
(1978) 04 MP CK 0034

In the Madhya Pradesh High Court

Case No : Civil Revision No. 358 of 1973

Kundan Singh Dolatram and another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 20-04-1978

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 64(1), 64(1)(a)(f), 64(1)(c), 82(1)

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1979) MPLJ 203

Hon'ble Judges : H.G. Mishra, J

Bench : Single Bench

Advocate : R. Gupta, for the Appellant; S.K. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

H.G. Mishra, J.

This is a revision filed by the plaintiffs-applicants u/s 25 of the Provincial Small Cause Courts Act against the decision passed by the Small Cause Judge (Additional District Judge, Guna) in Small Cause Suit No. 7 of 1971, whereby the suit of the plaintiff applicants has been dismissed.

The facts so far material for the purposes of this revision are as under:--

(a) The plaintiff-applicants instituted a suit against the defendant-non-petitioner on the allegations that the non-petitioner M.P. State Sahkari Bipnan Sangh Maryadit, Bhopal, had agreed to sell to the plaintiffs 480 bags of Jwar at the rate of Rs. 72 per quintal. The plaintiffs deposited Rs. 2,000 in pursuance of the sale agreement between the parties.

(b) The defendant-non-petitioner supplied 240 bags of Jwar on 16-7-1970 to the plaintiffs. Thus an amount of Rs. 1,000 was appropriated by the defendant for aforesaid bags of Jwar supplied to the plaintiffs.

(c) On 27-8-1970 the plaintiffs asked the defendant-non-petitioner to supply the remaining 240 bags of Jwar. Although in the night of 27-8-1970 delivery of the balance bags of Jwar was taken by the officers concerned from the godown of defendant-non-petitioner yet on 28-8-1970 the said bags were neither weighed nor delivered to the plaintiffs.

(d) This led to the filing of the suit for the refund of Rs. 1,000 by the plaintiff after notice to the defendant-non-petitioner.

The defendant-non-petitioner contended inter alia that the suit is not maintainable in the Small Cause Court, but reference of the dispute could be made only to the Registrar of Co-operative Societies, in view of the provisions of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as the Act).

The trial Court has dismissed the suit holding that the suit is barred from cognizance of the civil Court by virtue of the provisions contained in section 82(1)(c) read with section 64(1)(c) of the Act.

Aggrieved by this decision the present revision has been filed by the plaintiffs.

The contention of the Learned Counsel for the plaintiff-applicant is that the suit does not fall within the ambit of section 82(1)(c) read with section 64(1)(c) of the Act. Therefore, the learned Small Cause Judge has illegally refused to exercise jurisdiction vested in him. The Learned Counsel for the defendant-non-petitioner has supported the impugned order.

At the outset, it may be observed that the State of M.P. has been erroneously shown as non-petitioner. It is the M.P. State Sahkari Bipnan Sangh Maryadit, Bhopal, who was and is the defendant in the case. Therefore, the State of M.P. is not treated as a party for the purposes of this revision. Only the M.P. State Sahkari Bipnan Sangh is a party properly arrayed as non-applicant in the case. Therefore, the applicant will correct the title of the revision by deleting the words "State of M.P." from the description of the non-applicant.

Section 82(1) of the Act provides --

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(1) of the Act provides for two things, viz., Firstly, it provides that the dispute which shall be referred to the Registrar must be touching the constitution, management or business of a society or liquidation of a society; and, secondly, it provides that the parties should have right to refer the matter.

Sub-section (1) of section 64 runs as under:-- "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) 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 officer, 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, past member or deceased 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 the society.

Sub-section (2) of section 64 provides that for the purposes of subsection (1) of section 64 a dispute shall include five types of disputes enumerated therein.

Sub-section (2) of section 64 runs as under:--

(2) For the purposes 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, 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 result.

The plaintiffs in the instant case do not fall under any category of parties specified in sub-clause (a) or (b) of sub-section (1) of section 64. It is tried to be argued by the Learned Counsel for the defendant Society that the plaintiff's fall in the category of "a person" specified in sub-clause (c) of subsection (1) of section 64. The Learned Counsel for the plaintiffs in reply argued that in order to bring the plaintiffs in category of such "a person" it is necessary to point out that they had business transactions with the defendant Society and there being no evidence on that account the bar of jurisdiction enacted by section 82(1)(c) read with section 64(1) of the Act does not apply. This argument has great force.

But it appears that the parties were not alive to the legal situation which emerges from the correct analysis of clause (c) of sub-section (1) of section 64 of the Act. The postulate of clause (c) of sub-section (1) of section 64 of the Act is in case of "a person" other than a member of the Society, the Society may have granted a loan. But this is not the case here. The second postulate is "a person" other than a member of the Society must be such with whom the Society has or had business transaction. The attempt of the Learned Counsel for both the parties was to bring a case within the second postulate of the aforesaid provision. In the first postulate the word "a loan" have been used wherein in the, second postulate the words "business transactions" have been used. The principle that singular includes plural and plural includes singular cannot be pressed into service while construing clause (c) of section 64(1) of Act because when in the same Clause in the context of loan the contemplation of the Legislature is that of a single transaction of loan, then in the same Clause when the word "transactions" has been used it cannot be construed to mean a single business transaction. In view of the wordings of clause (c) of of section 64(1) of the Act, the words "business transactions" cannot be construed so as to cover case of a person other than a member who may have a single transaction with the Society. Plurality of transactions is sine qua non for attracting the second postulate to the situation. Moreover the use of the word "transactions" in plural clearly suggests a "continued course of dealing i.e. a trade as held in State Bank of India Employees Co-operative Housing Society Ltd. Raipur v. Nawal Shankar Dave and other 1972 MPLJ 71 : 1971 JLJ 973 by A.P. Sen J. (as he then was). The relevant observations are as under:--

The use of the word "transactions" in plural suggests "a continued course of dealing", i.e. a trading or commercial activity between a society and a non member giving rise to a dispute which still remains outstanding. Now, the mere acquisition of a certain piece of land by the defendant society by means of a deed of conveyance "in its favour would not be any such business transaction falling within the ambit of that section, as the purchase of land for a price need

not of necessity be a trading or commercial activity, i.e. one entered with the motive of earning profits, which is a sine qua non of any business, profession or trade.

Therefore, if there is only a single transaction of business with a non-member and a Society conditions necessary to attract the second postulate are not fulfilled.

The ouster of jurisdiction of civil Court can be only if the dispute in question touches the Constitution, management or business of Society. But that is not all. Further pre-requisite for working out an ouster of civil Court's jurisdiction is that the parties must be of categories enumerated in sub-section (1) (a) to (f) of section 64.

If in given case the parties do not fulfil the character specified by section 64(1) (a) to (f) simply because the dispute touches the Constitution, management or business of the Society or liquidation of a Society will not work out ouster of Civil Court's jurisdiction. It is well settled principle of law that ouster of jurisdiction of civil Court cannot readily be presumed. Where there is exclusion of civil Court's jurisdiction, all the conditions, existence of which is pre-requisite for working out the exclusion of jurisdiction of the civil Court must be shown to exist.

It appears from the impugned decision that the learned Small Cause Judge has just referred the provisions of section 82(c) read with section 64(1)(c) of the Act and has not taken into his view that the postulate of the law is to the effect that--

(a) the dispute must be touching the Constitution, management or business of the Society;

(b) that the parties must be of specified character, namely, for the present purposes, the plaintiff-non-member must be such a person with whom the Society must have or had more than one business transaction.

Both these conditions must co-exist. Since the Court and the parties had acted in oblivion of the correct legal position and the parties agree for the remand of the case for re-consideration of the matter afresh in the light of the principles laid down herein above, it appears the revision deserves to be allowed.

In the instant case there is no evidence to show that there was plurality of transactions between the parties.

Before parting with this order it has to be observed that the learned Small Cause Judge should not have dismissed the suit after arriving at the finding that it had no jurisdiction to entertain the same, but return of the plaint should have been ordered.

Accordingly, the revision is allowed. The impugned decision is set aside and the case is remanded back to the Judge of the Small Cause Court (Additional District Judge, Guna) who will, after giving parties opportunity to lead evidence on the question whether there was plurality of transactions between the parties or not,

decide the case afresh in accordance with law keeping in view the principles laid down herein above. The costs of this revision shall abide the event.