
(1954) 02 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 2308 of 1953

Malvan Co-operative Urban Bank Ltd.

APPELLANT

Vs

Kamalakar Narayan Zantye and Others

RESPONDENT

Date of Decision : 10-02-1954

Acts Referred:

Bombay Co-operative Societies Act, 1925 — Section 34, 54, 54(1)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 79

Citation : AIR 1955 Bom 101 : (1954) 56 BOMLR 629 : (1954) ILR (Bom) 1187

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : A.A. Adarkar, for the Appellant; Y.B. Rege, R. Mathalone and D.G. Rege and V.S. Desai, for Govt. Pleader, for the Respondent

Judgement

Chagla, C.J.—This is an application against an order of the Bombay Co-operative Tribunal. The petitioner is the Malvan Co-operative Urban Bank Ltd., situated at Malvan, and it appears that the President of the bank discovered that a sum of Rs. 50,000 was shown in the books of account of the bank as having been advanced to opponent No. 1 on 6-5-1948. This amount was shown credited on 30-6-1948, although in fact that amount had not been repaid.

The case of the bank further was that this transaction was effected in collusion with the manager and the accountant of the bank. The bank made an application for payment of this amount against opponent No. 1 and the manager and the accountant, and the matter was referred to arbitration under the Bombay Co-operative Societies Act and the arbitrators held that opponent No. 1 and the manager and the accountant were liable to pay to the bank the sum of Rs. 50,000 with interest. Against this award opponent No. 1 went in revision to the Co-operative Tribunal and the Tribunal set aside that award, and it is against that decision that this application is preferred.

2. The view taken by the Tribunal was that the decision of the arbitrators was covered by an authority of this Court in -- Shyam Co-operative Housing Society

Ltd. Vs. Ramibai Bhagwansing Advani and Others, , and following that authority the Tribunal held that there was no jurisdiction to try this dispute between the bank and opponent No. 1. Now, in that decision we construed Section 54 of the Act and it is necessary to bear in mind What the facts were before the Bench which necessitated a construction of Section 54.

The managing trustee of a public charitable trust had advanced a certain amount to a cooperative society and he was claiming that amount and he had filed a suit to recover that amount, and the society applied for a stay contending that the matter must be referred to arbitration u/s 54, and we held that although there was a dispute relating to the business of the society, the dispute was not between the society and the member "qua" a member, and we pointed out that there was no obligation upon the member to advance that amount, the amount was not advanced as a member, and that the amount might as well have been advanced by a stranger. We further pointed out that it was merely a coincidence that the lender happened to be a member of the co-operative society.

This judgment is relied upon for the contention that in this case also the sum of Rs. 50,000 was advanced by the bank, assuming it was advanced, to opponent No. 1 not as a member, that in advancing this sum of Rs. 50,000 the bank was doing business in respect of "hundis", and it was open to the bank to do this business not only with members but with strangers. Mr. Adarkar has argued that this sum of Rs. 50,000 was advanced to opponent No. 1 as a loan and he has drawn our attention to Section 34, Co-operative Societies Act and he says that a loan can only be advanced to a member, and therefore even if our decision applied, this is a case where the claim is made against opponent No. 1 as a member of the society and in his capacity as a member. We are not prepared to accept that contention.

It is clear from the case that was made out by the bank before the arbitrators that the sum of Rs. 50,000 was advanced on what is known as the bills purchase account. The past course of business clearly establishes that opponent No. 1 used to discount bills with the petitioner bank, the petitioner bank used to charge commission, and the sum of Rs. 50,000 was also entered in the books of account of the bank as an item in that bills purchase account. This contention now put forward by Mr. Adarkar that this sum of Rs. 50,000 represented a loan by the society to its member is being put forward for the first time in this Court.

Apart from the fact that this was never the case of the bank, in our opinion it is a case which cannot possibly be put forward by the bank. No application for a loan was made by opponent No. 1, the application was never put before the board of directors, the application was never sanctioned by the directors as the by-laws require it to be sanctioned, and therefore by reason of the fraud of the manager and the accountant this sum of Rs. 50,000 was made to appear in the books of account as an item in the ordinary business which the bank was doing of discounting "hundis". The fact that it happened to be a member who discounted these "hundis" does not make any difference to the position that what the bank

was doing was ordinary business and not advancing a loan to its member in his capacity as a member under the Act and its bye-laws.

3. But there is another aspect of the matter which is much more important and which, as we shall presently point out, for obvious reasons was not considered by this Court in "Shyam Cooperative Housing Society"s case (A)". There is a second paragraph to Section 54 & before it was amended under ? circumstances to which we shall presently refer, that paragraph read as follows :

"A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member, whether such debts or demands be admitted or not."

Therefore, the Legislature by enacting this second paragraph was extending the scope of a dispute which had been defined in Section 54(1). To put it in a different language, the Legislature by the second paragraph was enlarging the definition of a "dispute" which it had already given in Section 54(1).

The clear meaning of this paragraph is that a dispute, whether it touches the constitution or business of the society or not, would be a dispute for the purpose of reference to arbitration u/s 54 if it consists of a claim by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member, whether such debts or demands be admitted or not. Therefore, for the purpose of this enlarged definition of a "dispute", all that is necessary is that there should be a debt or demand due to a society by a member and a claim to be made by a society in respect of that debt| or demand.

It is unnecessary for the purpose of this enlarged definition that the debt must be due from the member in his capacity as a member or "qua" a member. It is sufficient if there is a debt or a demand due by the member howsoever the debt or demand might arise, provided the debt or demand is due to the society and a claim is made by the society in respect of that debt or demand.

4. Mr. Rege says that when we decided "Shyam Co-operative Housing Society"s case (A)" we interpreted and construed Section 54 and in that interpretation we emphasised the fact that the dispute must be between a society and a member "qua" a member and that principle winch we laid down as underlying Section 54(1) must apply to all cases of disputes between a society and a member. Now, it is clear, even on a casual reading of our judgment, that we never considered the second paragraph of Section 54(1) and we did not consider the second paragraph of Section 54(1) for very good reasons. The case we had to consider was a case of a debt claimed by a member against the society. We were not considering the case of a debt claimed by the society against the member.

The case before us was a converse case, and that case was not covered by the second paragraph of Section 54(1). Therefore, no occasion arose for the consideration of the second paragraph of Section 54(1), and as the law stood then, it was clear that when a member made a claim against the society in

respect of a debt, the society could not avail itself of the benefit of the provisions of arbitration contained in Section 54, and it is significant to note that after this decision was given the Legislature amended the second paragraph of Section 54, and the amendment is to the following effect :

"....as well as claims by a member or past member or the heirs of a past member for any debts or demands due to him from the society."

This amendment was effected by Bombay Act 41 of 1953.

Therefore, whereas the second paragraph before the amendment dealt only with a case of a debt claimed by a society against a member, the amendment now further enlarges the definition of a "dispute" and includes in that dispute a claim made by a member for a debt or demand against the society. Now, if this amendment had already been effected when we gave our judgment in "Shyam Co-operative Housing Society's case (A)", undoubtedly we would have had to consider the second paragraph, because it covered the facts of the case before us. But inasmuch as that amendment had not been effected and inasmuch as the second paragraph did not deal with the case of a member claiming a debt from a society, we only considered the first paragraph of Section 54. Therefore, the amendment effected by Act 41 of 1953 has considerably simplified the matter.

The position after the amendment is this, that whether it is the society or a member who claims a debt or a demand from the other, the dispute can only be determined by the domestic forum set up by Section 54 and not by a civil Court. Therefore, the new amendment has displaced the decision given by us in "Shyam Co-operative Housing Society's case (A)".

5. Inasmuch as whether the sum of Rs. 50,000 was advanced by the bank on the bill purchase account or it was advanced to him as a loan as now suggested by Mr. Adarkar, it does constitute a debt due by him to the society, this dispute can only be settled by arbitration as laid down in Section 54, and therefore in our opinion the Tribunal, with respect, was in error when it took the view that the decision in "Shyam Co-operative Housing Society's case (A)" applied to the facts which they had to consider.

6. There is a further difficulty in this matter. The Tribunal has taken the view that the arbitrators were guilty of legal misconduct, the misconduct consisting in not giving a proper opportunity to opponent No. 1 to resist the claim of the petitioner bank, and the Tribunal has expressed the opinion that even if it had held that Section 54 of the Act covered the case against defendant No. 2, it would have sent the case back for being tried by another nominee of the Registrar and new arbitrators. Therefore, even though the arbitrators had jurisdiction to decide the dispute between the society and opponent No. 1, inasmuch as a proper opportunity has not been given to opponent No. 1, the matter will have to be heard by a new board of arbitrators. But all that we propose to do on this petition is to quash the order passed by the Tribunal.

7. No order as to costs of the petitioner and opponent No. 1. Petitioner to pay the costs of the State of Bombay. It is difficult to understand why the petitioner should have made the State of Bombay a party to this petition. Mr. Adarkar says he wanted the moral support of the State of Bombay as he wanted its support for the interpretation he was putting upon Section 54. It is not the law that wherever the interpretation of a section is sought the State is a necessary party to the petition. Mr. Adarkar has not challenged the validity of Section 54, and therefore in our opinion the State was not a necessary party. But inasmuch as Mr. Adarkar has made the State a party, he must pay the costs of the State.

8. Order accordingly.