

(1986) 10 CAL CK 0003
In the Calcutta High Court
Case No : C.O. No. 7 of 1986

Konnagar Samabaya Bank Ltd.

APPELLANT

Vs

Nilmoni Banerjee and Others

RESPONDENT

Date of Decision : 01-10-1986

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 30, 33

Constitution of India, 1950 — Article 227

Limitation Act, 1963 — Article 19

West Bengal Co-operative Societies Act, 1973 — Section 132(2), 2, 86

Citation : (1986) 1 CALLT 109 : (1988) 63 CompCas 787 : 91 CWN 1112

Hon'ble Judges : C. Mookerjee, J;A.K. Sen Gupta, J

Bench : Division Bench

Advocate : P.K. Dutta and K. Ghosh, for the Appellant; S. Mukherjee and S. Ganguly, for the Respondent

Final Decision : Allowed

Judgement

Mookerjee, J.—The application under article 227 of the Constitution has been filed by the petitioner bank which is a society registered under the Bengal Co-operative Societies Act, 1940, which has since been replaced by the West Bengal Co-operative Societies Act, 1970. By the order complained of, the learned Assistant District Judge, Second Court, Hoogly, struck off the written statement filed by the petitioner-bank in Title Suit No. 17 of 1984, on the ground that any objection preferred by the bank under sections 30 and 33 of the Arbitration Act, 1940, would now be barred by limitation. The learned Assistant District Judge by the same order had fixed a date for passing an ex parte decree in the suit in terms of Section 17 of the Arbitration Act, 1940.

2. Opposite party No. 1, who is the husband of opposite party No. 2, was a member of the Konnagar Samabaya Co-operative Bank Ltd. They had a joint savings account with the said bank. A dispute has arisen between the petitioner bank and opposite parties Nos. 1 and 2 as to whether in fact the opposite parties had deposited in their said savings bank account with the petitioner bank a sum

of Rs. 25,000. By consent of parties, the said dispute was purported to be referred to an enquiry committee consisting of three persons, two of whom were selected by the opposite parties and one by the chairman of the bank. Both the petitioner-bank and the opposite parties agreed to abide by the decision of the enquiry committee regarding the dispute as to whether a sum of Rs. 25,000 had been in fact deposited in the savings bank account of opposite parties Nos. 1 and 2. According to the petitioner-bank, its nominee, Kanai Lal Mukherjee, had allegedly withdrawn himself from the said enquiry committee. The two remaining members of the said enquiry committee submitted an award in favour of opposite parties Nos. 1 and 2, inter alia, to the effect that they had really deposited the said sum of Rs. 25,000 in their joint savings bank account with the petitioner-bank. Therefore, the said award was purported to be filed u/s 14 of the Arbitration Act, 1940, in the Court of the Additional District Judge, Second Court, Hoogly, with a prayer for passing a decree in terms of Section 17 of the Arbitration Act, 1940.

3. For the purpose of deciding the present application, it is unnecessary to determine whether after making the said award, the said arbitrator had given notice under Sub-section (1) of Section 14 of the Arbitration Act and whether the summons/notice given by the court to the petitioner bank was in due compliance with Sub-section (2) of the said Act. We decline to accept the submission of Mr. Mukherjee, learned advocate, on behalf of the opposite parties, that the petitioner-bank's only remedy in respect of the aforesaid award was by filing objections under sections 30 and 33 of the Arbitration Act, 1940. In the instant case, the petitioner bank is contending that both the submission of the dispute to the enquiry committee and the award passed by two of the members of the said committee were null and void. Unless we subscribe to the view that the said ground of nullity could only be raised by filing objections under sections 30 and 33 of the Arbitration Act, 1940, article 19(b) of Limitation Act would not be relevant. The petitioner bank's contention is that the subject-matter of reference to the enquiry committee appointed by both the parties was fully covered by Section 86 of the West Bengal Co-operative Societies Act, 1973, and, therefore, the entire arbitration proceedings including the award by two members of the enquiry committee were void ab initio. It is not the case of the petitioner-bank that there was a valid reference and that only the award passed was in excess of jurisdiction of the arbitrators. Russel on Arbitration, twelfth edition, at page 389, observed:

" It has been held that where the ground of objection to the award was that the whole arbitration was a nullity, since there has been no submission, a motion to set aside was not the appropriate procedure ; for if there was no submission and no award, there was nothing upon which the court's jurisdiction to set aside could operate. "

4. In England previously in such cases, the party objecting had to wait until an attempt was made to enforce the award and then to attempt or to sue for a

declaration that the award was null and void. The said procedure has been described in Russel on Arbitration, at page 389a, as "a most convenient technicality". Since a party who waited until the award was sought to be enforced, risks being told that he should have applied to have it set aside, it being too late by then to do so. In England since the alteration of the rules of the Supreme Court while the substance of what must be done in such cases remains the same, all the questions can be raised on motion together, vide Russel on Arbitration, twelfth edition, at page 390. It has further been observed that there is some logical solecism in pursuing the statutory remedy to set aside an award u/s 23 of the Act, when ex hypothesi nothing exists which the law regards as an award. In England, this has, however, since 1965, been permitted by the Laws of the Supreme Court, Order 73, Rule 2(3). These observations by Russel on Arbitration may be very cogently applied for upholding the right of the petitioner-bank to challenge the aforesaid award obtained against it by the opposite parties on the ground of want of jurisdiction. At one stage of his submission, Mr. Mukherjee submitted that the petitioner bank having allowed its remedy under sections 30 and 33 of the Arbitration Act to become barred, the court was bound to pass a decree u/s 17 of the Arbitration Act upon the award in favour of the opposite parties. If and when the opposite parties put the decree into execution, the petitioner-bank may object, if so advised, on the ground of want of jurisdiction of the arbitrators to pass the award. In our view, the same would be an utterly inconvenient technicality as observed in the passage quoted by us from page 389 of Russel on Arbitration. In this case, the petitioner-bank's objection is that there is no valid submission, the appointment of the arbitrators was invalid and illegal and the court's jurisdiction to pass a decree u/s 17 of the Arbitration Act upon the award had been totally ousted by the provisions of the West Bengal Co-operative Societies Act. Determination of the said point of want of jurisdiction could involve investigation of facts. In case there is patent lack of jurisdiction on the part of the learned Assistant District Judge to pass any decree upon the award in terms of Section 17 of the Arbitration Act, this court ought not to allow the proceeding to go on further leaving the petitioner with an opportunity to raise an objection to the validity of the award at the time of the execution or by instituting a separate suit for declaration. If we adopt the said course, the same would lead to prolonging the proceedings which at the end may be adjudged as totally void. If we find that the impugned award and the proceedings of the same u/s 14 of the Arbitration Act are a nullity, it would be an exercise in futility to allow a decree u/s 17 of the Act to be passed upon the said award and at the same time grant leave to the petitioner-bank to challenge the award and the decree passed thereon either at the execution stage or by filing a separate suit. In exercise of the power under article 227 of the Constitution, this court possesses enough powers to quash proceedings the continuance of which would be an abuse of the process of law. In this connection, we may refer to the case of Hindusthan National Glass and Industries Mazdoor Union v. S.N. Singh 86 CWN 9. In the said reported case, the court upheld the order of the City Civil Court at Calcutta rejecting as not maintainable an application u/s 30 of the

Arbitration Act for setting aside an award/recommendation of the Labour Commissioner, West Bengal, regarding remuneration of the piece-rated workers employed by the contractors of M/s. Hindusthan National Glass and Industries Ltd., Hoogly. It was, inter alia, held that the civil court had no jurisdiction to adjudicate upon or enforce the rights in respect of the said recommendations of the Labour Commissioner in conciliation proceedings under the Industrial Disputes Act. In order to set aside the award, a Court must have territorial or pecuniary jurisdiction and be otherwise competent to try the subject-matter of reference. The dispute between the petitioner bank and the opposite parties as to whether the latter had in fact deposited into their savings bank account a sum of Rs. 25,000 certainly would be the subject-matter of a civil litigation and is covered by the expression " dispute " within the meaning of Section 86 of the West Bengal Co-operative Societies" Act, 1973. The expression " dispute " u/s 2(q) of the West Bengal Co-operative Societies Act, 1973, means " any matter capable of being the subject-matter of civil litigation and includes a claim in respect of any sum payable to or by a co-operative society, whether such claim is admitted or not " . The other ingredients of Sub-section (1) of Section 86 of the said Act in the instant case are also fulfilled. The claim of the opposite parties regarding the said sum of Rs. 25,000 is related to the affairs of the petitioner bank which is a co-operative society. Thirdly, opposite party No. 2 was alleged to be a member of the petitioner bank and, therefore, the dispute in question was among the parties specified in Clause (b) of Sub-section (1) of Section 86 of the West Bengal Co-operative Societies Act. The dispute relating to the said transaction between the petitioner-bank and the opposite parties would also be covered by Clause (d) of Sub-section (1) of Section 86 of the said Act. Thus, the present dispute between the petitioner-bank and the opposite parties was capable of being referred u/s 86 of the West Bengal Co-operative Societies Act to the Registrar for decision u/s 87 of the said Act. Under Clause (d) of Sub-section (2) of Section 132 of the said Act, no civil or revenue court shall have any jurisdiction in respect of any dispute required u/s 86 of the Act to be referred to the Registrar. Thus, the civil court's jurisdiction has been expressly ousted in respect of the disputes covered by different clauses of Sub-section (1) of Section 86 of the Act. Therefore, learned Additional District Judge, Hoogly has no jurisdiction to adjudicate the dispute between the parties relating to the said credit entry in the savings bank account of the opposite parties with the petitioner-bank and in respect of which a purported award has been made by some of the members of the enquiry committee/arbitrators.

5. We understand that at the instance of the petitioner-bank, the Assistant Registrar of Co-operative Societies concerned has already made a reference u/s 86 of the West Bengal Co-operative Societies Act in respect of the aforesaid dispute between the petitioner-bank and the Opposite parties relating to the alleged credit entry in the savings bank account of opposite parties Nos. 1 and 2. By the earlier order, the trial court had granted an order of temporary injunction restraining the bank from proceeding with the said dispute case u/s 86 of the

said Act. The said temporary injunction order, however, is not the subject-matter of the present revisional application.

6. For the above reasons, we allow the revisional application, set aside the order complained of and direct the court below to pass appropriate orders. In view of our decision that the arbitration case in question was not maintainable in civil court, no decree can be passed upon such an award filed u/s 14 of the Arbitration Act. The order which may be made by the Assistant District Judge upon the arbitration award would be, however, without prejudice to the rights and contentions of the parties in the pending dispute case u/s 86 of the West Bengal Co-operative Societies Act, 1973. We express no opinion on the merits of the claims and contentions of the parties.

7. There will be no order as to costs.

8. Let the operation of the order be stayed for six weeks after the reopening of the court after the long vacation.

Sen Gupta, J.

9. I agree.