

(1989) 06 KAR CK 0019
In the Karnataka High Court

Mahaveer Co-operative Credit Bank Ltd. and anothers APPELLANT
Vs
Mohan Bhupal Dorle and others RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 117 (3) (a)

Citation : (1991) 71 CompCas 560

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : H. Thipperudrappa, for the Appellant; Jayakumar S. Patil, W.K. Joshi, B.V. Jigjinni, S.G. Raikar, for the Respondent

Judgement

M.P. Chandrantraj Urs. J.

1. The petitioner is the Mahaveer co0- Credit Bank Ltd., an institution registered under the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act"). The second petitioner is a director.

2. The facts leading to this petition may be stated and they are as follows: The co-operative bank raised a dispute claiming certain sums of money from respondents Nos. 2 to 10 which, according to the petitioner-bank, was due to it on account of the conspiracy of respondents Nos. 2 to 10 to defraud the bank by various acts of commission and omission. The first respondent was the arbitrator who unfortunately is not a party to this writ petition. However, in his order which is produced at annexure A, after giving opportunity to the petitioner-bank and its director who were the plaintiffs before him as well as respondents Nos. 1 to 10, the defendants before the arbitrator, an award was made foisting the liability on the respondent//defendants in the following manner :

"(a) Defendants Nos. 1 to 8 shall, jointly and severally, pay Rs. 5,49,103.65 towards the principal amount and Rs. 18,534.46 towards the interest to the plaintiffs together with future interest at the rate of 18% per annum from the date of the suit to the date of realisation of the principal amount.

(b) Defendants Nos. 1 to 7 and 9 shall, jointly and severally, pay Rs. 48,587.50 to the plaintiffs towards the principal amount and Rs. 10,340.05 towards interest with future interest at the rate 18% per annum from the date of the suit to the date of realisation on the principal amount.

(c) Defendants Nos. 1 to 7 and 10 shall, jointly and severally, pay Rs. 1,47,399.65 towards the principal amount and 6,180.90 towards interest to the plaintiffs together with the future interest at the rate of 18% per annum from the date of the suit to the date of realisation on the principal amount.

(d) Defendants Nos. 1 to 7 shall, jointly and severally, pay Rs. 3,51,923.71 towards principal amount and Rs. 9,035.15 towards interest to the plaintiffs together with future interest at the rate 18% per annum from the date of the suit to the date of realisation on the principal amount.

Defendants Nos. 1 to 10 shall bear their own costs."

3. Aggrieved by that award, some of the respondents preferred appeals before the Karnataka Appellate Tribunal, Bangalore, in Appeals Nos. 829 of 1979, 850 of 1979, 925 of 1979 and 691 of 1981. One of the appeals filed by defendant No. 10 had been dismissed for default. But, however, an application was pending for setting aside the order dismissing the appeal for default with a prayer for recalling. All the appeals were disposed of by a common order, the co-operative portion of the Tribunal's order which is at annexure B to the petition being as follows:

"It is not possible to say that any of the sugar factories had acquired the property of defendants Nos. 2 to 4 in the cheques and that the plaintiff-bank had right to realise its dues out of the cheques themselves. The plaintiff-bank issued the cheques in favour of the sugar factories in consideration of the money that was paid or payable by defendants Nos. 2 to 4 or the firm. A. L. Samant and Co. The sugar factories have parted with sugar and realised the cheques as a matter of right. For all those reasons, we must say that the plaintiff society could not have impleaded defendant No. 9 company. The president of the society was not able to explain what was meant by saying in the plaint that this defendant has been added to avoid technical difficulty at the time of execution. We guess that the plaintiff-bank was aware the section 117(3) of the Co-operative society Act was meant to enable a person who had acquired the property which was accountable or liable to answer the claim, to show cause even before the award was passed against the liability or straight away discharge the liability on the property. This way Appeal No. 925 of 1979 should also be allowed.

In the result, Appeals Nos. 850 of 1979 and 925 of 1979 filed by defendants Nos. 8 and 9, respectively, are allowed. Appeal No. 829 of 1979 is allowed in so far as defendant No. 3 is concerned. The judgment and award passed by the learned arbitrator are modified, and now the said awards stands confirmed in so far as defendants Nos. 1,2 and defendants Nos. 4 to 7 are concerned. The claim against defendants Nos. 3,8,9 and 10 stands dismissed."

4. Aggrieved by the dismissal of the claim against defendants Nos. 3,8,9 and 10, the petitioner-society and its director have preferred this writ petition, inter alia, contending that the Tribunal erred in coming to the conclusion that the sugar factories were not necessary parties in terms of section 117(3)(a) of the Act.

5. In so far as defendants No. 3 who is respondent No. 3 in this petition is concerned, the finding in his favour is not questioned in this petition. Therefore, what really falls for consideration in this petition is whether, on the undisputed facts of the case, the Tribunal came to the correct conclusion that the sugar factories which had sold sugar to some of the defendants against payments made by certified cheques or banker's cheques would be considered necessary parties who had acquired interest in the properties of the society.

6. Section 117(3)(a) of the Act reads as follows:

"117 Procedure for settlement of disputes and power of the Registrar or any other person to whom the dispute is referred for decision u/s 70.-(1) The Registrar or any other person to whom a dispute is referred for decision under 70, hearing a dispute u/s 71, shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence on oath, affirmation or affidavit, and to compel the production of documents by the same mean and, as far as possible in the same manner, as is provided in the case of a civil court by the Code of Civil Procedure, 1908.

(2) Except with the permission of the Registrar or any other person deciding a dispute, as the case may be, no party shall be represented at the hearing of a dispute by a legal practitioner.

(3)(a) If the Registrar or any other person to whom a dispute is referred is satisfied that a person, whether he be a member of the co-operative society or not, has acquired any interest in the property of person who is party to a dispute he may order that the person who has acquired the interest in the property may join as a party to the dispute; and any decision that may be passed on the reference by the Registrar or his nominee or any other person shall be binding on the party so joined, in the same manner as if he were an original party to the dispute."

7. Section 117 itself determines as to who may be the parties to a dispute. In that view, what sub-section (3) of section 117 does is no more than authorising the arbitrator to make a person a party to the dispute even though he may not be one of the persons enumerated in section 70 of the Act provided such person impleaded has acquired an interest in the property of the co-operative society relating to the dispute. Evidently, the intention of the Legislature is to protect the property of the co-operative society irrespective of the fact as to who had at any relevant point of time interest in such property. In other words, if a member, past or present, an office-bearer of the committee of management, past or present, an employee of the co-operative society, past or present, against whom

an inter se dispute may be raised by the co-operative society, has transferred the assets of the co-operative society to third persons thereby creating an interest in favour of those third persons, they shall be liable to make good the property depending upon the result of the dispute and, in that manner, they become necessary parties for proper adjudication and resolution of the dispute.

8. In the instant case, it is not disputed that the sugar factories in question, namely, respondents Nos. 8,9 and 10, had no more than trading transactions with some of the other respondents to whom they sold sugar against certified cheques or cash. Though there is a vague hint in the order of the arbitrator that respondents No. 9 had colluded with some of the other respondents in selling sugar to some of the respondents, there is no clear evidence of such collusion with intention to commit fraud on the society. In other words, the sugar factories which sold sugar to some of the respondents for cash or cheque drawn by the society did no more than sell goods belonging to them for consideration and that is not the same as acquiring an interest in the property of the society. Acquiring an interest in the property of the society means obtaining a lien on the property, whether it is movable or immovable or acquiring possession of the property in the case of movable or immovable properties thereby creating an interest in it which would affect the property rights of the society such as a lease, a mortgage, a sale which the member/officer, past or present, has effected fraudulently to obtain benefit from such property. In no other case can it be said that persons have acquired interest. Therefore, on a plain consideration of section 117(3)(a), this court cannot find fault with the reasoning adopted by the Tribunal. As such, the Tribunal was correct in setting aside the award as against the sugar factories which did no more than trade with some of the other respondents having received consideration. That cannot be equated with their acquiring interest in any of the properties belonging to the society. Therefore, this petition is misconceived.

9. It was pointed out by learned counsel for the petitioners that the Tribunal erred in extending the benefit of the judgment to respondent No. 10 whose appeal had not, on the date of the judgment, been restored. I do not think this court should make much of it. The Tribunal itself has mentioned that an application for restoration of the appeal which was dismissed for default was pending and, in view of the benefit being extended, that application may not be pressed by that appellant. Therefore, any error committed is only a technical flaw and does not call for interference. The scope of appellate power enjoyed by the appellate authority under the CPC under rule 33, Order 41, is wide enough to include such a relief being granted. Because, in order to do justice, the Tribunal could well have allowed the miscellaneous petition pending before it, it restored the appeal and, then made it also one of the appeals which came to be disposed of by the common order. Therefore, no injustice has been done to the petitioners by the procedure adopted by the Tribunal.

10. There is no substance in this writ petition and it is, therefore, rejected.