
(1995) 01 GUJ CK 0017
In the Gujarat High Court
Case No : A.F.O. No's. 324 and 325 of 1993

Mahavir Cotton Co.

APPELLANT

Vs

Saurashtra Co-operative Spinning Mills Ltd.

RESPONDENT

Date of Decision : 21-01-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Gujarat Co-operative Societies Act, 1961 — Section 96, 96(1)(c)

Citation : AIR 1995 Guj 160 : (1995) 2 GLR 1394

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Advocate : D.D. V, for the Appellant; B.R. Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.A. Mehta, J.—The original plaintiffs are aggrieved by an order of the trial court directing the plaints to be returned to the plaintiffs for presentation to the proper court on the ground that the Civil Court has no jurisdiction to entertain the plaint against the respondent Co-operative Spinning Mill. Admittedly the plaintiff are not members of the defendant Mill. It is a dispute between the non member and the society.

2. The trial court has relied on the provisions, of Section 96(1)(c) which provides that any dispute touching the constitution, management or business of a society shall be referred to the Registrar if the parties thereto are one amongst the following:

"(a) 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 transactions under the provisions of Section 46, and any person claiming through such a person;"

Section 46 provides as follows:

"46. Save as is provided in this Act, the transaction of a society with persons

other than members, shall be subject to such restrictions, if any, as may be prescribed."

No restrictions have been prescribed u/s 46. Therefore, the transactions of the society with non members are not subject to any restriction u/s 46. In absence of any restriction which would attract clause (c) of Section 96(1) it is not possible to hold that Section 96(1)(c) would be attracted.

3. Even if this clause (c) is attracted, that clause (c) has already been struck down by a Division Bench of this Court in the case of Rasiklal Patel and Others Vs. Kailasgauri Ramanlal Mehta and Others, wherein the High Court has allowed the petition by declaring that Clause (c), (d) and (e) and the words "any past or present agent and-"deceased agent" in Clause (a) of Section 96(1) as also Explanation II at the end of Section 96 are violative of Article 14 of the Constitution and are, therefore, null and void. Therefore also, the plaint could not have been presented and filed before the Registrar u/s 96.

4. The trial court was, therefore, obviously in error in directing the plaint to be returned for presentation to the Registrar u/s 96. In fact, the Register has no jurisdiction and only the Civil has jurisdiction. Unfortunately, the learned Civil Judge whose attention was drawn to this ruling did not discuss that ruling and he only referred to it and observed the ruling supported the defendant's contention. This was clearly wrong.

5. In the result the appeals succeed and are allowed and the impugned judgment and orders directing the return of the plaints are quashed and set aside. The respondent shall bear and pay the costs of these appeals as well as of trial court. The trial court is directed to proceed with the suits expeditiously as the suits have already been delayed by more than two years.

In Civil Applications, no orders.