as the respondent No. 3 herein, being aggrieved with the aforesaid order passed by the Joint Registrar preferred separate appeals before the Tribunal. The Tribunal did not consider the claim of the petitioner on the ground that Section 64 of the Act does not envisage filing of any counter claim and determination or adjudication thereof.

It is averred in the petition that the impugned order passed by the Tribunal is wholly erroneous inasmuch as there has been total non-application of mind. It is setforth that the Tribunal has committed gross error in arriving at the conclusion that a counter claim does not fall within the ambit and sweep of Section 64 of the Act and the only remedy available to the petitioner to institute a civil action in the Civil Court.

At this juncture it is condign to state that as a pure question of law arose, the matter was heard by the learned Single Judge on the consent of the learned Counsel for the parties. Before the learned Single Judge it was submitted by Mr. S. A. Dharmadhikari, learned Counsel for the petitioner that the order passed by the Tribunal is absolutely unjustified. Mr. S.K. Agrawal, learned Counsel appearing for the respondent No. 3, per contra, contended that the order of the Tribunal is impeccable and no fault can be found with it. The learned Single Judge referred to Sections 64, 67, 89 and 90 of the Act and prima facie, came to hold that the said provisions which constitute a complete Code itself do not provide for filing of the counter claim. However, a decision rendered in the case of Surendra Textiles, Burhanpur and Ors. v. Sahakari Soot Mills Maryadit, Burhanpur and Ors., 1985 RN 136, was cited wherein a learned Single Judge of this Court in Paragraph 4 has held that the Registrar has the power to entertain counter claim and to arrive at the aforesaid conclusion he had placed reliance solely on Section 67 of the Act. The learned Judge while dealing with this writ petition felt that Section 67 is couched in a different language and it really did not confer every power under the CPC on the Registrar, Co-operative Societies. He was of the view, the decision rendered in the case of Surendra Textiles, Burhanpur (supra), required reconsideration. Recommendation having been made the matter has been referred to the Larger Bench. That is how, we are in seisin of the matter.

We have heard Mr. S.A. Dharmadhikari and Mr. Gopi Chourasia, learned Counsel for the petitioner, Mr. S.K. Yadav, learned Counsel for the State and Mr. P. Yadav, learned Counsel for the respondent No. 3. It is submitted by the learned Counsel for the petitioner that the decision rendered in the case of Surender Textiles, Burhanpur (supra), correctly lays down the law and does not warrant reconsideration inasmuch as the learned Single Judge has scanned the provisions contained in Section 67 of the Act and on a proper scrutiny of the said provision it is quite graphic and luminous that a counter claim can be entertained by the Registrar of the Co-operative Society under the Act.

The learned Government Advocate as well as the learned Counsel appearing for the respondent No. 3, in their turn submitted that if the scheme of the Act is X-rayed there remains no trace oi" doubt that entertaining a counter claim is not within the domain of the adjudicating authority u/s 64 of the Act.

To appreciate the rivalised submissions we think it appropriate to reproduce certain provisions of the Act. Section 64 of the Act which is the main provision on which reliance is placed reads as under :--

"64. Disputes.-- (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following :--

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) a creditor of society.

(2) For the purpose of Sub-section (1), a dispute shall include--

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society :

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any Court."

On a scrutiny of the aforesaid provision it is clear as day that the aforesaid provision does not stipulate or envisage anything relating to presentation or adjudication of any counter claim. What has been stipulated u/s 64 (1) is that any dispute shall be referred to by the Registrar by any of the parties to the disputes if the parties thereto come within Clauses (a) to (f). Clause (c) envisages that a person other than member who had been granted a loan falls in that category or persons. Thus such a person can refer a dispute by following the due procedure. Sub-section (2) contextually deals with dispute and it is an inclusive definition. Before we scan the anatomy of the provision engrafted u/s 64 of the Act it is seemly to refer to Section 67 of the Act. The said provision deals with the procedure for settlement of disputes and power of Registrar, his nominee or board of nominees. The said provision reads as under :--

"67. Procedure for settlement of disputes and power of Registrar, his nominee or board of nominees.-- (1) The Registrar or his nominee or board of nominees shall have the power of making interlocutory orders including grant of a temporary injunction. In exercising this power, the Registrar or his nominee or board of nominees, as the case may be, shall follow the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908), for the purpose of making such orders and granting an injunction.

(2) No party shall be represented at the hearing of the dispute by any legal practitioner, except with the permission of the Registrar or his nominee or board of nominees, as the case may be :

Provided that where the permission is so granted, the other party to the dispute shall be entitled to be represented by a legal practitioner.

(3) The Registrar or his nominee, as the case may be, shall record a note in Hindi of the evidence of the parties and witnesses who attend and upon the evidence so recorded and after consideration of any documentary evidence produced by either side, shall give a decision or award, as the case may be, which shall be reduced in writing. If the applicant duly summoned is absent, the case may be dismissed in default. If the non-applicant is absent, the case can be decided ex parte. In cases, where three nominees are appointed, the majority shall prevail :

Provided that where a dispute has been decided against any party, in default and if such party satisfies the Registrar within thirty days from the date of such default, that there was sufficient cause for its non-appearance, the Registrar shall make an order setting aside the decision and shall appoint a date for proceeding with case."

Section 89 of the Act deals with powers of Civil Courts. It reads as follows :--

"89. Powers of Civil Courts.-- (1) In exercising the powers conferred on him by or under this Act, the Registrar, his nominee or board of nominees, or any other person deciding a dispute and the liquidator of a society shall have all the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters, namely :--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) proof of facts by affidavits; and

(d) issuing commissions for examination of witnesses.

(2) In the case of any affidavit, any officer appointed by the Registrar, his nominee or board of nominees or the liquidator, as the case may be, may administer oath to the deponent."

Section 90 of the Act stipulates that Registrar or person empowered by him to be a Civil Court for certain purposes. To understand the scheme of the Act in entirety it is necessitous to reproduce the aforesaid provision :--

"90. Registrar or person empowered by him to be a Civil Court for certain purposes.-- The Registrar or any person empowered by him in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property, or when passing any orders on any application made to him for such recovery or for taking a step in aid of such recovery, to be a Civil Court for the purposes of Article 182 of the First Schedule to the Indian Limitation Act, 1908 (IX of 1908)."

The learned Single Judge in the case of Surendra Textiles, Burhanpur (supra), in Paragraph 4 has expressed the view as under :--

"4. It is not disputed that proceedings before the Deputy Registrar started by filing a dispute u/s 64 of the Act. Section 67 of the Act deals with the procedure to be followed in deciding such a dispute and confers necessary powers on the Registrar in that behalf. This Section specifically provides that the Registrar or his nominee shall follow the procedure laid down in the CPC for purposes of making orders or granting injunction. It can not be disputed that a Civil Court has the power to entertain counter claim under Order VIII, Rule 6 of the Code of Civil Procedure. It must, therefore, follow that the Registrar or his nominee has also the power to entertain counter claim or set off. Unfortunately, this law has not even been noticed by the respondent Board of Revenue in its impugned order. Under the circumstances, it is not possible to sustain the said order of the Board."

On a perusal of the reasoning given by the learned Single Judge in the case of Surendra Textiles (supra), it becomes quite clear that reasoning given by the learned Single Judge is neither correct nor sound. Entertaining of counter claim does not flow from Section 67.

The learned Counsel for the petitioner has submitted that the reasoning of the learned Single Judge in the aforesaid decision may not be presentable or sound but conclusion is correct. The heart of the matter is whether the conclusion is correct. To elucidate : whether there is any other provision in the Act or the scheme of the Act is such from which conferral of power upon the Registrar of the Cooperative Society to clothe him with the jurisdiction to entertain a counter claim can be inferred. The learned Counsel for the petitioner has drawn inspiration from the decision rendered in the case of Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabbarwala and Ors., AIR 1946 SC 11. In the aforesaid case Their Lordships in Paragraph 11 have held as under :--

"11. The question has therefore to be considered on principle as to whether there is anything in law statutory or otherwise--which precludes a Court from treating a counter claim as a plaint in a cross-suit. We are unable to see any. No doubt, the CPC prescribes the contents of a plaint and it might very well be that a counter-claim which is to be treated as a cross-suit might not conform to all these requirements but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner. If, for instance, what is really a plaint in a cross-suit is made part of a written statement either by being made an annexure to it or as part and parcel thereof, though described as a counter-claim, there could be no legal objection to the Court treating the same as a plaint and granting such relief to the defendant as would have been open if the pleading had taken the form of a plaint. Mr. Desai had to concede that in such a case the Court was not prevented from separating the written statement proper from what was described as a counter claim and treating the latter as a cross-suit. If so much is conceded it would then become merely a matter of degree as to whether the counter claim contains all the necessary requisites sufficient to be treated as a plaint making a claim for the relief sought and if it did it would seem proper to hold that it would be open to a Court to convert or treat the counter claim as a plaint in a cross-suit. To hold otherwise would be to erect what in substance is a mere defect in the form of pleading into an instrument for denying what justice manifestly demands. We need only add that it was not suggested that there was anything in Order VIII Rule 6 or in any other provision of the Code which laid an embargo on a Court adopting such a course."

It is submitted by him that the aforesaid decision was rendered before the Order VIII Rules 6-A to 6-G were inserted in the Code of Civil Procedure. At this juncture the learned Counsel for the respondents has submitted that the same was permissible qua a Court but not in respect of any Tribunal or quasi judicial authority. Submission of the respondent is that unless a specific power is conferred on a Tribunal or quasi judicial authority to entertain the counter claim the same is not permissible. This being the singularly singular issue we are required to have a penetrating look at the language employed u/s 64 of the Act. The said provision deals with the dispute and unequivocally stipulates that the dispute has to be referred to the Registrar by any of the parties to the dispute. A loanee comes u/s 64 (1) (c). Sub-section (2) of Section 64 deals with the concept of disputes. But the language used is ''a dispute shall include''. Thus the scope is quite wide as the language used is inclusive in nature. In this context we may profitably refer to the decision rendered in the case of Baldeo Kumar Agrawal Vs. Managing Director, M.P. Rajya Laghu Van Upaj Sahkari Sangh Maryadit and Another, , wherein it has been held as under :--

"19. The argument, therefore, that only disputes categorised in Clauses (i) to (v) of Section 64 (2) are alone referable can not be accepted as that would wittle down the scope of Sub-section (1) of Section 64 and frustrate the very purpose of broad categorisation of disputes therein. It can not be lost sight of that in enacting Section 64 the legislative intent obviously is to provide a self-contained dispute resolving mechanism through the hierarchy of original and appellate co-operative Courts. It is difficult to infer from the provisions of Section 64 as a whole that a dispute of the present nature which directly concerns or touches the main trading activity of the co-operative society concerned is not within the jurisdiction of co-operative Court although it is covered in one of the broadly classified categories of disputes under Sub-section (1) of Section 64.

In effect, even without Sub-section (2) containing the categories of certain disputes in Clauses (i) to (v), those are included in the nature of disputes broadly classified in Sub-section (1) of Section 64. The disputes categorised in Sub-clause (i) to (v) of Sub-section (2) are also disputes touching the constitution, management or business of the society, as mentioned in Sub-section (1) of Section 64. In the opening part of subsection (2), mention of them as inclusive in Sub-section (1) becomes necessary only by way of an Explanation to the main Section 64 (1). See : the following passage from the Principles of Statutory Interpretation, by Justice G.P. Singh, Sixth Edition, Pages 151, 152 and 153 :--

"An Explanation is at times appended to a section to explain the meaning of words contained in the section ...... An Explanation may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring it it. An Explanation, normally, should be so read as to harmonise with and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of Section. It is also possible that an Explanation may have been added in a declaratory form to retrospectively clarify a doubtful point in law and to serve a proviso to the main Section or ex ahundanti cautela to ''allay groundless apprehensions''

For the aforesaid reasons, the convention advanced on behalf of the plaintiff can be accepted that although the present dispute raised by the plaintiff ''touches the business of the society and is covered by Sub-section (1) of Section 64, it being not included in any of the specified categories of disputes in Clauses (i) to (v) of Sub-section (2) of Section 64, is not referable to Registrar. As held above, the dispute ''touches the business'' of the society within the meaning of Sub-section (1) of Section 64. The plaintiff is non-member of the society and is held to ''have or had business transactions with the society'' within the meaning of Clause (c) of Sub-section (2). The dispute therefore, clearly referable to Registrar for its adjudication. Since the nature of dispute is covered by the provisions of Sub-section (1) it docs not matter, for the purpose of its exclusive adjudication by the Registrar, that it docs not fall in any of the categories of disputes mentioned in Clauses (i) to (v) of Sub-section (2) of Section 64. On a reasonable construction of the provisions both of Sub-sections (1) and (2), the disputes covered by Sub-section (1) between the parties mentioned in Clauses (a) to (f) therein together with all categories of disputes enumerated in Clauses (i) to (v) of Sub-section (2) of Section 64 are within the exclusive jurisdiction of the Registrar and the jurisdiction of Civil Court with regard to such disputes is expressly barred under Sub-section (1) (c) of Section 84 of the Act."

In the bedrock of the aforesaid broader spectrum it is worthnoticing that a loanee can raise a dispute against the society. That apart Section 64 occurs in the Chapter the heading of which is ''Disputes and Arbitration''. We are conscious the heading ordinarily does not govern the provision but we are mentioning to show the role that has been ascribed to the Registrar under the Act. At this juncture, we may profitably refer to the Division Bench decision rendered in the case of P.K. Pande v. State of M.P. and Ors., 2000(2) M.P.II.T. 455 = 2000(1) MPLJ 367, wherein the Bench was considering the tenability of the counter claim under the M.P. Madhyastham Adhikaran Adhiniyam. In Paragraph 7 of the judgment the Bench observed that there is no specific provision in the Act, Rules and Regulations for submission of counter claim. The Court also took note of the fact that the Order VIII Rule 6 of the CPC is not applicable to the proceeding before the Arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983. Considering from all angles and various spectrums in Paragraph 14 the Bench speaking through D.M. Dharmadhikari, J. (as His Lordship then was) held as under :--

"......Arbitration Tribunals have been constituted as substitutes for the traditional Courts which were found ill-suited for adjudication of such disputes. The procedure of the traditional Courts is too formalistic and burdensome. It is not flexible enough to deal rapidly and efficiently due to lack of technical knowledge on the subject matter of disputes which arise in works contract. u/s 11 of the Act (quoted above), the Tribunal is empowered to regulate its own procedure. The Counsel for the contractor argues that u/s 10 when regulations have been framed by the Tribunal laying down procedure before it to be followed by the parties, in exercise of powers u/s 11 the Tribunal could not evolve a procedure of permitting filing of a counter-claim not provided by the Regulations. On reading Sections 10 and 11 together we find that by framing of Regulations for procedure, the Tribunal is not in any manner inhibited for adopting such just and fair procedure as would advance the cause of justice and be convenient to the parties and Court. By permitting a counter-claim or reference, the Tribunal has not in any manner violated any of the provisions of the Rules or Regulations but in fact has tried to fill the gap in them. In our opinion, Section 11 is clearly intended to empower the Tribunal with ancillary powers to deal with disputes requiring technical and legal expertise. The legislature intends that the Tribunal should have simpler procedure than in regular Courts, the procedure should be more flexible, speedy, informal as well as socially and technically conscious. The constitution of the Arbitration Tribunal is such that it has on its Bench technical expertise through the Technical Member and legal expertise through the Judicial Member. They together provide a forum totally different from tradition Civil Courts for deciding disputes in a less formal but speedier manner. The provisions of Sections 10 and 11 with the Rules and Regulations framed thereunder have to be interpreted keeping in view the aim and object of the legislation under consideration. We find that the Full Bench of the Tribunal has not in any manner tried to legislate in permitting filing of a counter claim or has tried to substitute some words or rules in the Act and the Regulations. Its attempt has been to evolve a just and fair procedure for better and quicker dispensation of justice. A counter claim, in our view, is nothing but a reference of dispute in relation to same works contract by the opposite party. It can not be said that the opposite party (such as the department of the State herein) is not competent to make a reference u/s 7 of the Act. The subject-matter on which it has filed the counter-claim constitutes relevant material for filing a separate reference petition. The counter claim is, therefore, nothing but a counter reference petition. It is not the case that the party submitting such counter reference has not followed the provision regarding payment of Court fees on it as leviable under the Rules. It is also within limitation. It is true that as required by the Regulations, a reference petition is to be filed in the Registry before the Registrar and then it is placed before the Bench. But merely for this reason it can not be said that the Bench of the Tribunal which is competent to adjudicate the dispute can not entertain a reference directly. The Registrar in receiving the claim petition only discharges ministerial or administrative functions. The judicial function or powers of the Tribunal thereby are in no manner inhibited. Even if counter claim is held untenable, the opposite party was in any case entitled to file a counter reference petition for its claim and dispute. In such a situation where two petitions or claims on same works contract have been filed, it would be in the interest of justice and fair procedure for the Tribunal to have clubbed them for a joint trial. If a counter reference could be filed by the opposite party which could be linked for trial and disposal by the Tribunal with the pending reference of the contractor, we find no logic or reason why the reference tenable the instance of opposite party can not be entertained in the same pending reference as a counter reference on payment of the requisite Court fees on it and within the prescribed period of limitation. The decision in A.A. Haja Muniuddin (supra), relied on on behalf of the department fully supports the view taken by us. In that case, there was no specific provision permitting filing of a claim before the Railway Claims Tribunal by the party as a pauper or indigent person as provisions of Order 33 of the CPC were not applicable to the proceedings before the Railway Tribunal. By construing provisions similar to those contained in Section 11 of the Act under consideration before us, the Supreme Court held that a pauper who is unable to pay Court fees can not be denied the remedy before the Railway Tribunal."

On the basis of aforesaid analysis, eventually the Court came to hold that the Tribunal was justified in permitting the respondent to prefer the counter claim. The aforesaid decision though was rendered in a different context of a different statute and there was a provision like Section 11 enabling the Tribunal to regulate its own procedure but the ratio of the decision is if a counter reference could be filed by the opposite party which could be linked for the trial and disposal by the Tribunal with a pending reference of the contractor, there is no logic or reason why the reference tenable at the instance of opposite party can not be entertained in the same pending reference as a counter reference on payment of the requisite Court fees.

In this context, we may refer with profit to a two Judge Bench decision of the Apex Court rendered in the case of K.V. George Vs. Secretary to Government, Water and Power Department, Trivandrum and Another, , wherein in Paragraph 13, Their Lordships expressed the view as under :--

"..... It is the duty of the Arbitrator while considering the claims of the appellant to consider also the counter claims made on behalf of the respondents and to make the award after considering both the claims and counter claims..."

We have referred to the aforesaid decision only to show that the Arbitrator has also the jurisdiction to decide the counter claims. We may clarify we are not dealing with any kind of conditions precedent.

At this juncture we think it seemly to refer to the decision rendered in the case of Macherla Ravi Kumar and Others Vs. Indian Bank, Warangal and Others, . In the aforesaid case, the learned Single Judge while dealing with the concept of claim under Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993) expressed the view as under :--

''6. Order VIII, Rule 6-A, CPC empowers the defendant to file counter claim. As a matter of fact couner claim is an independent claim, which can he made by the defendant by filing a separate suit. But in order to avoid multiplicity of suits. Rule 6-A of Order VIII, CPC was inserted by CPC Amendment Act, 1976, which came in effect from 1-2-1977. If the counter claim is filed, it being in the nature of a suit, the original plaintiff has a right to file the written statement denying the claim of the defendant. In other words, the original plaint filed by the plaintiff and the counter claim filed by the defendant are two different proceedings which are separable. On establishment of Debts Recovery Tribunal, the main claim made by the Financial Institutions is required to be transferred to the Debts Recovery Tribunal and the counter claim made by the defendant can be entertained by the Civil Court in which the counter claim is made and both the suits can go independently. As stated earlier, if the claim of the Financial Institutions exceeds Rs. Ten lakhs, then the Civil Court has no jurisdiction, it must be entertained and decided by the Debts Recovery Tribunal at Bangalore ....."

It is worthnoting here that similar view has been expressed in the case of Cofex Exports Ltd. Vs. Canara Bank, .

In this regard we may profitably refer to the decision rendered by the Apex Court in the case of Union of India and Anr. v. Delhi High Court Bar Association and Ors., 2002 AIR SCW 1347, wherein the Apex Court has held that the infirmity in the Act has been removed. It is worthnoting that there was no provision for filing of counter claim under the 1993 Act. The aforesaid decision was rendered in the backdrop that the statute was brought into existence only for realisation of the sum due to banks and other financial institutions. The whole scheme of the Act was different. There was no provision in the remotest sense to entertain any kind of counter claim. Language of the Act was totally different. No loance can file independent an application before the Debt Recovery Tribunal. That is why the High Court of Delhi as well as the High Court of Andhra Pradesh categorically held that the counter claim before the Debt Recovery Tribunal was not maintainable. The Legislature amended Section 19 of the said Act and incorporated the provision for filing of counter claim and set off. On a first flush it may appear that unless there is specific provision of the Statute the counter claim can never be entertained but on a deeper scrutiny and greater probe it becomes quite clear that it depends upon the language of the statute. In the 1993 Act the whole enabling provisions was for the purpose of clothing the Tribunal with the jurisdiction to entertain application by the Banks and other financial institutions. But the language of the Cooperative Societies Act is quite different. Section 64 has been couched in a broader base and has different ramification. As has been stated earlier a loanee can raise a dispute against the Society from which it has borrowed money by filing a dispute or making a reference to the Registrar. Registrar functions as a adjudicatory authority and also has the role of an Arbitrator. If we are allowed to say so when a loanee can file an independent application there is no reason why it can not file in a proceeding instituted by the Society a counter claim if other conditions precedent, namely, limitation, fees and such other requisite factors are met with or satisfied. Registrar may deal with both the applications simultaneously and pass a composite order. The real question is whether he should file an independent application or to put it by way of counter claim when occasion arises. In our considered view if all the conditions are fulfilled he can file a counter claim when a dispute is raised by the Society and both are to be decided analogously and simultaneously, The nomenclature of counter claim does not take away the power of the Registrar to entertain the controversy of this nature. Thus there is no scintilla of doubt that the Registrar of the Cooperative Societies u/s 64 of the Act can entertain a counter claim.

In view of the aforesaid preceding analysis we are of the opinion that the conclusion arrived at in the case of Surendra Textiles, Burhanpur (supra), is correct thought the reasoning given therein are not sound or apposite.

Now to the merits of the case. On a perusal of the order of the Tribunal it is manifest and patent that it has rejected the claim of the petitioner on the simple reason that there is no provision for entertaining a counter claim u/s 64 of the Act. As there is no adjudication on merits it is directed that the Original Adjudicator)'' Authority shall entertain the claim of the petitioner if in the meantime the claim of the society has been finally adjudicated. We may hasten to add it would he open to adjudicating authority to arrive at an independent conclusion whether a dispute in the instant case u/s 64 arises or not. We have not expressed any opinion on that score. We have only stated that the counter claim at the instance of the petitioner is maintainable before the Adjudicating Authority.

Ex consequenti, the writ petition is allowed and the order of the Tribunal is quashed. However, in the peculiar facts and circumstances of the case there shall be no order as to costs.

