
(2002) 04 BOM CK 0104
In the Bombay High Court
Case No : Writ Petition No. 941 of 2002

Khandesh Urban Co-Operative Credit Society Ltd.	APPELLANT
Vs	
Ashok Agrawal	RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Citation : (2002) 4 ALLMR 91 : (2002) 104 BOMLR 862

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Judgement

D.G. Karnik, J.—This writ petition raises several important questions of law, some of which are not res integra.

FACTS

2. The facts giving rise to the petition are not many and are all admitted. They are briefly stated below.

The petitioner is a Co-operative Credit Society (for short "the Society") incorporated and registered under the Maharashtra Co-operative Societies Act, 1960 (for short "the Act"). The respondent was the Chairman of the Society in the past and it is alleged that during his tenure as a Chairman, he committed several illegal acts causing financial loss to the Society. The respondent had kept certain amounts by way of Fix Deposits with the petitioner, who had issued Fixed Deposit Receipts. The petitioner - Society alleges that the Fixed Deposit Receipts were forged and/or were without consideration and were obtained by the respondent by taking advantage of his position, which he then held as Chairman. In view of this the petitioner did not make the payment of the amounts covered by the Fixed Deposit Receipts on maturity. The respondent, therefore, filed a dispute before the Co-operative Court for recovery of the money due under the Fixed Deposit Receipts. Some interlocutory orders were passed which were challenged in the past by filing revisions and/or writs. It is not necessary to recite history about the said revisions/writs as they are not relevant for deciding

the present controversy. All that needs to be stated is that the disputes were transferred to the Co-operative Court, Aurangabad.

3. Initially, eleven issues were framed by the Co-operative Court on 13.12.1999, one more issue was framed on 20.1.2000 and lastly, one more issue was framed on 13.12.2000. Issue Nos. 2 and 13 read as under :

2. Does the Disputant prove that he had deposited alleged amounts by way of fixed deposits vide deposit receipts numbers 542, 544 and 543 ?

13. Does Disputant proves that, he is entitled for additional amended claim and interest as prayed for ?

4. The burden of proving Issue Nos. 2 and 13 was thus admittedly on the original disputant, who is the respondent before this Court (hereinafter he is referred to as the disputant). The burden of proving all other issues except issues like "What order and award?", is on the petitioner. The disputant made an application before the Co-operative Court on 6.1.2000 stating that the burden of proving only one issue was on him and burden of proving all other issues was on the Society and, therefore, the petitioner Society should be directed to adduce the evidence first and the disputant be allowed to adduce the evidence after the Society's evidence was over. By an order dated 6th January, 2000, the application made by the disputant was allowed.

5. Being aggrieved by this order, the petitioner Society filed a revision bearing No. 2/2000 purporting to be under Sub-section (9) of Section 149 of the Act before the Co-operative Appellate Court. No point was raised before the Co-operative Appellate Court about the maintainability of the revision and the Co-operative Appellate Court dismissed the revision on merits by an order dated 18th January 2000 and confirmed the order of the Co-operative Court dated 6th January.

6. In pursuance of the order of the Co-operative Appellate Court confirming the order of the Co-operative Court, the petitioner Society commenced its evidence by adducing evidence of Shri V.R. Choudhary, Manager, whose examination-in-chief was recorded on 21st January 2000. The cross-examination commenced on 25th January and was continued on 28th and 29th January, and 1st and 2nd February, 2000. Shri V.J. Dixit, learned Counsel for the disputant stated before me that the cross-examination of the said witness is practically over and would be concluded in about half an hour more.

7. At that stage, the petitioner Society filed an application before the Cooperative Court on 19th March, 2001, praying for review of the order dated 6th January, 2000 passed by the Co-operative Court directing the Society to adduce the evidence first. Relying on the judgment of this Court in the case of Haran Bidi Suppliers and Anr. v. V.M. & Co. 2001 (1) All M.R. 173 the Co-operative Court allowed the application for review and directed that the petitioner Society should only complete the evidence of Shri V.R. Choudhary, the Manager, whose evidence

was already commenced and thereafter the disputant should adduce his entire evidence and after the evidence of the disputant is over, the petitioner Society should continue and complete its evidence.

8. Being aggrieved by the order passed on the Review Application on 19th March, 2001, the disputant filed a revision bearing Revision Application No. 24/2001 before the Co-operative Appellate Court. This revision again was filed purportedly under Sub-section (9) of Section 149 of the Act and no objection was raised to the jurisdiction of the Co-operative Appellate Court to entertain the revision. The learned President of the Co-operative Appellate Court, by an order dated 18th December, 2001, allowed the revision and set aside the order passed by the Co-operative Court on 19th March, 2001, reviewing its first order dated 6th January 2000. This order of the Co-operative Appellate Court dated 18th December, 2001, allowing the Revision Application No. 24/2001 is challenged by the petitioner Society by filing the present writ petition.

9. It is submitted by both the parties that it is necessary to lay down the procedure to be followed by the Co-operative Court in hearing and deciding the disputes u/s 91 of the Act. Supporting the judgment of the Co-operative Appellate Court, it was contended by the disputant that the Co-operative Court did not have a power to review its own orders and, therefore, Co-operative Appellate Court rightly set aside the order of the Cooperative Court. In reply, it was contended by the petitioner Society that the Co-operative Appellate Court had no power of revising the order of the Co-operative Court dated 19th March, 2001 under Sub-section (9) of Section 149 of the Act and, therefore, it could not have interfered in the orders of the Co-operative Court even if it was erroneous. The order passed in the review, assuming it to be illegal, could be challenged only by filing of writ petition and as the disputant had not challenged it, the said order passed in review has become final. Each of the contentions raised by the parties are considered below separately.

Procedure to be followed by the Co-operative Court while hearing disputes u/s 91 of the Act and Applicability of the Code of Civil Procedure.

10. Section 94 of the Act prescribes the procedure for settlement of disputes and the powers of the Co-operative Court. Sub-section (1) of Section 94 lays down that the Co-operative Court shall hear the dispute in the manner prescribed and shall have the powers of Civil Court as provided by the CPC to summon and enforce the attendance of witnesses including the parties or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of documents. Some powers similar to the powers under Rule 10 of Order I of the CPC are conferred upon the Co-operative Court under Clauses (c) and (d) of Sub-section (3) of Section 94 of the Act. However, the entire provisions of the CPC are not specifically made applicable u/s 94 of the Act. Rule 77-E of the Maharashtra Cooperative Societies Rules, 1961 (for short "the Rules"), prescribes the procedure to be followed by the Co-operative Court at the hearing. Sub-rule (1) of rule 77-E lays down the manner of recording of the evidence and

also lays down that the decision of the Co-operative Court shall be in writing and pronounced in the open Court. Sub-rules (2) to (4) confer a power on the Co-operative Court to dismiss the dispute for default and/or to proceed ex parte in the absence of the parties. Sub-rule (5) confers a power on the Cooperative Court to grant adjournment and Sub-rule (6) provides for furnishing the certified copies. Rule 77-F lays down the summary procedure and when it can be followed. Thus, neither the Act nor the Rules make the provisions of the CPC specifically applicable for hearing of a dispute before the Co-operative Court.

11. The CPC also specifically does not contain any section specifically making the CPC applicable to the Co operative Court. The preamble to the Code lays down that the CPC was enacted with a view to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature. Undoubtedly, the Co-operative Court decides the civil disputes between the parties and even if the CPC is not specifically made applicable, the general principles contained in the CPC are broadly applicable to the Co-operative Court. Except where the Maharashtra Cooperative Societies Act and the Rules framed thereunder lay down a different procedure, the Co-operative Courts are expected to follow broadly the principles laid down in the Code of Civil Procedure. Though the Cooperative Court may not be bound by every technical rule of procedure, the principles of natural justice and broad principles contained in the CPC would be applicable to the Co-operative Court also.

12. The broad principles laid down under Order XVIII of the CPC are also applicable to the Co-operative Court. Rule (1) of Order XVIII lays down that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff. This right to begin is also coupled with the duty to begin. It is not only the right but it is also the duty of the plaintiff to begin. This right and duty to begin cast on the plaintiff would not be applicable only when the burden of proving all the issues is on the defendant. When the burden of proof of some issues is on the plaintiff and burden of proof of some issues is on the defendant, then the plaintiff must begin but is entitled to reserve his evidence, in respect of those issues of which burden lies on the defendant, until the defendant adduces his evidence. This right is conferred on the plaintiff under Rule 3 of Order XVIII of the Code of Civil Procedure. For example, if there are only two issues and burden to prove issue No. 1 is on the plaintiff and issue No. 2 on the defendant, then the plaintiff must adduce his evidence on issue No. 1. He can also adduce his evidence on issue No. 2 at the same time or he may reserve his evidence on issue No, 2 until the defendant's evidence is over. In the first case, the plaintiff should adduce his entire evidence on both the issues and then the defendant should adduce his entire evidence; and in the second case, when the plaintiff exercises his option to reserve the evidence on issue No. 2 under Rule 3 Order XVIII, the plaintiff shall adduce his evidence on issue No. 1 and then the defendant should adduce the entire evidence on issue No. 1 as well as on issue No. 2. Thereafter the plaintiff may adduce the evidence only on issue No. 2 by way of rebuttal, but he would not be allowed to adduce evidence on issue No. 1

again. In the present case, as stated earlier, the burden of proving two issues was on the disputant and burden of proving all other issues was on the Society. It was, therefore, necessary for the disputant to enter the witness box first and discharge his burden in respect of issue Nos. 2 and 13. He could have reserved his evidence in respect of rest of the issues, the burden of proving which was on the petitioner society. It was thus improper on the part of the Co-operative Court to direct the petitioner society to commence adducing its evidence first. The first order of the Co-operative Court dated 6th January 2000 directing the Society to adduce the evidence first was, therefore, improper. The matter, however, does not rest here. On account of further proceedings, which have taken place, whether this order can now be set aside in this writ petition on account of subsequent events and also on account of some orders passed in Revision and Review needs to be considered separately.

POWERS OF REVIEW

13. The power of review is creature of a Statute. The Court or any Judicial Authority does not have an inherent power of review. It can review its order only if the power of review is conferred upon it by any of the Statute. Section 150 of the Act confers a power of review on the Co-operative Appellate Court. The Co-operative Appellate Court, therefore, has a statutory power of reviewing its own orders. However, the same is not case in respect of Co-operative Courts. The Act does not confer a power of review on the Co-operative Court and, therefore, the Co-operative Court cannot review its own orders. The order of the Co-operative Court dated 19th March 2001, reviewing it or earlier order dated 6th January 2000 was, therefore, clearly without jurisdiction.

REVISIONAL POWERS OF THE CO-OPERATIVE APPELLATE COURT

14. As stated earlier, the Co-operative Appellate Court has passed two orders in the Revision, one on 18.1.2000 in Revision No. 2/2000 and Anr. on 18.12.2001 in Revision Application No. 24/2001. It is, necessary to consider what are the revisional powers of the Co-operative Appellate Court. Sub-section (9) of Section 149 of the Act, which confers the revisional powers on the Co-operative Appellate Court reads as under :

The Co-operative Appellate Court may call for and examine the record of any proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case, it appears to the Co-operative Appellate Court that any such decision or order should be modified, annulled or reversed, the Co-operative Appellate Court may pass such order thereon as it may deem just.

15. The plain reading of Sub-section (9) of Section 149 makes it clear that the Co-operative Appellate Court can call for the record and proceeding, only in the proceeding in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. In other words, the Co-operative Appellate Court cannot call for the record of the proceeding in which an

appeal does not lie to it. The powers of revision of the Co-operative Appellate Court are thus restricted only to the appealable orders. Non-appealable orders cannot be revised under Sub-section (9) of Section 149 of the Act. It was contended by Shri Dixit that this interpretation is contrary to common sense because if the order is appealable, a party would always choose to prefer an appeal the scope of which is normally wider than a revision. He, therefore, contended that even non appealable orders must be held revisable. He contended that every interlocutory order, appealable or non appealable can be a subject matter of revision provided that appeal lay against the final order in the proceeding. I am afraid, this contention cannot be accepted in view of the plain reading of Sub-section (9) of Section 149. The powers under Sub-section (9) of Section 149 of the Act can be exercised by the Co-operative Appellate Court, suo motu and without application by any party, while an appeal can be filed only by the aggrieved party. This is a distinction between the appeal and revision.

APPEALS AND APPEALABLE ORDERS

16. Section 97 of the Act reads as under :

97. Appeal against decision u/s 96 and Order u/s 95:

Any party aggrieved by any decision or (sic of) the Co-operative Court under the last preceding section, or order passed by the Co-operative Court or the Registrar or the authorised person u/s 95 may, within two months from the date of the decision or order, appeal to or the Co-operative Appellate Court.

17. The word "or" before the words "the Co-operative Court" in the first line appears to be an error and the correct word should be "of" instead of the word "or". u/s 95 of the Act, the appeal lies to the Co-operative Appellate Court only in respect of the following orders.

(1) An award passed on a dispute or decision given u/s 96 of the Act;

(2) Order of attachment before the judgment or other interlocutory orders passed u/s 95 of the Act.

18. An appeal does not lie to the Co-operative Appellate Court against other orders passed by the Co-operative Court. Thus, no appeal lies against the decision of the Co-operative Court in respect of framing of issues or amending/modifying the issues. Similarly, no appeal lies against the order of the Co-operative Court directing a particular party to begin the evidence or permitting the party to reserve evidence under Order XVIII of the CPC or the principles analogous thereto. In this view of the matter, the order directing that the petitioner Society to adduce the evidence first was not appealable and consequently was not revisable also. The remedy for the Society, if it was aggrieved, was to challenge the order by filing of a writ petition before this Court. The petitioner Society, however, chose to file the revision. The State Co-operative Appellate Court dismissed the first revision on merits. It should have dismissed it as not maintainable. Thus the order of the Co-operative Court dated

6th January 2000, though erroneous, was confirmed by the Co-operative Appellate Court.

IMPROPRIETY BY CO-OPERATIVE COURT

19. The Co-operative Court not only erred in reviewing its order dated 6th January 2000 as it had no power of review but committed a grave error in reviewing the order which had been confirmed by the Co-operative Appellate Court in revision No. 2/2000 decided on 18th January 2000. Whether the revision was competent or not was never an issue before the Co-operative Court and indeed it could not have held that the revision was incompetent. The Co-operative Court was bound by the order of the Co-operative Appellate Court. The order of Co-operative Court dated 6th January 2000 had merged into the order dated 18th January 2000 of the Co-operative Appellate Court at least so far as the Co-operative Court was concerned. It could not therefore have ventured into reviewing the order which had then merged into the order of superior Court.

20. Though the order of the Co-operative Court dated 19th March, 2001, was erroneous as it has no power of review, the State Co-operative Appellate Court could not have revised the said order. As stated earlier, the State Co-operative Appellate Court had no power of revision and could only revise those orders which were appealable. Co-operative Appellate Court cannot correct every erroneous order in revision. It can revise only those orders against which a revision lies to it. Therefore, the State Co-operative Appellate Court also erred in revising the order and allowing the Revision Application No. 24/2001.

21. The question, therefore, now arises is what should the High Court do in the facts and circumstances of the present case in which more than one order are shown to be erroneous. The endeavour should be to do justice. In the present case, the disputant ought to have commenced the evidence as the burden of proving at least two issues was on him. However, because of the order of the Co-operative Court directing the Society to begin the evidence, though erroneous, has practically become final. It has been followed and the petitioner Society has started adducing its evidence, by examining Shri V.R. Choudhary, Manager and his evidence is practically completed. In view of this, no useful purpose would be served by directing the disputant to commence the evidence. On the other hand, the principles laid down in Rule (3) of Order XVIII of the CPC can be applied to the facts of the present case and the petitioner Society be directed to complete its evidence on all the issues except issue Nos. 2 and 13 of which the burden lies on the disputant. After its all other evidence, the petitioner Society may reserve its evidence on issue Nos. 2 and 13. The disputant should then adduce all his evidence by way of rebuttal on the issues on which the Society has adduced the evidence and should also adduce evidence on issue Nos. 2 and 13, the burden of which lies on him. After the disputant's evidence is over, the Society shall have a right to adduce evidence in rebuttal only in respect of issue Nos. 2 and 13.

22. Initially, in Writ Petition No. 2077/93, this Court had directed that this

dispute including some other disputes should be disposed of within a period of three months from the date of communication of the order. Since then there have been many proceedings between the parties and the hearing could not be completed within three months. By an order in Writ Petition Nos. 5371/2001, 5372/2001 and 5373/2001 passed on 8th December, 2001, this Court (Coram : A.B. Naik, J.), it was directed that all the disputes should be decided on or before 30th April, 2002. Both the parties now state that it may not be possible to conclude the entire evidence and decide the case before 30.4.2002 and, therefore, some reasonable extension be granted. Accordingly, it is directed that the dispute should be disposed of within a period of further two months.

23. Writ Petition is disposed of in terms of these directions. No order as to costs. In view of the final disposal of the petition, interim relief stands vacated.

24. The parties to act on the ordinary copy of this judgment, duly authenticated by the Personal Assistant of the Court.