
(1987) 09 BOM CK 0047
In the Bombay High Court
Case No : First Appeal No. 310 of 1970

Rupchand Rajaram Shah	Vs	APPELLANT
Janata Consumers Co-operative Society Ltd. and Others		RESPONDENT

Date of Decision : 23-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 105, 195
Limitation Act, 1963 — Section 14, 14(1), 14(2)

Citation : AIR 1988 Bom 193

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : Ajit P. Shah, for the Appellant; V.B. Rajure, P.S. Patankar and N.H. Bagadia and A.N. Nadkarni, for Bhimrao N. Naik, for the Respondent

Judgement

1. A short question of law that arises for decision in this appeal is whether the time taken by a party to a suit before the Registrar u/s 93 of the Maharashtra Co-operative Societies Act can be excluded for the purpose of computing the period of limitation u/s 14(1) of the Limitation Act. A few facts giving rise to the said issue may be stated.

2. The Appellant is the original Plaintiff. The Respondent No. 1 who was the original Defendant No. 1 is a Co-operative Society of which the respondent No. 2 who was the original Defendant No. 2 was Chairman and the Respondents Nos. 3 to 10 who were original Defendants Nos. 3 to 10 were the members of the Managing Committee. The Plaintiff on 16th May, 1961 advanced to Defendant No. 1 Rs. 6000/- and on 9th October, 1961 further sum of Rs. 4000/- by way of deposits on interest at 6% per annum. The said deposit amounts were repayable within three months. The Defendants did not repay the said amounts, the Plaintiff therefore issued his notice dated 9th October, 1961 calling upon the Defendants to repay. Since this amounts were not repaid despite the said notice the Plaintiff issued his notice dated 31st March, 1962 to the Registrar u/s 164 of the Maharashtra Co-operative Societies Act. The Plaintiff thereafter on 8th May,

1964 filed a Reference u/s 93 of the said Act for recovery of the said amount of deposits along with interest. The said Reference was heard by the Deputy Registrar who by his order dated 7th February, 1968 held that the dispute was not one falling u/s 91 and was, therefore, not maintainable. The Plaintiff thereafter on 12th February, 1968 filed the present suit for recovery of Rs. 14098.40 P. wherein the Plaintiff claimed that the Defendants Nos. 2 to 10 were jointly and severally liable along with Defendant No. 1 to pay the said amount as they were guilty of acts of misfeasance and malfeasance.

3. The Defendants resisted the said suit contending that the suit was barred by limitation, the notice u/s 164 dated 31st March, 1962 was not legal and valid, the suit transactions were in the form of a loan and as the Plaintiff did not possess a licence, the suit was barred under the provisions of the Bombay Money Lenders Act. The suit suffered from misjoinder of causes of action and parties and the Defendants Nos. 2 to 10 were not personally liable for the suit claim.

4. The issues relating to limitation and validity of notice u/s 164 were tried as preliminary issues and by Judgment and order dated 3rd December, 1969 the suit was dismissed. The learned Judge inter alia held that the notice u/s 164 was valid but the suit was barred by the law of limitation. According to the learned Judge the Registrar hearing a dispute u/s 91 was not a Court and that in any event the Plaintiff could not be said to be litigating bona fide within the meaning of Section 14 of the Limitation Act.

5. In appeal this Court remitted the matter back to the trial Court for recording findings on other issues which had remained to be decided. On remand the learned Judge of the trial Court negatived all the defences except that the Defendants Nos. 3 to 10 were not personally liable. It was held that the Defendants Nos. 1 and 2 alone were liable for the suit claim. After the aforesaid findings were received, the appeal was placed for hearing and final disposal. The Defendant No. 2 having in the meanwhile died the Defendants Nos. 2A, 2C and 2D being the heirs and legal representatives of the deceased Defendant No. 2 have filed their objections to the findings recorded by the trial Court.

6. It may be stated at the outset that Shri Shah, the learned Advocate appearing on behalf of the Plaintiff has fairly conceded that he was unable to support the finding of the trial Court that the Defendant No. 2 was personally liable for the suit claim. Similarly he conceded that he was not in a position to successfully challenge the finding of the trial Court that the Defendants Nos. 3 to 10 were not personally liable. He, however, pressed the present appeal in so far as the same concerned the Defendant No. 1 Society which during the pendency of the present proceedings went in liquidation and is presently represented by the liquidator.

7. Shri Shah submitted that the time spent by the Plaintiffs between the 8th May, 1964 and 7th February, 1968 when the Plaintiffs had filed a dispute before the Registrar u/s 93 of the Maharashtra Co-operative Societies Act was required to be excluded under the provisions of Section 14(1) of the Limitation Act. He

submitted that the Plaintiffs during the aforesaid proceedings had been prosecuting with due diligence the said civil proceedings and the said proceedings had been prosecuted before the Registrar which would be a Court of first instance as contemplated under the aforesaid Section 14(1) and hence the said period was liable to be excluded while computing the period of limitation for filing the present suit which came to be filed on 12th February, 1968. According to him the learned Judge of the trial Court had erred in negating the aforesaid plea on the ground that the Plaintiff was an advocate and as such he was not justified in adopting the said proceedings before a wrong forum.

8. In my judgment, there is considerable force in the aforesaid submission and the same will have to be accepted.

9. The question whether the dispute as in the present case fell within the provisions of Section 91(1)(c) of the Maharashtra Co-operative Societies Act cannot be said to be a question which at the relevant time had either been settled or was clear and unambiguous. The said question came up for decision before this Court in the case of Omparkash Gowardhandas Singhania and Another Vs. G.V. Koimatlur and Another, and it was observed in the said decision : --

"Three different constructions of the said words "transactions under the provisions of Section 45" have been canvassed before us. The first is that the word "under" should be read as "in accordance with"; transactions effected in accordance with the restrictions prescribed by Section 45 will then be covered by Clause (c). Also where, no restrictions have been prescribed u/s 45, every transaction between a society and a person other than a member, will come under this clause. The other meaning suggested is that the word "under" should be construed to mean "referred to". Every transaction referred to in Section 45 i.e. every transaction in respect of which restrictions could be imposed u/s 45 will then fall within the scope of Clause (c). The third interpretation and this is the one which has been urged on behalf of the petitioners -- is that only those transactions, in respect of which restrictions have been prescribed u/s 45, can be said to be transactions under the provisions of Section 45. Where no such restrictions are prescribed, Clause (c) of Sub-section (1) of Section 91 will not apply."

10. After elaborate discussion of the rival submissions advanced in that case, this Court in the aforesaid decision held that the words "transactions under the provisions of Section 45" in clause (c) of Sub-section (1) of Section 91 mean transactions in respect of which restrictions have been prescribed u/s 45. If no restrictions have been prescribed, the question of applying Section 45 will not arise and in such cases the transaction with a person other than a member cannot be said to be a transaction under the provisions of this section. Where, however, restrictions have been prescribed Section 45 will operate and the transactions with persons other than members can only be effective subject to those restrictions. Such transactions will be transactions u/s 45 and disputes

arising out of or in connection with such transactions will fall under Clause (c) in Sub-section (1) of Section 91. Inasmuch as there were no restrictions prescribed in regard to the transactions of the kind entered into between the parties, the dispute cannot be the subject-matter of a reference u/s 91.

11. The Plaintiff in the present case had filed a dispute before the Registrar on 8th May, 1964 and the aforesaid judgment of this Court pronounced much later and hence it cannot be held that the said question was a settled question of law and, therefore, the Plaintiff was not litigating bona fide.

12. The next question that will have to be decided is whether Registrar or a Deputy Registrar is a Court and the proceedings before them are civil proceedings. The learned Judge of the trial Court on placing reliance upon the case of Rama Rao and Another Vs. Narayan and Another, has held inter alia that the Registrar hearing a dispute u/s 91 is not a Court. In my view the reliance on the said decision of the Supreme Court is totally misconceived. It has been held in the aforesaid case and followed by this Court in the case of Malabar Hill Co-operative Housing Society Ltd. Vs. K.L. Gauba and Others, , that the nominee of the Registrar appointed u/s 93 of the Maharashtra Co-operative Societies Act is not a Court within the meaning of Section 195 of the Criminal Procedure Code or within the meaning of Contempt of Courts Act. A nominee exercising power to make an award u/s 96 of the Act derives authority not from the statute but from investment by the Registrar in his individual discretion. The power invested is liable to be suspended and may be withdrawn. He is, therefore, not entrusted with the judicial power of the State. He is merely an arbitrator authorised within the limits of power conferred upon him to adjudicate a dispute. The position of a nominee of the Registrar is analogous to an Arbitrator under the Arbitration Act apply. It is not true to say that because there is obligation on a body to deal with a matter fairly and impartially and the procedure to be followed by it is assimilated to the procedure for a trial in other disputes it necessarily makes the body invested with the power to decide the dispute as a Court. It may be pertinent to note that the Supreme Court was dealing with the question whether the nominee of the Registrar was a Court and that too within the meaning of Section 105 of the Criminal Procedure Code. In the present case we are not dealing with the Registrar's nominee who is appointed not under any statute but under the discretion of the Registrar. The said appointment can be subject to such limitations that may be prescribed by the Registrar and any dispute referred to the Registrar's nominee can at any time be withdrawn by the Registrar. The appointment of a Registrar or the Deputy Registrar are statutory appointments u/s 3 of the Maharashtra Co-operative Societies Act. In the present case we are more concerned as to whether the Registrar or the Deputy Registrar is a Court within the meaning of the said term as contained in Section 14(1) of the Limitation Act. In order to appreciate whether the Registrar was functioning as a Court, it is necessary to examine certain provisions of the Maharashtra Co-operative Societies Act. The said Act was enacted with a view to providing for the orderly development of the Co-operative movement in the State of Maharashtra

in accordance with the relevant directive principles of the State policy enunciated in the Constitution of India. Section 2(24) defines Registrar to mean a person appointed to be the Registrar of Co-operative Societies under the Act. u/s 3 the State Government may appoint a person to be the Registrar of Co-operative Societies and may appoint one or more persons to assist such Registrar with such designations and in such local areas as it may specify in that behalf and may by general or special order confer on any such person or persons all or any of the powers of the Registrar under this Act. The Registrar under the said Act has been conferred with performing various statutory functions. The Registrar is empowered to decide any dispute touching the constitution, management or business of a society. He or his nominee has the exclusive jurisdiction to deal with or decide the said dispute and the Civil Court's jurisdiction in that behalf is expressly barred, and it is provided that no Civil or Revenue Court shall have any jurisdiction in respect of any dispute required to be decided by the Registrar or his nominee. It is further provided that the decision or the award passed in accordance with the Act subject to the provisions of appeal or revision would be final and no such order, decision or award shall be liable to be challenged, set aside, modified or revised in any Court. The provisions of the Limitation Act are also made applicable by virtue of Section 92 of the said Act. The Registrar under the provisions of Section 94 has the power to summon and enforce attendance of witnesses and to compel them to give evidence and to compel production of documents in the same manner as provided in the case of a Civil Court by the Code of Civil Procedure. He has been authorised to levy attachment before award having the same effect as if made by competent Civil Court. Various decisions of the Registrar are appealable as provided in Section 152. Hence it would be clear that the Registrar while exercising power u/s 91 is discharging the duties which otherwise would be required to be discharged by other Civil or Criminal Courts of the State. The Registrar under the provisions of Section 94 is given the same powers as are given to ordinary Civil Courts of the land by the Code of Civil Procedure, including the power to summon and enforce attendance of witnesses and to compel them to give evidence and compel the production of documents by the same means and as far as possible in the same manner as provided in the case of a Civil Court by the Code of Civil Procedure. Section 92(2) specifically lays down that the period of limitation in the case of a dispute other than the one covered by Sub-section (1) shall be regulated by the provisions of the Limitation Act as if the dispute were a suit and the Registrar a Civil Court. It may be stated broadly that what distinguished a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner implies that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the

provisions of the Act it possesses all the attributes of a Court. A true judicial decision presupposes an existing dispute between two or more parties, and that involves four requisites :-- (1) The presentation of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

13. In my judgment, all the aforesaid requisites are present when the Registrar decides a dispute falling u/s 91 of the Maharashtra Co-operative Societies Act, and in view of the aforesaid statutory provisions, it must be held that the Registrar while adjudicating disputes referred to in Section 91 of the Act for all its intents and purposes, is a Court discharging the same functions and in the same manner as a Court of law is expected to do and, therefore, the Registrar would be a Court. In the present case, the dispute which was required to be decided is undoubtedly a civil dispute and, therefore, the same will be civil proceedings as contemplated in Section 14(1) of the Limitation Act. Hence the essential conditions to constitute a Court in the strict sense of the term that the Court should have apart from having some trapping of judicial tribunal, power to give a decision or definitive judgment which has finality and authoritativeness which are essential tests of judicial pronouncement, are fully satisfied.

14. Shri Nadkarni, the learned Advocate appearing on behalf of the Defendants Nos. 2, 3, 5 and 8 has, however, submitted that the proceedings adopted by the Plaintiff before the Assistant Registrar lack bona fides as, despite a specific contention having been raised on behalf of the Defendants that the said proceedings were not maintainable under the provisions of the Maharashtra Co-operative Societies Act, the Plaintiff who himself is a lawyer persisted in prosecuting the said proceedings. The Plaintiff was, therefore, not entitled to take resort to Section 14(1) of the Limitation Act for excluding the period spent before the Deputy Registrar while computing the period of limitation in filing the present suit. He further submitted that the provisions of Section 92(2) of the Maharashtra Co-operative Societies Act would apply only if the dispute was one which falls u/s 91. Since the present dispute cannot be one which falls u/s 91, the Plaintiff will not be entitled to take resort to the provisions of the Indian Limitation Act. He lastly contended that what was done by the Assistant Registrar in the present case was merely to test whether the present dispute fell within the provisions of Section 91 and that of function of the Registrar could not convert him into a Court. According to him it was only when the Registrar decides the dispute on its merits he could be termed to be a Court. His decision as to whether the dispute fell within the provisions of Section 91 was merely an administrative function for which he was not even required to hear the

Defendants as held in the case of Krishnarao Bakaramji Hadge v. State of Maharashtra reported in 69 Bom LR 150 and Bandra Green Park Co-operative Housing Society Ltd. and Another Vs. Dayadasi Kalia and Others, . He further pointed out that the Supreme Court in the decision in the case of Jai Mahavir Co-operative Housing Society Ltd. Vs. Panchal Keshavlal Narbheram and Others, had approved the aforesaid decision in Krishnarao Bakaramji Hadge Vs. The State of Maharashtra, . He further submitted that the present order passed u/s 91 was not passed by the Registrar but by the Deputy Registrar and if one were to hold the Registrar to be a Court, the same will not be applicable to the Deputy Registrar. Having considered the aforesaid submissions, I am of the view that the same are devoid of any substance and are liable to be negated. As pointed out hereinabove, it is not possible to hold that the Plaintiff had lacked in his bona fides when he approached the Registrar as the question at the relevant time had not been decided but the same came to be decided and reported in the year 1965 after elaborate discussion on the point. What is really required to be decided for the applicability of Section 14(2) of the Limitation Act is not whether a particular order passed by the Registrar is an administrative or a judicial order, but what is required to be determined is whether the Registrar was a Court authorised to decide the civil proceedings as contemplated in Section 14(1) of the Limitation Act. If the Plaintiff approaches the Registrar with a dispute and the Registrar finds that the same falls within the provisions of Section 91, he is authorised to decide the dispute himself or to refer it to his nominees. It is difficult to hold that it is only in the event of his deciding the dispute on merits that he functions as a Court and he ceases to be so while deciding the preliminary issue as to whether the dispute falls u/s 91. To dissect the said function of the Registrar would be doing violence to the powers of Registrar provided under the Act. If the Registrar on holding that the dispute falls u/s 91 proceeds to decide the said dispute, there would arise no occasion for the Plaintiff to file a suit and take resort to Section 14 of the Limitation Act. It is only in the event of the Registrar holding that the dispute does not lie within the provisions of Section 91 that the question of filing the suit would arise. Hence in my view, even though the order of the Registrar passed u/s 93(1) that the dispute is one either falling or not falling u/s 91(1), though of an administrative nature, the Registrar while deciding the said issue acts as a Court within the meaning of Set. 14 of the Limitation Act. The fact that the present order was passed by the Deputy Registrar and not by the Registrar, in my view, makes no difference as both the Registrar and the Deputy Registrar are statutory appointments u/s 3 and hence both the authorities will be performing statutory functions under the Act. In this view of the matter, the submissions of Shri Nadkarni will have to be negated.

15. In the result, it will have to be held that the Plaintiff will be entitled to exclusion of the time spent before the Deputy Registrar in proceedings u/s 93 of the Maharashtra Co-operative Societies Act and consequently the present suit will have to be held to have been filed within the period of limitation. In view of

the fact that the Defendants Nos. 2 to 10 have been held not to be personally liable for the suit claim, the Defendant No. 1 alone will be liable.

16. In the result, the impugned decree of the trial Court dismissing the Plaintiff's suit in so far as the same related to the Defendant No. 1 is set aside and the suit of the Plaintiff is decreed as against Defendant No. 1 along with interest thereon at 6% per annum from the date of the suit till the date of the passing of this decree and at 9% per annum from the date of the decree till realisation. The Plaintiff will be entitled to the costs from Respondent No. 1 throughout.

17. The Cross-Objections filed by the Respondents Nos. 2A, 2C and 2D are allowed and the suit of the Plaintiff as against them is dismissed. The Plaintiffs will pay costs of cross-objections.