

(2004) 08 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 452 of 2004

Maharashtra State Co-Operative Agricultural and Rural
Development Bank Ltd. and Another

APPELLANT

Vs

Vasant Mahadeo Gire

RESPONDENT

Date of Decision : 17-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2005) 1 ALLMR 621 : (2005) 1 BomCR 701 : (2005) 107 BOMLR
660 : (2005) 1 MhLj 13

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

Bench : Single Bench

Advocate : P.S. Dani, for the Appellant; C.J. Sawant and Lalita Panchakshari, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—Heard Counsel appearing for the parties.

2. Rule. Rule made returnable forthwith, by consent. Ms. Panchakshari waives notice for respondent.

3. As short question is involved, the matter is heard for final disposal forthwith, by consent.

4. The respondent filed dispute before the Co-operative Court No. 1, Pune at Pune being Dispute No. 74 of 1996 on the assertion that he was an employee as Grade VI Officer in the petitioner Bank. In substance, the respondent questioned the order passed by the District Branch Manager dated 16th/18th September, 1995, whereby, his (respondent No. 1's) services were transferred from the post of Assistant District Branch Manager to the post of the Statistical Officer, on the ground that the said order was issued without authority, as no prior sanction of the Chairman District Loan Sanctioning Committee, Pune was obtained before issuance of that order, which was mandatory. Besides, it is asserted that the said

order is the outcome of ill-will and mala fide action against the respondent by the opponent No. 3 Gokul Dagdoba Malusare. In other words, it was contended that the impugned decision of transfer passed against the respondent was mala fide action, for which reason also, the same will have to be treated as null and void and not binding on the respondent. It is asserted in the dispute that although the respondent reported on duty on his original post, he was not allowed to resume the duty since September, 1995. It is on that basis, the respondent prayed for following reliefs in the dispute as filed by him :

(a) It be declared that the order dated 16-18/9/1995 issued by District Branch Manager transferring the Disputant from Assistant District Manager to Statistical Officer is illegal, vexatious and without jurisdiction and not binding on the Disputant;

(b) An award be passed against the Opponents for Rs. 63,192/-.

(c) Interest at the rate of 18% p.a. be awarded to the Disputant from the Opponents on the amounts of Rs. 63,192/- from the date of filing of the dispute till its realisation.

(d) The Opponents through its Agents, employees and other Officials be restrained by permanent injunction from prohibiting the Disputant from attending his duties as Assistant District Branch Manager at Pune.

(e) A Temporary injunction be issued that till the disposal of the present dispute, the Opponents be directed not to transfer the Disputant from the post of Assistant District Branch Manager;

(f) The costs for the present dispute be awarded from the Opponents;

(g) Other just and equitable orders may be passed in the interest of justice."

5. The petitioners raised preliminary objection regarding the jurisdiction of the Co-operative Court. According to the petitioners, the dispute as filed by the respondent, was neither touching the business nor touching the management of the Society and for which reason, it was outside the scope of dispute provided for u/s 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act"). The Co-operative Court accepted the said submission canvassed on behalf of the petitioner mainly relying on the Division Bench decision of our High Court reported in Maharashtra Co-operative Housing Finance Society Ltd. and Others Vs. V.S. Loni and Anrs., . and decision of the Apex Court reported in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, . Against that decision, respondent carried the matter before the Maharashtra State Co-operative Appellate Court, Bench at Pune. The proceedings were initially instituted as appeal, but have been treated as Revision Application and the Appellate Court, by the impugned Judgment and Order dated July 22, 2003, was pleased to reverse the view taken by the Co-operative Court and instead, held that the nature of dispute instituted by the respondent was touching the management of the society and was amenable to Section 91 of the

Act. On that basis, the Appellate Court has allowed the Revision Application by setting-aside the order passed by the Cooperative Court which had held that it had no jurisdiction and directed the Cooperative Court to decide the proceedings on its own merits as expeditiously as possible. It is this decision which is subject matter of challenge in the present writ petition.

6. Mr. Dani for petitioner society contends that having regard to the relief claimed in the dispute, it is amply clear that the respondent, in substance, was claiming relief of reinstatement with backwages and such relief cannot be granted by the Civil Court, much less, by the Co-operative Court u/s 91 of the Act. He submits that assuming that respondent was only questioning order of transfer, even such challenge was not available before the Civil Court and for which reason, the Co-operative Court will have no jurisdiction u/s 91 of the Act to entertain such dispute.

7. On the other hand, Counsel for the respondent/Disputant submits that on fair reading of the Plaint as filed before the Co-operative Court, it would be seen that the Disputant was essentially challenging the action on the ground, being without jurisdiction and also being mala fide, for which reason, to be treated as void-ab-initio and not binding on the respondent. Such a relief could be pressed into service before the Civil Court and the Civil Court could have granted that relief u/s 34 of the Specific Relief Act. If it is so, contends Mr. Sawant for the respondent that the Co-operative Court will have jurisdiction to entertain the dispute u/s 91 of the Act and *moreso*, because in the present case, the respondent is neither workmen nor employee as defined under the provisions of the Industrial Disputes Act or the Bombay Industrial Relations Act, 1946, on account of which, the respondent will not fall in the excepted category of the persons provided for in the proviso to Section 91(1) of the Act.

8. Counsel for the parties had relied on, in all, four decisions to buttress their above submissions. Reliance was placed on *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, . as well as on *The Gujarat State Cooperative Land Development Bank's case (supra)* and two decisions of Division Bench of our High Court in the case of *Maharashtra Co-operative Housing Finance Society Ltd. (supra)* and reported in *Pralhad Vithalrao Pawar Vs. Managing Director and Another*, .

9. After having considered the rival submissions, the core issue that needs to be examined is whether the dispute as filed in the present case is amenable to Section 91 of the Act. The purport of Section 91 is no more *res-integra*. There are catena of decisions which have examined the scope of Section 91 of the Act. Suffice it to refer to the decision in the case of *The Gujarat State Co-operative Land Development Bank Ltd. (supra)*. In that case, similar question was considered by the Apex Court. The Apex Court has examined the purport of expression "touching the business of the society" as well as expression "touching the management of the Society". Both the abovesaid Supreme Court decisions have been analysed in *extenso* by the Division Bench of our High Court in the

case of Maharashtra Co-operative Housing Finance Society Ltd. (supra), besides other decisions which are referred to in the said Judgment. In para 27, the Division Bench of our High Court has summarized the legal position, which reads thus :

"27. We may now summarise our findings briefly as follows :-

(1) A claim which is not entertainable by a Civil Court u/s 9 of the CPC cannot also be entertained by a Registrar or other authority u/s 91 of the Act. Such a claim will include a claim by an employee for reinstatement in the service of his previous employer and/or a claim by an employee for alteration of the conditions of service. Such a claim could only be entertained and decided by the adjudication authorities under the relevant Industrial Law.

(2) Any dispute, therefore, involving such a claim is not one touching the management or the business of a society.

(3) A question such as the payment of wages on account of the termination of the services by a co-operative society will also not be the subject-matter of a dispute touching the "business" of a co-operative society (See paragraph 32 read with para 14(ii) of the judgment of the Supreme Court in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others,).

(4) However, a claim based upon contracts between the employees of a co-operative society and the society or claims for damages arising out of breach of such contracts can be part of a dispute touching the "management" of a co-operative society within the meaning of Section 91 of the Act. Hence such a claim can be entertained and decided by the machinery provided under the Act."

10. In the light of the legal position, which can be discerned from the aforesaid decision, it will be seen that the persons specified in Clauses (a) to (e) of Section 91(1) ought to be parties to the dispute, so as to bring the dispute within the parameters of Section 91 of the Act. Proviso to sub-section (1) of Section 91 of the Act excludes certain classes of disputes. In the present case, it is common ground that the respondent is neither workmen nor can be said to be employee within the meaning of the provisions of the Industrial Disputes Act. If it is so, the claim of the respondent, is not ascribable to the provisions of the Industrial Disputes Act, will be governed by other provisions. The question that requires to be examined is whether the plaint can be said to be in the nature of civil dispute which could be resolved by the Civil Court and if the answer is in the affirmative, then obviously, since all other requirements of Section 91 are fulfilled, the dispute as filed, will have to be held as permissible u/s 91 of the Act. On fair reading of the plaint as filed, it is seen that the grievance made in the plaint is that the impugned order of transfer has been passed without jurisdiction, as no prior sanction of the Chairman of District Loan Sanction Committee, Pune has been obtained by the concerned Officer. The plea pressed into service is that the impugned order is void-ab-initio and nullity and the same will have to be ignored as being non-existent and not binding on the respondent. Such a plea can

obviously be examined by the Civil Court. Besides the said plea, it is also asserted that the action against the respondent was out of ill-will and mala fide, at the behest of Opponent No. 3. Indeed, it is not in dispute that transfer is one of the incidence of service of the respondent, but the plaint proceeds on the assertion that the transfer as ordered in the present case, is without jurisdiction and non-existing in the eyes of law. Such a plea can obviously be considered by the Civil Court and it is open to the Civil Court to grant such declaration by virtue of the expansive provisions contained in Section 34 of the Specific Relief Act. Going by the nature of dispute and the reliefs claimed, which is reproduced above in Para 4 [see clause (a)], in essence, this is the declaration sought by the respondent. It prays that the impugned order transferring the respondent from Assistant District Manager to Statistical Officer, is illegal, vexatious and without jurisdiction and not binding on the respondent. If this claim succeeds, it necessarily follows that the action taken against the respondent/Disputant is not in terms of the contract and it is open to the Civil Court to remedy such mischief. Reliance has been rightly placed on the decision of the Division Bench of our High Court in the case of Maharashtra Cooperative Housing Finance Society Ltd. (supra). This Court has clearly opined on analysing the relevant decisions that a claim which is entertainable by a Civil Court u/s 9 of the CPC can also be entertained by a Registrar or other Authority u/s 91 of the Act. In my opinion, the relief as claimed is not a relief of reinstatement of the respondent/Disputant as such, but a declaration sought that the order of transfer is nullity and non-existing and not binding on the respondent/Disputant. If that declaration is to be granted, it necessarily follows that in law, the respondent will have to be treated to have continued in service and there is no question of issuing direction for reinstatement of the respondent/Disputant. On that assumption, the respondent/Disputant will also be entitled to claim for the emoluments, which he would have drawn as per the service contract. That is the relief which has been sought in terms of prayer clause (b). Whether the respondent/Disputant would be entitled for that relief in its entirety or partially, is a matter which can be decided only at the end of the trial. For the present, suffice it to observe that the relief which is claimed by the respondent/Disputant, is ascribable to Section 9 of the Code of Civil Procedure, and such a relief could be granted in dispute u/s 91 of the Act. Even in the subsequent decision of the Division Bench of our High Court in the case of Pralhadrao Vithalrao Pawar (supra), similar view has been taken, which in fact, is followed by the earlier decisions including the decision of our High Court in Maharashtra Co-operative Housing Finance Society Ltd. (supra). Indeed, an attempt was made on behalf of the petitioners to contend that the decision in Pralhadrao Vithalrao Pawar (supra) has gone beyond the ratio laid down by the Apex Court in The Gujarat State Co-operative Land Development Bank Ltd. (supra) by relying on the exposition in Para 13 of the decision. However, that aspect need not detain us and the same does not arise for our consideration. Suffice it to observe that the principle stated by the Apex Court in The Gujarat State Co-operative Land Development Bank Ltd. (supra) has been analysed and has been followed and rightly so, by the Division Bench of our High Court in

Maharashtra Co-operative Housing Finance Society Ltd. (supra). Even the subsequent decision of the Division Bench of our High Court in the case of Pralhad Vithalrao Pawar (supra), in my opinion, does not deviate from the view already taken by the Apex Court and the aforesaid decision of our High Court. On the other hand, it has followed all the decisions to conclude that challenge to the termination order for claim of damages or for declaration that termination order was null and void or did not exist in the eyes of law is a dispute touching the management of the Society and the remedy for such a relief is available to the party u/s 91 of the Act. This elucidation is made, following another decision of Division Bench of our High Court in Shetkari Sahkari Sakhar Karkhana v. N. B. Tulpule reported in 1979 M.L.J. 210, as can be discerned from paragraph 14 of this decision. That opinion is obviously binding on me, much less, the lower Courts. In my opinion, therefore, no fault can be found with the decision of the Appellate Court, which has taken the view that prima facie, the challenge by the respondent was in respect of matter, which was touching the management of the Society, as the claim of wages arising out of contract between the parties to the dispute, is covered by Section 91 of the Act on the assumption that the respondent/Disputant was still in service as Assistant Manager and if he succeeds in establishing that he was ready and willing to assume his duties with the Bank.

11. Viewed in this perspective, I see no reason to take a different view and therefore, uphold the conclusion reached by the Appellate Authority that the dispute as filed by the respondent was amenable to Section 91 of the Act. Hence, this petition fails, the same is dismissed. Rule discharged.