
(2006) 11 AHC CK 0098
In the Allahabad High Court

Ram Shanker

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Citation : (2007) 2 AWC 1801

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—This appeal is filed against the judgment and decree of the lower appellate court dated 2.8.2006 whereby appellant's first appeal was dismissed and the judgment of the trial court has been affirmed.

2. The plaintiff appellant filed the suit for permanent injunction to restrain the defendants-respondents from recovering certain sum of Rs. 93,000/- and odd through proceedings started on the basis of a recovery certificate issued to the Collector. The prayer was also made for accounting of the entire deposits made by the plaintiff in the defendant bank and its adjustment towards the loan taken by him from the said bank. The plaintiff along with his brother took loan of Rs. 47,000/- from the defendant bank for purchase of a tractor. The tractor was purchased and some time it remained in joint possession in the name of plaintiff and defendant No. 4. Thereafter on the basis of a compromise between the brother the whole liability was fastened upon the plaintiff to make repayment of the loan amount to the defendant bank. During the course of time the said tractor is said to have been taken out of the possession of plaintiff by defendant No. 4 and thereafter its possession, was taken by the bank, but it was not auctioned so that the proceeds of sale money may be adjusted towards the minus balance in the plaintiffs loan account. Later on a recovery certificate was issued by the defendant bank for the aforesaid sum of Rs. 93,000/- and odd. The suit was filed thereafter without giving notice, under, Section 117 of the U.P. Cooperative Societies Act. The suit was contested by the defendant society and

the plea of its non maintainability for want of mandatory notice u/s 117 of the Cooperative Societies Act and provisions of Section 70 of the said Act was also taken. It was further pleaded that in spite of filing the suit the recourse should have been had for getting a reference to the Arbitration by the Registrar of Cooperative Society.

3. The trial court decided this issue of Section 117 of the Cooperative Societies Act against the plaintiff holding that the suit was not maintainable. Accordingly, the suit was dismissed for want of the said notice. The trial court, however, decided the issue relating to the defence plea of Section 70 of the U.P. Cooperative Societies Act in favour of the plaintiff and against the defendants and held that the remedy to go in Arbitration was not the proper remedy and the suit Would lie. on behalf of the plaintiff before the, Civil Court, In appeal the lower appellate court decided the aforesaid two issues against the plaintiff holding that a notice u/s 117 of the Act was a mandatory formality which had to be gone into before filing the suit and that the suit was also not competent in view of the provisions of Section 70 of the Cooperative Societies Act. It is against this judgment of the lower appellate court that the present appeal has been preferred.

4. A perusal of Section 117 of the Cooperative Societies Act makes it more than obvious that requirements are mandatory for the plaintiff and notice to the defendant Society through the Registrar of Cooperative Society is a must before a suit against it is filed. The language of the section is very relevant and it is reproduced as below:

Notice necessary in suits. - No suit shall be Instituted against a co-operative society or any of its officers In respect of any act relating to the constitution, management or the business of the 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 of 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.

5. The aforesaid provision requires the plaintiff that before he goes in a suit and present his claim in a court in respect of a dispute relating to an act Involving" constitution management or business of the society, prior notice of two months must be given by the plaintiff by delivering it to the Registrar which should specifically state the cause of action, name, description of place of residence of the plaintiff and the relief which he claims and the plaint shall also contain statement that such notice has been so delivered or left with the Registrar. Admittedly, in the present case no such notice has been given. There is also no statement of such fact contained in the pleadings of the plaint. The requirement of such notice as per the aforesaid language of the Section, appears to be mandatory and it cannot be said that it is just directory in the nature as has been submitted by the learned Counsel for the appellant. Therefore, if for want of such notice the courts below five found the suit as barred for Cognizance the findings

so recorded are wholly sound and are not challengeable in this appeal.

6. As regards the requirement of Section 70 of the Cooperative Societies Act, the present suit is definitely with regard to a dispute between a member and a cooperative society which relates to a claim made by the society against the plaintiff member for recovery of due money by issuing a recovery certificate against him. This dispute is covered by Clause (b) of Sub-section (2) of Section 70 of the Act. Naturally, if such type of dispute is resisting between the plaintiff and the society, it is a matter for reference to Arbitration which should have been referred in accordance with the provisions of Section 70 of the U.P. Cooperative Societies Act. A suit filed before getting such reference made in the matter will definitely be incompetent and the findings recorded in this regard by the lower appellate court appears to be quite just and proper requiring no interference in the present appeal.

7. In the aforesaid view of the matter, the appeal does not appear to have merits as to require its admission. It is at the admission stage itself.