

(1969) 08 SC CK 0031
In the Supreme Court Of India
Case No : C.A. No. 1224 of 1966

Keshava Narayan

APPELLANT

Vs

Mandal Co-operative Marketing Society and Others

RESPONDENT

Date of Decision : 18-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10
Madhya Pradesh Co-operative Societies Act, 1960 — Section 82, 82(1)(c)
Madhya Pradesh Co-operative Societies Rules, 1962 — Rule 29

Citation : (1969) MPLJ 713

Hon'ble Judges : J.C. Shah, Acting C.J.; V. Ramaswami, J; A.N. Grover, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

J.C. Shah, Ag. C.J.

1. The Mandal Co-operative Marketing Society and the Adivasi Co-operative Society (respondents Nos. 1 and 2 in this appeal) are societies registered under the Madhya Pradesh Co-operative Societies Act, 1960. Section 82 of that Act provides, in so far as it is material:

(1) Save as provided in this Act, no civil or revenue Court shall have any jurisdiction in respect of-

(a) * *

(b) * * * * *

(C) any dispute required to be referred to the Registrar or his nominee or board of nominees;

* * * * *

Section 64 provides:

“(1) Notwithstanding anything contained in any other law for the time being in

force, any dispute touching the constitution, management or business 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) * * * * *

(b) * * * * *

(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;

* * * * *

Section 66 provides for settlement of disputes. By sub-section (1) it is provided :

'The Registrar may, on receipt of the reference of dispute under 'section 64 decide the dispute himself, or transfer it for disposal to a nominee or board of nominees to be appointed by the Registrar.

Section 67 sets out the procedure for settlement of disputes and the powers of the Registrar his nominee or board of nominees. An appeal lies u/s 77 against every original order under the Act or the Rules made thereunder to the Registrar if the order is passed by any officer subordinate to the Registrar, and a second appeal lies to the State Government against the order of the Registrar.

2. The appellant Keshva Narayan claimed to have been supplied to the Mandal Society on credit wheat, pulses, oil and other food-stuff of the value of Rs. 3,458.64p. and a quantity of power of the Value of Rs.6,908.88p. The appellant thus claimed to receive from the Mandal Society an amount of Rs. 10,267-47p. By letter dated January 6, 1964, the Adivasi Society agreed to pay the amount due by the Mandal Society within one month from the date of the letter. Since the two societies failed to discharge the obligation, the appellant instituted an action in the Court of the Additional District Judge, Shivpuri for a decree for Rs. 11,299 against the Mandal Society, the Adivasi Society and Sobha Ram and Panchu the last two being respectively member and President of the Mandal Society. The action was resisted on the plea that the civil Court had no jurisdiction to try the suit and the Registrar, Co-operative Societies or his nominee had exclusive jurisdiction to adjudicate upon the claim. The learned Additional District Judge rejected the contention. Against that order a revision application was filed before the High Court of Madhya Pradesh. The High Court set aside the order passed by the District Judge and declared that the civil Court was incompetent by virtue of section 82 (1) (c) of the Madhya Pradesh Co-operative Societies Act, 1960 to try the suit, and directed that the suit be dismissed. Against the order passed by the High Court, this appeal is preferred with special leave.

3. Counsel for the appellant contended that a claim for recovery of price of goods purchased by the Mandal Society did not raise a dispute "touching the business

of the society and the jurisdiction of the civil Court to entertain the action was not barred. The Mandal Society carries on the business of purchase and sale of foodgrains and other goods. It appears from the Bye-laws that the Society was formed with the object of purchasing "forest produce" from members of the Scheduled Tribes and of supplying them foodstuff. The business of a Society is clearly the function or activity of the Society having some continuity and regularity. The expression "touching the business of a society" means in reference or in relation to, respecting, regarding or concerning the business of the society. Even on the averments made in the plaint there can be no doubt that it was the business of the Mandal Society to purchase foodgrains for their members. The Mandal Society purchased the goods from the appellant and by its letter dated January 6, 1964, the Adivasi Society agreed to pay the amount. In our judgment, the dispute was touching the business of the Mandal Society.

4. Counsel for the appellant contended, however, that under sections 36, 37 and 38 of the Act purchase of foodgrains cannot be regarded as a part of the business of a registered co-operative society under the Madhya Pradesh Cooperative Societies Act, 1960, There is no substance in that contention. Section 36 provides for restrictions on borrowings, and section 37 provides for restrictions on loans. Evidently the transaction of purchase does not fall within the terms of sections 36 and 37. Section 38 provides:

Save as provided in sections 36 and 37, the transactions of a society with persons other than members shall be subject to such restrictions, if any, as may be prescribed.

By rule 29 of the Madhya Pradesh Co-operative Societies Rules, 1962, it is provided :

No society shall enter into any transactions with a person other than a member except those referred to in sections 36 and 37, unless,-

(i) the bye-laws of the society permit it to enter in such transactions, and (ii) previous sanction of the Registrar has been obtained by the society.

Apparently the bye-laws of the society permit the Mandal Society to enter into such transaction and it was not contended that previous sanction of the Registrar for entering into transactions for purchase of good was not obtained by the Mandal Society.

5. It was then submitted that in any event the claim against the Adivasi Society was not barred. But the question that a contract entered by the Adivasi Society agreeing to stand surety for another co-operative society in respect of a debt due by that other society was not within the bye-laws of the Adivasi Society has not been raised and we will not be justified in allowing counsel to raise that contention for the first time in this Court.

6. It was finally contended that in any event the High Court was not justified in dismissing the suit and the plaint should have been returned for presentation to

the appropriate Court. Assuming that the Registrar of Cooperative Societies is not a Court within the meaning of Order 7, rule 10, Code of Civil Procedure; the High Court would still have been justified in directing that the claim made before the civil Court should be returned so that the appellant may be entitled to present that claim before the Registrar and ask for condonation of delay, if any, in presenting the claim before the Registrar. Counsel for the respondents raised no objection to the order that the plaint instead of being dismissed be returned for presentation to the Registrar.

7. We accordingly modify the order of the High Court and direct that the plaint be returned to the appellant for presentation to the Registrar Cooperative Societies under the Madhya Pradesh Co-operative Societies Act, 1960. Having regard to the circumstances of the case, there will be no order as to costs in this appeal.