
(1998) 02 RAJ CK 0033
In the Rajasthan High Court
Case No : Spl. Appeal No. 1234 of 1997

Phoneix Impex

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Banking Regulation Act, 1949 — Section 5
Evidence Act, 1872 — Section 115
Rajasthan Co-operative Societies Act, 1965 — Section 1
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 1, 18

Citation : AIR 1998 Raj 100 : (1998) 1 RLW 417 : (1998) 1 WLC 725 : (1998) 1 WLN 131

Hon'ble Judges : S.C. Mital, J;G.L. Gupta, J

Bench : Division Bench

Advocate : Akshey Parakh, for the Appellant; R.N. Upadhya and Sangeet Lodha, for the Respondent

Final Decision : Dismissed

Judgement

Gupta, J.—A ticklish but interesting question to be decided in this appeal is whether the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act No. 51 of 1993) is applicable to the recovery of the debts by the Cooperative Bank, due to its members. FACTS FIRST :

Appellant M/s. Phoneix Impex had Account No. 1 in the Jodhpur Central Co-operative Bank (respondent No. 2). A sum of Rs. 27,35,649 was outstanding against the appellant on 14-7-1995. A demand was raised by the Bank but the appellant did not deposit the amount. Therefore, the proceedings of recovery were taken under the provisions of the Rajasthan Co-operative Societies Act (to be hereinafter referred to as "the Rajasthan Act of 1965"). The respondent No. 2 calculated Rs. 37,71,323 as the sum outstanding against the appellant, and issued notification for sale of the property belonging to the appellant. It is on the issuance of the notification that the appellant filed writ petition alleging that the amount shown in the notification was not outstanding against it and also that the

Bank could not recover the amount in accordance with the procedure laid down in the Rajasthan Cooperative Societies Act, 1965 as on 24th June, 1993 Central Act No. 51 of 1993 came into force and Tribunal was also established in Rajasthan u/s 3 of the Act vide Notification GSR (G); dated 30th August, 1994 which is the forum for the recovery of the debts outstanding to Banks or financial institutions". In the writ petition, it was averred that because of the bar of Section 18 of the Act No. 51 of 1993, the recovery proceedings by the respondent-Bank could not be continued and by virtue of Section 31 of the said Act, the recovery proceedings should be transferred to the Tribunal established at Jaipur.

2. In the return, the respondents No. 2 and 3 averred that the co-operative bank does not come in the definition of the "banking company" within the meaning of the Banking Regulation Act, 1949 (to be hereinafter referred to as the Act No. 10 of 1949) and the Tribunal constituted under the Act No. 51 of 1993 does not have jurisdiction to entertain the debt disputes of the co-operative banks. It was also averred that the disputes with regard to the debt of a co-operative bank can be raised only u/s 75 of the Rajasthan Act of 1965 and the writ petition is liable to be dismissed. It was further averred that alternative remedy of approaching the authorities under the Rajasthan Act of 1965 is available to the petitioner who is a member of the respondent-Bank and as a matter of fact, it has already availed of the remedy available under that Act by filing a revision petition and hence the writ petition is not maintainable.

3. In the rejoinder, it was averred that the petitioner has withdrawn the revision filed under the provisions of the Rajasthan Act of 1965 and that by virtue of Section 56 of the Banking Regulation Act, 1949, the Co-operative Bank is included in the definition of "Banking Company," and therefore, the Tribunal established under the Act of 1993 only can adjudicate the dispute between the parties.

4. The learned single Judge vide order dated 10th November, 1997 dismissed the writ petition holding that the Co-operative Bank does not court in the definition of "Banking Company" and the petitioner-firm has invoked the jurisdiction of this Court to delay the recovery proceedings.

CONTENTIONS :

5. The contention of Mr. Parakh was that by the Banking Laws (Application to Co-operative Societies) Act, 1965 (Act No. 23 of 1965) the Banking Regulation Act has been amended and Chapter V was added and as Section 56 of that Act says that every co-operative bank shall be construed as a "banking company," the original definition of "banking company" in the Banking Regulation Act of 1949 stands amended and the co-operative banks shall also be read in that definition. According to him, now in Section 2(b)(i) of Act No. 51 of 1993 "banking company" shall also include a co-operative bank, in this connection, he also pointed out that the Act No. 51 of 1993 and the Act No. 10 of 1949 are the

Central Acts and they obviously have the overriding effect over the State enactment of the Co-operative Societies Act, 1965. He canvassed that "banking" is exclusively the field of the Union list and when there is demarcation of jurisdiction, the State enactment of 1965 cannot be given effect. He referred to the cases of *Sant Sadhu Singh v. State of Punjab*, AIR 1970 Punj & Har 528 and *Nagpur District Central Co-operative Bank Ltd. and Another Vs. Divisional Joint Registrar, Co-operative Societies, Nagpur and Another*, Mr. Parakh further contended that the respondents have pleaded before the MRTP Commission in a case that the respondent No. 2 is "Banking Company" and they are, therefore, estopped from pleading now that respondent No. 2 is not the banking company.

6. As against this, Mr. Upadhyaya and Mr. Sangeet Lodha contended that the Co-operative Bank has been construed as banking company for the limited purpose and the provisions of Section 56 do not change the definition of the "Banking Company" in Section 5(c) of Act No. 10 of 1949. They referred to the statement of objects and reasons of the Act and urged that the purpose of enactment was not to include the debts due to the co-operative banks. RELEVANT PROVISIONS :

7. Before we consider the arguments advanced on both the sides, it is profitable to read the various provisions of the Acts.

Section 2(d) of the Act No. 51 of 1993 reads as follows :

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.

Section 2(e) of the Act No. 51 of 1993 is as under; .

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

Section 5(b), (c) and (d) of the Banking" Regulation Act, 1949 read as follows :--

5. Interpretation.-- In this Act, unless there is anything repugnant in the subject or context,--

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdraw able by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in India;

(d) "company" means any company as defined in Section 3 of the Companies Act, 1956; and includes a foreign company within the meaning of Section 591 of that Act.

Section 3(i) of the Companies Act, 1956 defines "Company" as follows :

3(i) "Company means a company formed and registered under this Act or an existing company as defined in Clause (ii)."

8. It is obvious that a company becomes banking company if it is formed and registered under the Companies Act, 1956 and also it transacts the business of banking in India. Admittedly, a Co-operative Bank is not formed and registered under the Companies Act, 1956. It is formed and registered under the Rajasthan Cooperative Societies Act of 1965. Thus, apparently a co-operative bank does not fall in the category of "banking company" defined in Clause (e) of Section 2 of Act No. 51 of 1993.

9. However, the controversy has arisen because of Part V of the Banking Regulation Act of 1949 inserted by the Banking Laws (Application to Co-operative Societies) Act (Act No. 23 of 1965) which came into force on 1-3-1966. The heading of Part V is to this effect "APPLICATION OF THE ACT TO CO-OPERATIVE BANKS". Section 56 has obviously been enacted for the purpose of regulating the banking business of Co-operative Societies. We reproduce relevant part of Section 56 hereunder.

"56. Act to apply to co-operative societies subject to modifications.-- The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to the following modifications, namely :

(a) Throughout this Act, unless the context otherwise, requires,--

(i) reference to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank," By the aforesaid amending Act No. 23 of 1965, Sections 5A, 7, 11, 18, 19, 20, 24A, 29 and 55 of the Banking Regulation Act of 1949 have been substituted obviously for "the limited purpose of the application of the provisions to the cooperative institutions.

FINDING

10. The crux of the matter is whether Section 56(a)(i) changes the definition of "Banking Company" given in Section 5(c) of the Original Act (No. 10 of 1949). It is, of course, there that the opening words of Clause (a) are "throughout this Act" but by these words it cannot be inferred that even the definition given in Section 5(c) of the Act No. 10 of 1949 has been amended. In our opinion, in the definition of "banking company" given in Clause (c) of Section 5, the words "co-operative bank" cannot be read. What seems to have been done by the Legislature is that it kept the definition of "banking company" given in Section 5(c) of the main Act No. 10 of 1949 intact but wherever the words "banking

company, company or such company" have appeared in the Act of 1949 it will also include a Co-operative Bank. If the intention of the legislature had been to change the definition of the banking company given in Clause (c) of Section 5, it could very well change the definition itself. The fact that the definition has not been changed the legislative intent is clear that it wanted to keep the definition of "banking company" given in Clause (c) of Section 5 intact.

11. It is relevant to refer to Section 3 of the Banking Regulation Act of 1949 which is to the following effect :

3. Act to apply to co-operative societies in certain cases-- Nothing in this Act shall apply to--

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V. The opening words of this section clearly indicate that the provisions of the Banking Regulation Act of 1949 do not apply to any Co-operative Bank except in the manner and to the extent as mentioned in Part V which was added vide Act No. 23 of the Act of 1965. The purpose of adding Part V by the Amendment Act No. 23 of 1965 was only to bring co-operative banks under the Banking Regulation Act of 1949 for the purpose of "regulating banking business to the extent specified in Part V. A reading of the preamble of the Banking Laws Act, 1965 (No. 23 of 1965) which is to the following effect makes the position crystal clear:--

"An Act further to amend the Reserve Bank of India Act, 1934 and the Banking Companies Act, 1949 for the purpose of regulating the banking business of certain co-operative societies and for matters connected therewith."

12. It is, thus, obvious that for the purpose of regulating the banking business of all the institutions, including the co-operative banks the Banking Companies Act, 1949 was amended and it was renamed vide Act No. 23 of 1965 as Banking Regulation Act, 1949. The purpose of enactment by Act No. 23 of 1965 was not to regulate each and every function of a co-operative bank. It is only in order to regulate the banking business i.e. what shall be the control of the Reserve Bank to the advances to be made to the co-operative banks or what shall be the reserve ratio, what shall be the restriction on the loans and advances etc., that the amendment in the Act No. 10 of 1949 was made. In our opinion, this amendment does not change the definition of "banking company" given in Clause (c) of Section 5 of the Principal Act.

13. Even if we assume for arguments sake that Clause(a)(i) of Section 56 amends the definition of "banking company" then also it will have to be found that this amendment is only for the limited purpose that the banking business run by the co-operative societies shall also be considered as banking. In our opinion, the learned single Judge has rightly held that a "banking company"

under the Banking Regulation Act, 1949 is one which is formed and registered under the Companies Act. A cooperative bank, may be called a banking company by fiction as it is engaged in banking business, yet it does not become a "Company" formed and registered under the Companies Act. As such, in the definition of "Bank" in Clause (d) of Section 2 of Act No. 51 of 1993, a cooperative bank does not fall in the category of a "banking company." It is significant to point out that the legislature has given exhaustive definition of the "Bank" in Clause (d) which includes 5 categories of banks. A reference may be made of Regional Rural Bank. The legislature was, thus, conscious of the fact that besides the nationalised banks; State Bank of India and its subsidiaries and companies registered under the Companies Act doing banking business, the rural banks were also doing banking business. It choicely did not include co-operative banks which shows that the legislature did not want that the debt disputes between the co-operative bank and its members should be adjudicated by the Tribunal established under the Act though the amount of debt is more than 10 lacs of rupees.

14. We do not find any merit in this contention that the Act No. 51 of 1993 shall prevail over the provisions of the Rajasthan Act of 1965. The two enactments are under the powers vested in the two different legislatures. There is no overlapping of the jurisdiction. The subject of co-operative societies is not included in the Union list rather it comes in entry 32 of List II of Schedule VII appended to the Constitution, and therefore, this argument cannot be allowed to prevail that the provisions of Rajasthan Act of 1965 dealing with recovery of the loans from its members by the cooperative societies are violative of the provisions of the Union list. The cases relied on by learned counsel for appellant hardly carry point stressed by him. Rather in the case of *Sadhu Singh* (AIR 1970 Punj & Har 528) (supra) it has been held that the banking business of co-operative societies does not fall in Entry No. 43 of List I and State Legislature is competent to regulate the functions of the co-operative societies engaged in the business of banking".

15. We do not find much substance in this contention also that the respondent No. 2 had made some averments before the MRTP Commission. Though a copy of the averments made has not been placed on record of this case, yet even on assuming that the respondent No. 2 had stated before the MRTP Commission that it was a "banking company," it cannot be accepted that the respondent No. 2 is estopped from saying now that it is not a "banking company" within the meaning of Section 5(c) of the Banking Regulation Act, 1949. There cannot be estoppel against a statute. If a party makes admissions which are contrary to the provisions of an Act, it cannot be said that that party is estopped from taking different stand in consonance with the provisions of law, before a Court. Thus, the contention of estoppel falls to the ground.

16. No other point was pressed before us.

17. As a result of the foregoing discussion, the question formulated in first para of this judgment is answered in negative.

18. Consequently, this appeal being devoid of merit is dismissed.