

(2000) 07 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 730 of 1987

Jat Taluka Sahakari Kharedi Vikri Sangh Ltd. Jath	APPELLANT
Vs	
Rakmuddin Dastgir Khatib and Others	RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2000) 102 BOMLR 43

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of Constitution of India is directed against the judgment of the Maharashtra Co-operative Appellate Court, Bombay dated 27th February, 1986 in Appeal No. 382 of 1984.

2. The short question which arises for consideration in this case is whether the dispute filed by the petitioner Society was maintainable u/s 91 of the Maharashtra Co-operative Societies Act.

3. Briefly stated the facts are that the petitioner Society had started a cloth shop at Daphalapur wherein the Respondent was working as an employee in the said shop. There is no dispute that the Respondent was in service of the Petitioner society at the relevant point of time. In June, 1977 the Petitioner Society decided to close the shop on account of heavy losses. At that point of time the Respondent by an application requested the society to dispose of all the stock lying in the said shop to him at a concessional rate. The said application was considered favourably by the Petitioner society and the Society passed Resolution on 7.9.1977 to hand over the entire stock to the Respondent at a concessional rate. The Petitioner decided to sell the stock to the respondent for total sum of Rs. 4989.35 along with dead stock, although the actual price of the said stock was about Rs. 19,166.50. The Petitioner asserts that because of the special

relationship between the Petitioner and the Respondent that of an employer and employee and in recognition of the service rendered by the Respondent, the Petitioner decided to sell the stock to the Respondent at the subsidised rate by offering discount to the extent of 25% rebate. In the light of the said Resolution the stock was made over to the respondent, who in turn paid only an amount of Rs. four thousand and odd to the Petitioner Society. The Respondent, however, continued to remain in service till 30.9.1977 and appears to have resigned just before entering into a formal agreement with the Petitioner Society on 6.10.1977. Since the Respondent failed to pay the balance amount, the Petitioner Society filed a dispute u/s 91 of M.C.S. Act for recovery of sum of Rs. 17030.50 with future interest at the rate of 15.5% p.a. from the date of filing of the dispute till realisation. The Petitioner filed dispute before the Co-operative Court on the basis that the transaction in question was entered with Respondent being an employee of the petitioner Society at the relevant point of time. Both the parties, besides pleadings, adduced documentary as well as oral evidence. One Balasaheb was examined on behalf of the Petitioner Society. He deposed in the examination in chief that the transaction in question was entered between the Petitioner Society and Respondent on account of Respondent being the employee of the Petitioner society and he had sought concession from the Petitioner society being its employee. It appears that no question or suggestion was put to the said Witness on behalf of the Respondent to challenge the said version. In other words, the evidence laid on behalf of the Petitioner that the transaction in question, the basis of which the dispute has arisen between the parties, was entered by the Petitioner society with the Respondent being its - servant at the relevant time, pursuant to the application made by the Respondent seeking such benefit as an employee. Respondent though examined himself did not give any explanation in his evidence or refuted version of the Petitioner society that he was favoured by the Petitioner being its employee. On the basis of the pleadings and evidence adduced before the Co-operative Court, the Cooperative Court by its judgment and order dated 30.G. 1984 decreed the dispute and ordered recovery of a sum of Rs. 17030.50 ps. from the Respondent with future interest at the rate of 15.5% p.a. on Rs. 10346.06 from the date of filing of the dispute till realisation. No doubt, issue was raised before the Co-operative Court about the maintainability of the dispute, however, the Co-operative Court answered the same in favour of the Petitioner and held that the dispute as presented was maintainable.

4. Being dissatisfied the Respondent took up the matter in appeal before the Maharashtra Co-operative Appellate Court, Bombay being Appeal No. 382 of 1984. The Co-operative Appellate Court decided the appeal only with regard to the issue of jurisdiction of the Co-operative Court to try and dispose of the dispute filed by the Petitioner. Since the Appellate Court concluded that the dispute filed by the Petitioner was not maintainable u/s 91 of the Act, therefore, allowed the appeal and was pleaded to set aside the order passed by the Co-operative Court regarding recovery and interest. The Appellate Court did not go

into the merits of the dispute between the parties. The Petitioner Society has taken exception to the aforesaid decision of the Appellate Court holding that the dispute as filed by the Petitioner was not maintainable.

5. Shri S.G. Page, learned Counsel for the Petitioner contended that on the basis of the pleadings and materials on record, the position which would emerge is that the transaction of disposing of the stock at concessional price was entered into with Respondent mainly because of his relation with the Petitioner Society, being its employee. He has placed reliance on the decision of the Division Bench of this Court in Maharashtra Co-operative Housing Finance Society Ltd. and Others Vs. V.S. Loni and Anrs., more particularly Clause 4 of para 27 of the said judgment. He contents that the claim of the Petitioner Society is based upon contract between the Respondent as an employee of the Petitioner Society and the dispute arises with regard to the breach of the said contract which therefore touches upon the management or business of the Society within the meaning of Section 91 of the Act. He has criticised the finding recorded by the Appellate Court being error apparent on the face of record. On the other hand the learned Counsel for the Respondent has supported the finding recorded by the Appellate Court that dispute was not maintainable as the transaction between the Petitioner and the Respondent was in his individual capacity and not due to the relationship of employer and employee as such. In support of his contention he has relied upon the decision of the Apex Court in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, particularly paras 25, 27, 30 and 31. Reliance has also been placed on the decision in I.R. Hingorani Vs. Pravinchandra Kantilal Shah and Others, . Besides the aforesaid 2 decisions reliance is placed on the recent decision of the Apex Court in Marine Times Publications Pvt. Ltd. Vs. Shriram Transport and Finance Co. Ltd. and another, All the aforesaid decisions have taken the view that only such claim which arises through a transaction or dealing which the member entered into with the Society as a member would fall u/s 91 of the Act. Placing emphasis on the said view, it is stated that by the said analogy for a dispute to be maintainable u/s 91 of the said Act a transaction between the Petitioner and Respondent ought to have been in the capacity as an employer and employee of the Society.

6. Having considered the rival submissions and after going through the pleadings and evidence on record I am of the view that the conclusion reached by the Appellate Court is wholly untenable and [insupportable. Before dealing with the conclusion recorded by the Appellate Court, I would point out the important facts on the basis of which the dispute has been filed by the Petitioner. It is undisputed that the Respondent was in service of the Petitioner society during the relevant time. It is Respondent who made representation to the Petitioner society to sell the stock at a concessional rate to him. This representation was made in the capacity of an employee of the Petitioner Society. The said representation was not only entertained and considered but favourably responded to by the Petitioner Society. Petitioner Society while accepting the request of the Respondent took into account that the Respondent was an employee of the

Society and had rendered services to the Petitioner in the past. Keeping in view this special relation, the Society went out to grant concession or rebate to the Respondent to the extent of 25% inasmuch- as the stock which was otherwise valued at Rs. 19.000/- or odd was sold to the Respondent for a sum of Rs. 14.000/- only. Besides the sale being at a concessional rate the Society also provided payment facility to the Respondent. Reference has rightly been made by the learned Counsel for the Petitioner to the Resolution which is on record. The Resolution specifically states that stock is being made over to the Respondent in view of his application as an employee of the Society. What is important to note is that during the deliberation which took place between the Petitioner and the Respondent, the Respondent was very much in the employment of the Petitioner Society and resigned only on 30.9.1977. In other words, the Respondent was favoured by the Petitioner Society because of the special relation of employer and employee. No doubt the Petitioner society was not under any obligation to offer any concession under the terms of the employment but nevertheless the said gesture was shown by the Petitioner Society having regard to their relationship. The transaction eventually materialised between the parties at the concessional rate only because of the special relations. Rebate was given by the Petitioner Society only because the Respondent was in its employment. There is no denying the fact that rebate which was given to the Respondent was very sumptuous and only because he was an employee. Now this position has been established from the pleadings of the Petitioner Society as well as evidence laid before the Co-operative Court which remained unchallenged by the Respondent. The Petitioner besides making specific averments in the dispute has also led evidence of Balasaheb who has stated in examination in chief that the transaction took place between the parties because of application made by the Respondent as an employee of the Petitioner Society. Admittedly, this assertion," has remained unchallenged and no question has been put to the petitioner's witness during the cross-examination. More importantly, the Respondent, though examined himself, has made no reference to the aforesaid assertion and has not disputed that substantial rebate was given to him being an employee of the Society. It would, therefore, be preposterous to contend that the transaction in question was not the outcome of the special relationship between the parties that of employer and employee. What is to be seen is that the transaction of giving special rates was offered to the Respondent and also availed by the Respondent. The rebate and the concession granted is so inextricably mixed with the transaction that it cannot be separated at all. In other words the transaction between Petitioner and Respondent at the concessional rate mentioned only because of the relationship of employer and servant. Under the circumstances, it is not open for the Respondent to now contend that the transaction materialised in his individual capacity and not as an employee.

7. No doubt, the decision of the Apex Court reported in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, , which has been followed in other decisions of the Apex Court, referred to above, has taken the

view that the transaction should be the outcome of the relationship that of the society and as a member of the society but not as a stranger. In other words, the transaction should spring from the relationship of the society and being its employee. In my view, the material on record would not support the Respondent's stand that the transaction entered into with him by the Petitioner Society was not because of the special relationship of employer and employee. The Respondent has not only failed to controvert the stand taken by the Petitioner in the pleadings as well as evidence, but has not adduced any evidence to show that the transaction was independent of relationship with the Petitioner as its employee. Accordingly the ratio enunciated by the Apex Court in Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, and other decisions will have no application to the facts of the present case. On the other hand, the facts of the present case would certainly permit filing of dispute u/s 91 of the Act as the transaction is between the Society on the one hand and its employee or past servant on the other hand. This exposition has been accepted by the Division Bench of this Court in Maharashtra Co-operative Housing Finance Society Ltd. and Others Vs. V.S. Loni and Anrs., . This Court after referring to the aforesaid decision of the Apex Court in its concluding portion of the judgment held that claim based upon the contracts between the employees of a co-operative society and the society or claims for damages arising out of each of such contract can be part of dispute touching on the business and/or management of the Co-operative Court within the meaning of Section 91 of the Act and as such a dispute could be entered and decided by the Co-operative Court. The said view taken by the Division Bench would squarely apply to -the present case.

8. Now coming to the conclusion reached by the Appellate Court, that the Petitioner Society has not led any evidence that even after the stock was given to the Respondent, the Respondent was in service of the society. The basis of this finding is totally wrong and contrary to the record, inasmuch as it is seen that the stock was made over to the Respondent on 1.7.1977 while Respondent was still in service and retired only after 30.9.1977. The Appellate Court based its reasoning on the aforesaid erroneous assumption and proceeded to hold that the Respondent took over the possession of the shop and also purchased the stock therein not in the capacity as an employee. This conclusion is contrary to the assertion made by the petitioner in the pleadings as well as the documentary and oral evidence adduced by the petitioner, which has been discussed herein above. The Appellate Court proceeded on the assumption that there was no evidence on record that the transaction between the Society and the Respondent was in the capacity of employer and Employee whereas there was clinching evidence on record to show that" the transaction materialized between the parties only because of the special relationship of employer and employee. The Appellate Court was, therefore, in error in not only proceeding on wrong assumption but also in recording findings which cannot be supported by the evidence on record.

9. In the circumstances, the view taken by the Appellate Court will have to be set

a side arid the matter deserves to be remanded to the Appellate Court for examining the merits with regard to the claim set up in the dispute. The Appellate Court shall decide the appeal on merits within 6 months from the receipt of this order, parties shall appear before the Appellate Court on 18.7.2000 to enable the Appellate Court to fix the date of hearing of the appeal, the Appellate Court shall decide the matter in accordance with law and after giving opportunity to both sides. The appeal to be decided on the basis of the evidence which is already on record,

10. For the aforesaid reasons writ petition is allowed. Rule is made absolute to the above extent. The order passed by the Appellate Court on 27.2.1986 is set aside and the matter is remanded to the Maharashtra Cooperative Appellate Court, Bombay to decide the appeal on merits in accordance with law.

Certified copy expedited.

Parties to act on the copy of this order duly authenticated by Sheristedar of this Court.