

(2009) 05 P&H CK 0089
In the Punjab And Haryana At Chandigarh

N.K. Gram Udyog Mandal and Others	Vs	APPELLANT
Meghi Devi and Others		RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 124

Citation : (2009) 155 PLR 648 : (2009) 4 RCR(Civil) 794

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This judgment shall dispose of four appeals being R.S.A. Nos. 2526, 3557, 3558 and 3617 of 2008 as the same arise from the identical facts and common questions are involved therein. For brevity, the facts are being taken from R.S.A. No. 2526 of 2008.

2. This regular second appeal filed by some of the defendants, i.e. defendants No. 1, 3 and 4 and 8 to 10 is directed against the judgment and decree dated 6.5.2008 passed by the Additional District Judge (I), Bhiwani, whereby that of the Civil Judge (Senior Division), Bhiwani dated 10.5.2005 decreeing the suit of the plaintiff for recovery of Rs. 1,07,800/- with interest at the rate of 12% per annum, was modified to the extent that the plaintiff was entitled to recover principal amount of Rs. 70,000/- with interest pendente lite at the rate of 6% per annum and also future interest at the same rate only on the principal amount and the interest pendente lite would not be included in the principal amount while calculating future interest payable by the defendant.

3. Put succinctly, the facts of the case are that the plaintiff filed a suit for recovery of Rs. 1,07,800/- (Rs.70,000/- as principal amount plus Rs. 37,800/- as interest) against the defendants on the averments that defendant No. 1 was a registered society and the remaining defendants were its members and were, therefore, jointly and severally liable for all debts of the society. It was pleaded

that the defendants borrowed a sum of Rs. 70,000/- as loan from the plaintiff which was paid to them by way of cheque No. 290691 dated 27.9.1996 drawn on Bhiwani Co-operative Bank, Toshani, District Bhiwani and agreed to repay the same by 27.12.1996 along with interest at the rate of 18% per annum. It was further pleaded that the plaintiff asked the defendants to return the said loan amount but they did not repay the same. She also sent a registered notice dated 13.11.1988 demanding the loan amount through her counsel to the defendants but no response was received. As the defendants failed to repay the loan amount to the plaintiff, she filed a suit for recovery, as mentioned above.

4. Upon notice, the suit was contested by defendants No. 1, 3 to 5, and 6 to 10. Respondents No. 2, 6 and 7 were proceeded against ex parte whereas defendant No. 11 was given up.

5. Defendants No. 1, 3 to 5 and 8 to 10 filed a joint written statement raising various preliminary objections. It was pleaded that on 4.6.1996, Ram Tirath, husband of the plaintiff, took a loan of Rs. 79,500/- from them which was paid to him through cheque No. 004961 drawn on Oriental Bank of Commerce, Toshani, from SB A/c No. 10198 and an amount of Rs. 70,000/- as a part payment of the said loan amount was returned by him through cheque dated 28.9.1996 by playing fraud and mis-representation on the answering defendants as that cheque was signed by the plaintiff instead of her husband, the loanee. He also promised to return the balance amount of Rs. 9500/-. According to the answering defendants, they did not take any loan from the plaintiff, rather the plaintiff had repaid the loan amount to them taken by her husband through the cheque in question. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made.

6. From the pleadings of the parties, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to recover a sum of Rs. 1,07,800/- from defendants, as alleged? OPP

2. If issue No. 1 is proved, whether the plaintiff is entitled future interest at what rate? OPP

3. Whether the suit of the plaintiff is false, frivolous and vexatious to the knowledge of defendants? OPD

4. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD

5. Whether the suit of the plaintiff is not maintainable in the present form? OPD

6. Whether the plaintiff has no cause of action to file the present suit? OPD

7. Whether the plaintiff has no locus standi to file the present suit? OPD

8. Relief.

7. Vide order dated 9.12.2004, the following additional issues were framed by

the trial Court on an application filed by defendant No. 3:

8. Whether the present suit cannot be instituted without notice under the Co-operative Societies Act? OPD

9. Whether the matter under Co-operative Societies Act is liable to be referred to the Arbitrator? OPD

10. Whether the Civil Court has got no jurisdiction to entertain the present suit? OPD

11. Relief.

8. On appreciation of the oral as well as the documentary evidence led by the parties, the trial Court decided issues No. 1 and 2 together, being inter connected, in favour of the plaintiff holding that the plaintiff advanced a loan of Rs. 70,000/- to the defendants vide cheque No. 290691 dated 27.9.1996, therefore, she was entitled to recover the same along with interest accrued thereon, totaling Rs. 1,07,800/- plus interest at the rate of 12% per annum from the date of filing of the suit till the passing of the decree and 6% per annum interest of the decretal amount from the date of the decree till its realization. Issue No. 3 and 4 and 5 to 7 were decided against the defendants. The trial Court while deciding additional issue No. 8 against the defendants held that the service of notice upon the Registrar u/s 124 of the Haryana co-operative Societies Act, 1984 (for short "the Act") was not required. Additional issue No. 9 was decided as not pressed while issue No. 10 was decided against the defendants holding that the civil court had the jurisdiction to entertain any try the suit. According, the trial Court vide judgment and decree dated 10.5.2005 decreed the suit of the plaintiff for a recovery of Rs. 1,07,800/- along with interest at the rate of 12% per annum from the date of filing of the suit till the date of the decree. The plaintiff was further held entitled to interest at the rate of 6% per annum on the decretal amount from the date of the decree till its actual realization.

9. Feeling aggrieved by the judgment and decree of the trial court dated 10.5.2005, the appeal was filed by some of the defendants and the lower appellate court modified the judgment and decree of the trial Court to the extent that the plaintiff was entitled to the recovery of the principal amount of Rs. 70,000/- along with interest pendente lite at the rate of 6% per annum and also future interest at the rate of 6% per annum only on the principal amount. The lower appellate Court also observed that the interest pendente lite would not be included in the principal amount of Rs. 70,000/- while calculating the future interest. Hence, the present appeal.

10. I have heard the learned Counsel for the parties and have perused the record with their assistance.

11. Learned Counsel for the appellant by placing reliance upon Section 124 of the Act submitted that the suit could not have been filed without issuance of prior

notice under the aforesaid provision. The learned Counsel placed reliance upon a Full Bench Judgment of this Court in *Mam Raj v. State of Haryana* and Ors. 1982 P.L.J. 84, Single Bench in *Satnam Singh v. The Tarn Taran Primary Land Mortgage Bank Ltd., Tarn Taran* and Anr. 1984 P.L.J. 104 and of Bombay High Court in *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, in support of his submissions.

12. Mr. Goel, counsel appearing for respondent No. 1 vehemently controverted the aforesaid submission and referred to a single Bench judgment of this Court in *M/s Amin Chand Shiv Sharam Dass v. The Nalagarh Co-operative Transport Society Ltd.* 1981 P.L.J. 471 to contend that this was not a case which can be termed as touching the business of a society and, therefore, there was no requirement of issuing any prior notice as canvassed by the learned Counsel for the appellant.

13. I have given my thoughtful consideration to the respective arguments of the learned Counsel for the parties and do not find any merit in this appeal.

Section 124 of the Act reads thus:

124. Notice necessary in suits.- No suit shall be instituted against a co-operative Society or any of its officers in respect of any act touching the business of society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left.

14. The aforesaid provision provides that where the suit is relating to any act touching the business of the society, it shall not be filed against a co-operative society or any of its officers until a period of two months has expired after a notice in writing has been delivered to the Registrar or left at his office specifying therein the cause of action, the name, description and place of residence of the plaintiff and also stating therein the relief which is claimed by him. It also provides that a statement that such notice has been so delivered or left, shall be stated in the plaint. The question that arises for consideration in the present appeal is - whether in the facts and circumstances, the service of prior notice in case of suit for recovery for not returning the amount of loan taken by the society is sine qua non for filing a civil suit against the society. The answer to the said question is in the negative. The defendant-society is engaged in the business of stone-crusher and is not connected with leasing or financing. Taking of loan by the society and not returning of the same cannot be described as "acts touching the business of the society" though it falls under the terminology "in the course of business of the society". The issuance of prior notice in terms of Section 124 of the Act is, thus, not a condition precedent for filing a suit for recovery against a society in such a situation. Section 79 of the Punjab Co-operative Societies Act, 1961 (in short "1961 Act") which is *pari materia* to the

aforesaid provision came up for consideration before the Single Bench of this Court in M/s Amin Chand Saran Boss's case (supra) wherein the society which was engaged in the business of motor transport carrying passengers had failed to return an amount of Rs. 980/- to the plaintiff therein, it was observed by this Court as under:

6. A Division Bench of this Court in The Jullundur Central Co-operative Bank Ltd. v. Gian Singh, ILR (1973) P&H 453, while dealing with a case of a Co-operative Society v. Its employees came to hold that the object of sending a notice u/s 79 to the Registrar was only for his purpose to mediate with the Co-operative Society for settling the claim of the intended plaintiff and such power he could only invoke if he had jurisdiction in the matter and could exercise his power in that behalf to compel the society to decide the matter in a certain way. It was also held that if he could not exercise that power, then there was no point of giving him a notice before filing a suit against the Co-operative Society. And it is in this light it was held that the Registrar was not concerned with other activities of the Co-operative Society and its disputes with strangers or employees arising out of their service conditions. That incidentally was a case of employees and not of strangers. In the instant facts, as it appears to me, the Registrar could not exercise any powers over the Co-operative Society and as such service of notice on him was utterly futile and meaningless. In addition thereto, neither the act of purchasing the tyres and tubes nor of sending a cheque which got dishonoured were "acts touching the business of a society". These could certainly be called acts "in the course of the business of the society" but not acts touching it. These acts could not be called even ancillary acts to the business but merely incidental over which the Registrar had no power to attract a notice of the kind envisaged u/s 79 of the Act. From both the angles, the defence of defendant-respondent, subject matter of issue No. 4 seems to me legally unsound and the judgment and order of the lower appellate Court tant amounts to refusal to exercise jurisdiction.

15. Reference is now made to the judgments relied upon by the learned Counsel for the appellants. The primary issue before the Full Bench in Mam Raj's case (supra) was whether a dispute between a co-operative society on the one hand, and the employee, agent, or member, of another co-operative society (claiming through a member) on the other hand, falls within the ambit of arbitration proceedings u/s 55(1)(b) of the 1961 Act. The controversy arose between the employees of the society and the society itself. The court held that it cannot be said that when a company employs or dismisses a servant, it does not do something which relates to its business and such a dispute is within the four corners of Section 55(1) of the 1961 Act. Similarly, where a dispute arose between a company incorporated in Bombay registered under the Bombay Co-operative Society Act, 1925 for doing the business of banking and its employee, the Court while interpreting Section 54 of the said Act, and also the object and purpose of such enactment while assigning liberal meaning in the facts and circumstances therein, in G.I.P. Railway Employees Co-operative Bank's case

(supra) held that such dispute shall be termed as touching the business of the society and fall within the ambit of arbitration proceedings under the said Act. Again Satnam Singh's case (supra) was a case where the society was dealing in business of banking by advancing loan and the refund of loan amount to the society was held to be lis which was in respect of an act touching the constitution, management or business of a cooperative society. These judgments have no application to the facts and circumstances of the instant case and are, thus, of no assistance to the appellant.

16. In view of the aforesaid there is no merit in these appeals and the same are hereby dismissed. There shall, however, be no order as to costs.