

(1997) 11 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1365 of 1997

Phoneix Impex

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 3
Banking Regulation Act, 1949 — Section 2, 3, 5
COMPANIES ACT, 1956 — Section 3, 4A, 591
Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 2, 3

Citation : (1997) 2 WLN 615

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Judgement

N.L. Tibrewal, J.—The respondent-Bank, namely, the Jodhpur Central Co-operative Bank Limited, Jodhpur (for short "the Co-operative Bank") is a co-operative society registered under the Rajasthan Co-operative Societies Act, 1965 (Act No. 13 of 1965) (hereinafter to be referred as "the Act of 1965;") and its area of operation is confined to Jodhpur District only. The petitioner, as a member of the Co-operative Bank, borrowed money as a loan from it and as per auction notice (Annexure 1), Rs. 37,98,677/- were outstanding against him. The Co-operative Bank initiated recovery proceedings under the Act of 1965 which were challenged by the petitioner by filing a revision u/s 128 of the said Act. The petitioner also filed the present petition under Articles 226 and 227 of the Constitution of India, challenging recovery proceedings under the Act of 1965. The challenge is on the ground that after establishment of Debts Recovery Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993") the recovery proceedings under the Act of 1965 is without jurisdiction and authority of law. In other words, contention of the petitioner is that for the recovery of debt amount the Co-operative Bank should make an application to the Debt Recovery Tribunal established under the

Act of 1993 and no court or other authority have any jurisdiction, power or authority (except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India.) to entertain and decide the matter.

2. The crucial question which calls for decision in this petition is whether the provisions of the Act of 1993 are applicable to a co-operative bank established and registered under the Act of 1965 for recovering debts due to its members ?

3. In order to resolve the above controversy it is necessary to notice the scheme and relevant provisions of the Act of 1965 and 1993. The Rajasthan Co-operative Societies Act, 1965 came to be enacted to consolidate and amend the law relating to co-operative societies in the State of Rajasthan as Pre-amble of the Act manifests. The various provisions contained in the Act also show that the Legislature was keen to provide that ordinarily the co-operative societies should not be dragged in Civil courts and there should be comparatively a clean and speedy remedy for settlement of disputes. The Act and the Rules framed thereunder, relating to settlement of disputes provide a complete Code touching the constitution, management or business of a co-operative society arising amongst members, between a member and the society, between the society or its committee and employees and between the society and the surety of a member. Section 75 provides that all disputes touching constitution, management or the business of a co-operative society shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Chapter XII provides the modes of recovery of any debt or outstanding demand due to the society by any member, present or past or deceased, by sale of the property or any interest therein. The Registrar or any person empowered by him in this behalf, while exercising any power under the Act for the recovery of any amount by attachment of sale etc., is a Civil Court for the purpose of Article 136 of the First Schedule to the Limitation Act. Chapter XIII deals with provisions of appeal, revision and review. The Rajasthan State Co-operative Tribunal is constituted u/s 123. A person to be qualified for appointment as the Presiding Officer of the Tribunal should be either a retired Judge of High Court, a District Judge present or retired, or a Registrar of Co-operative Society having served as such for not less than three years in any State of India. Section 123 deals with constitution and appeals to the Tribunal. Section 124 provides appeals to other authority against certain orders mentioned in the Section. Sections 125, 126, 128, and 136 contain provision for revision, review and other power of superintendence. Then, Section 137 contains a statutory bar of jurisdiction of courts. Thus, the Act of 1965 and the Rules of 1966 framed under the Act, besides other matters, contain a complete Code and mechanism for settlement of disputes between the society and a member and a complete machinery is provided for the recovery of any amount of debts due to a co-operative society by its members.

4. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 came

to be enacted for speedy adjudication and recovery of debts due to commercial banks and financial institutions. The Statement of Objects and Reasons is self explanatory which is as under:

STATEMENT OF OBJECTS AND REASONS:

Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narsimham has considered the setting up of the Special tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981 a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs. 5622 crores in dues of Public Sector Banks and about Rs. 391 Crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

5. Section 3 of the Act provides establishment of Debts Recovery Tribunal and Section 17 states inter alia that the Tribunal shall exercise, on and from the appointed day, the jurisdiction, power and authority to entertain and decide applications from the bank and financial institutions for recovery of debts due to such banks and financial institutions. Then, Section 18 creates a statutory bar to the jurisdiction of courts and other authority in relation to matters specified in Section 17. Chapter IV deals with the procedure of Tribunals and appeal to the Appellate Tribunal. Then, Chapter v. provides the modes and procedure of recovery of debts. Sections 2(d), 2(e), 2(f) and 2(h) define "bank", banking company", "corresponding new bank", and "financial institution" as under:

2. (d) "bank" means:

- (i) a banking company,
- (ii) a corresponding new bank;

(iii) State Bank of India;

(iv) a subsidiary bank; or

(v) a Regional Rural Bank;

2 (e) "banking company" shall have the meaning assigned to it in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949).

2(f) "corresponding new bank" shall have the meaning assigned to it in Clause (da) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949).

2 (h)--"financial institution" means:

(i) a public financial institution within the meaning of Section 4A of the Companies Act, 1956 (1 to 1956);

(ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India by notification, specify;

Then, Section 2(g) defines "debt"

which is thus:

2 (g) "debt" means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institutions or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any civil court or otherwise and subsisting on and legally recoverable on, the date of the application:

6. Section 5(c) of the Banking Regulation Act, 1949 (for short "the Act of 1949") defines "banking company" as any company, which transacts the business of banking in India.

7. Section 5(d) defines "bank" which means any bank as defined in Section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of Section 591 of that Act. Clause (da), then, defines "corresponding new bank" means a corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

8. Section 3 defines "company" which means a company formed and registered under the Companies Act.

9. The above provisions make it undoubtedly clear that a Cooperative Bank does not fall within the definition of "bank" or a financial institution under the Act of 1993 so as to attract the provisions of the Act of 1993 for recovery of debts due to it by its member.

10. Faced with this situation, learned Counsel appearing for the petitioner, vehemently contended that after enactment of Banking Law (Application to Co-operative Societies) Act, 1965 (for short "the Amending Act"), inserting amendment in the Banking Companies (now Regulations) Act, 1949, the Co-operative Banks are also governed by the Act and as such, a Co-operative Bank is a "banking company" within the meaning of Section 2(d) of the Act of 1993. Hence, a Co-operative Bank, for recovery of its debts, is governed by the Act of 1993 and no other procedure under any other law shall be applicable and no court or other authority is entitled to exercise any jurisdiction, power or authority for the same.

11. After giving my serious consideration to the above contention I find that it has no merit though, at first instance the argument appears to be attractive and appealing. The Amending Act of 1965 is for the purposes of regulating the banking business of certain co-operative societies and for matters connected there-with. For this very purpose certain amendments have been made in the Reserve Bank of India Act, 1934 by this very Amending Act. Section 3 of the principal Act of 1949 has been substituted and it expressly provides that nothing in this Act shall apply to (a) a primary agriculture credit society., (b) a Co-operative Land Mortgaged Bank and (c) any other co-operative society except in the manner and to the extent specified in part v. In part V, Section 56 has been inserted providing application of the Act to Co-operative Banks to the extent specified in it. Section 56 starts with that "the provisions of this Act in force for the time being, shall apply or, or in relations to, co-operative societies as they apply to or in relation to banking companies subject to the modifications, narrated there in. "The object of making amendment in some sections of the principal Act with reference to a Co-operative Bank is intended to regulate their banking businesses and make them amenable to the provisions of the Act of 1949 with restrictions and limitations as provided by the Amending Act of 1965 as incorporated in part V of the Principal Act.

12. The contention of the learned Counsel for the petitioner cannot be accepted that a Co-operative Bank falls in the fold of Act of 1993 as a "banking company" referred to under the Act of 1949. As per the Amending Act 1965, a Co-operative Bank is construed as a bank in order to bring Co-operative Banks under the principal Act of 1949 for the purpose of regulating banking business to the extent specified in part V Still, a Co-operative Bank cannot be deemed" a banking company" or a company registered and incorporated under the Companies Act, 1956 for the purpose of Section 2(d) of the Act of 1993. The expression banking company in Section 2(d) of the Act of 1993 will have the same meaning as defined in Clauses (c) and (d) of Section 5 of the Act of 1949. In other words, it should be a company registered and incorporated under the Companies Act, 1956 and transact the business of banking in India. The co-operative society being registered and incorporated under the Act of 1965 is not a company registered under the Companies Act, 1956.

13. The matter may be judged from another angle also. The Rajasthan Co-operative Societies Act, 1965 is a special Act which consolidates law regulating to the co-operative societies in the State of Rajasthan. It also provide speedy remedy for settlement of disputes and recovery of debts due to the society by any member. The Act of 1993 intends to bring in its fold the commercial banks and financial institutions as existing procedure for recovery of their dues was time consuming and an urgent need was felt to work out a suitable mechanism through which the dues could be realised without delay. The Statement and Objects and Reasons and other provisions clearly indicate that a co-operative society/co-operative bank is not intended to be brought under the provisions of the Act of 1993.

14. The result of the above discussion is that the contention raised by the learned Counsel for the petitioner challenging jurisdiction, for recovery of debts due to a Co-operative Bank, under the provisions of the Act of 1965 is not sustainable and it is rejected conveniently.

15. The petitioner firm is a member of respondent Co-operative Bank and it appears that more than 37 Lacs of rupees are outstanding against it which have not been paid since long. Instead of making payment, the petitioner firm is delaying recovery proceedings by one way or the other. Hence I think it just and proper to saddle it with costs of this litigation, which is quantified Rs. 5,000/- to be paid to the respondent Co-operative Bank within three months.