(2010) 12 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 5223, 1391, 1394, 2765, 2949, 2950, 4450, 4471, 4492, 4493 and 5222 of 2009

Sau. Varsha Ravindra Isai and Others — APPELLANT

Vs

Sow. Rajashri Rajkumar Chaudhari and Others etc. etc. — RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32
Consumer Protection Act, 1986 — Section 3
Maharashtra Co-operative Societies Act, 1960 — Section 105, 155, 163, 22, 23

Citation : AIR 2011 Bom 68 : (2011) 3 ALLMR 88

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : C.R. Thorat, in Writ Petition No.1391 and 1394 of 2010, V.J. Dixit for S.P. Tiwari, in Writ Petition No. 2765 of 2010, P.N. Kutti, in Writ Petition No. 2949 of 2010, P.S. Gaikwad, in Writ Petition No. 4450 of 2009 and A.G. Talhar, in Writ Petition Nos. 4471, 5222 and 5223 of 2009, 4992 and 4993 of 2010, for the Appellant; K.M. Suryawanshi, A.G.P. for Respondent No. 1 in Writ Petition No. 2765 of 2010, A.G. Talhar, for Respondents Nos. 4, 5 and 12 in Writ Petition Nos. 2949 and 2950 of 2010, N.L. Choudhari, in Writ Petition No. 4992 of 2010, J.R. Shaikh, in Writ Petition No. 4993 of 2010, S.B. Yawalkar, in Writ Petition Nos. 5223, 4450, 4471 and 5222 of 2009, P.N. Kutti, for Respondent No. 14 in Writ Petition Nos. 5223, 4450, 4471 and 5222 of 2009, N.N. Desale, for Respondents Nos. 6, 8 to 10 in Writ Petition Nos. 2949 and 2950 of 2010 and V.B. Patil, in Writ Petition Nos. 4450, 4471 of 2009 and 4992 of 2010, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. In all these petitions, the orders passed by the District Consumer Forum imposing liability either on the Directors or ExDirectors of the Cooperative Society in respect of payment of amount to the complainant/s, is subjected to challenge. As common question falls for determination in all these petitions,

those are being taken up together.

3. The complainants in all these matters, Respondents herein, are the depositors of the Cooperative Credit Societies / Banks who have not been refunded the amount of deposit/s by the concerned Credit Societies / Banks after completion of the term. Along with the Directors of the Cooperative Society, the complainants have impleaded the concerned Credit Societies / Banks in the complaints presented to the District Consumer Forum and the District Consumer Forum has issued uniform direction against all those Cooperative Credit Societies / Banks as well as the Directors to refund the amount along with interest as well as damages. The Petitioners have objected to the orders passed by the District Consumer Forum raising two principal grounds:

1 Firstly, it is contended that the Complaints against the Petitioners as well as the Cooperative Credit Societies / Banks would not be entertainable before the District Consumer Forum, as the provisions of the Consumer Protection Act, 1986, shall have no applicability in respect of functions carried out by the Cooperative Credit Societies / Banks. There is a special enactment in the form of Maharashtra Cooperative Societies Act, 1960, which provides for presentation of disputes to the Cooperative Court and in view of availability of remedy under the special statute, the complaints ought not to have been entertained by the District Consumer Forum established under the Consumer Protection Act, 1986.

2 The second ground of attack is that in any eventuality, even assuming that the provisions of the Consumer Protection Act, 1986, has applicability, the Directors of the banks or members of the Managing Committee of the Cooperative Credit societies cannot be held responsible and no liability can be fixed against them, without observing the procedure as prescribed under the Maharashtra Cooperative Societies Act, 1960. It is contended that the District Consumer Forum has no jurisdiction to pass orders against the members of the Managing Committee of the Cooperative Societies / Directors of the Banks.

4. That, so far as applicability of the provisions of Consumer Protection Act, 1986, in respect of transactions carried out by the Cooperative Credit Society / Bank is concerned, the question is no more res integra as the Apex Court, in the matter of Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs.M. Lalitha (dead) through L. Rs. and Ors., reported in 2004 (4) Bom.C.R. 273, has held that:

the provisions of the Act of 1986 are in addition and not in derogation of the provisions of any other law for the time being in force, and as such, the dispute / complaint by a member of a Cooperative Credit Society / bank is entertainable by a forum created under the Act of 1986.

5. In the matter of State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, , the Apex Court, while considering the issue of constitutional validity of the Consumer Protection Act, 1986, has ruled that:

The Parliament has legislative competence to enact the Consumer Protection Act, 1986.

It is also observed in the said judgment that:

The provisions of the said Act clearly demonstrate that it was enacted keeping in view the long felt necessity of protecting the common man from wrongs where for the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of.

By reason of the said statute, quasijudicial authorities have been created at the District, State and Central levels so as to enable a consumer to ventilate his grievance before a Forum where justice can be done without any procedural wrangles and hypertechnicalities.

It is also observed by the Apex Court in the said judgment that,

the provisions of the said Act are in addition to the provisions of any other law for the time being in force and not in derogation thereof, as is evident from Section 3 thereof.

6. The question as regards applicability of provisions of Consumer Protection Act, 1986 visavis, the Maharashtra Cooperative Societies Act, 1960, was considered by the learned Single Judge of this Court in the matter of Abhay s/o Narayan Raje and Ors. v. Shrikant s/o Ramesh Bhalerao and Ors., reported in 2010 (5) Mh.L.J. 601. In view of the ratio laid down by the Apex Court in the case of Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs.M. Lalitha (dead) through L.Rs. and Ors., (supra), this Court has also taken a view that the complaint / dispute under the provisions of Consumer Protection Act, 1986 is entertainable by the District Consumer Forum and the provisions of Section 3 of the said Act provide for an additional remedy. Although, this Court, while dealing with Writ Petition No. 1998/2008, has taken a contrary view and held that the complaint under the provisions of Consumer Protection Act, 1986, is not entertainable, however, the said judgment does not lay down a correct proposition of law as the judgments of the Apex Court in the matter of State of Karnataka v. Vishwabharati House Building Coop. Society and Ors., and in the matter of Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs.M. Lalitha (dead) through L. Rs. and Ors., (supra), were not brought to the notice of this Court.

7. It is contended that Section 163 of the Maharashtra Cooperative Societies Act, 1960 bars the jurisdiction of other Courts to entertain any dispute / complaint, which is required to be considered by the Cooperative Court or a forum created under the provisions of Maharashtra Cooperative Societies Act, 1960. Section 163 of the Maharashtra Cooperative Societies Act, 1960, reads thus:

163 Bar of jurisdiction of Courts:

(1) Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of (

a) the registration of a society or its bylaws, or the amendments of the bylaws or the dissolution of the of the committee of a society, or the management of the society on dissolution thereof; or (b) any dispute required to be referred to the Cooperative Court, for decision.

(c) any matter concerned with the winding up and dissolution of a society.

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar, and subject to such terms as he may impose.

(3) All orders, decisions or awards passed in accordance with this Act or the rules shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits or upon any other ground whatsoever.

8. On bare reading of the Section, it is clear that the Act creates a bar for Civil or Revenue Court to entertain a dispute / complaint in respect of the registration of a society or its bylaws, or the amendments of the bylaws or the dissolution of the of the committee of a society, or the management of the society on dissolution thereof; or any dispute required to be referred to the Cooperative Court, for decision.) any matter concerned with the winding up and dissolution of a society. Section 163 of the Maharashtra Cooperative Societies Act, 1960, would not be a bar for entertainment of a dispute / complaint by the District Consumer Forum for the reason that, firstly, as stated above, the remedy under the provisions of Consumer Protection Act, 1986 is in addition to the remedy provided under the Maharashtra Cooperative Societies Act, 1960; and secondly, the nature of proceedings before the Consumer Forum are not in the nature of suit or revenue proceedings or that the Forum created under the Consumer Protection Act, 1986 is neither a Civil or Revenue Court.

9. In the matter of Laxmi Engineering Works Vs. P.S.G. Industrial Institute, , the Apex Court, has observed thus:

A review of the provisions of the Act discloses that the quasijudicial bodies/ authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not Courts though invested with some of the powers of a Civil Court. They are quasi judicial Tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these Forums/Commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional Forums providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and service. The Forum so created is uninhibited by the requirement of Court fee or the formal procedures of a Court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself, any recognised consumers'' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business to consumer" disputes and not for "business to business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal.

10. Thus, in view of the judgment of the Apex Court in the matter of Laxmi Engineering Works (supra), the argument advanced by the Petitioners, based on applicability of provisions of Section 163 of the Maharashtra Cooperative Societies Act, 1960, regarding bar of jurisdiction of the Courts, cannot be accepted. The forum created under the Consumer Protection Act, 1986, not being either a Civil or Revenue Court, Section 163 of the Maharashtra Cooperative Societies Act, 1960, does not create a bar for entertaining a dispute / complaint by the Consumer Forum. In this context, reliance can be placed on the judgment of this Court in the matter of Sanjay R. Kothari and Another Vs. South Mumbai Consumer Disputes Redressal Forum and Another, . The Division Bench of this Court has ruled that the Consumer Forums, though have trappings of Civil Court, are not Civil Courts within the meaning of the provisions of the Code of Civil Procedure. Thus, the argument advanced by the Counsel appearing for the Petitioners, that Section 163 of the Maharashtra Cooperative Societies Act, 1960 create a bar for entertainment of a dispute by the Consumer Forum, is unacceptable.

11. This takes me to consider the second objection raised by the Petitioners in respect of holding the Directors of the bank / members of the Managing Committee of the society personally liable to pay dues / damages.

12. Section 36 of the Maharashtra Cooperative Societies Act, 1960, reads thus:

36 Societies to be bodies corporate The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquit, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted.

13. Thus, a society can institute and defend a suit and other legal proceedings as a corporate body. Thus, a dispute / complaint under the provisions of Consumer Protection Act, 1986 can be presented against a registered society. However, so

far as rights and liabilities of members of the Managing Committee are concerned, considering the principles of cooperation as well as scheme of the Act, those stand on different footing. The Maharashtra Cooperative Societies Act, 1960, defines "society with limited liability" and "society with unlimited liability". "Society with limited liability" means a society having the liability of its members limited by its bylaws; whereas, in case of a society with unlimited liability, in the event of its being wound up, its members would be jointly and severally liable for and in respect of its obligations and to contribute to any deficiency in the assets of the society. Section 22 of the Act prescribes, a person who may become member of the society. Section 33 of the Act prescribes liability of past member and estate of deceased member. In view of Section 72 of the Act, the final authority of every society shall vest in the general body of members in general meeting, summoned in such a manner, as may be specified in the bylaws, whereas, Section 73 of the Act provides that the management of every society shall vest in a committee, constituted in accordance with the Act, Rules and bylaws, which shall exercise such powers and perform such duties, as may be conferred or imposed respectively by this Act, the rules and the bylaws.

14. Heavy reliance is placed by the Petitioners on Section 73(1AB) of the Act, 1960, to advance the argument that the members of the Managing Committee can also be held responsible for all the decisions taken by the Committee during its term relating to business of the society. Section 73(1AB) reads thus:

73(1AB) The members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. Every such member shall execute a bond to that effect within fifteen days of his assuming the office, in the form as specified by the State Government by general or special order. The member who fails to execute such bond within the specified period shall be demand to have vacated his office as a member of the committee.

15. Reference is also necessary to Section 78 of the Act of 1960, which invest in the Registrar power to remove the committee or its members. Thus, on perusal of the provisions of Maharashtra Cooperative Societies Act, 1960, it is clear that the general control of a society vest in the general body which consists of members of the society. Whereas, the management of the society is entrusted with the managing committee in view of provisions of Section 73 of the Act. The liability of the members of the managing committee in case of misapplication of the funds or the member having become accountable for any money or property of the society or having been held guilty of misfeasance or breach of the trust in relation to the society, the Registrar is authorised to frame charges against such person or the persons after giving reasonable opportunity to the concerned and in case of deceased persons, to his L.Rs. , to answer the charge. The Act provides for a separate scheme for holding enquiry and fastening liability on the

member of the managing committee or any other person in respect of loss occasioned to the society or in the matters of financial irregularities or misfeasance. Section 81 of the Act provides that the Registrar shall audit or cause to be audited at least once in each cooperative year, by a person authorised by him by general or special order in writing in this behalf, the account of every society. The societies other than the societies mentioned in Clause (a) are also required to get their accounts audited at least once in each cooperative year. The Registrar or the person authorised on his behalf has an access to all the books of accounts, documents, papers, securities, cash and other properties belonging to or in the custody of the society and is also empowered to summon any person responsible for such books, accounts, papers, securities, cash or other properties to produce the same at any place, at the headquarter of the society or any branch thereof. The Registrar is also empowered to depute a flying squad to a society or societies for examining the books, records, accounts and such other papers and for verification of cash balance. The report of the flying squad shall be deemed to be an audit report for the purpose of taking further action, if necessary. Section 81 also empowers the Registrar or any person authorised by him, in that behalf, to carry out or cause to be carried out the test audit of the accounts of any society. A responsibility is cast on the officer or employee of the society and every member and past member of the society to furnish such information in regard to the transaction and working of the society as the Registrar, or the person authorised by him, may require. The Registrar is also authorised to impound books of accounts of the society wherein the auditor satisfies that those books of accounts contain any incriminatory evidence against any past or present officers or employees of the society. The Registrar is also authorised to order an reaudit of the accounts of the Society, if he deems it expedient to do so.

16. Section 83 of the Act empowers the Registrar to conduct an inquiry into the constitution, working and financial condition of the society. Section 84 of the Act empowers the Registrar to conduct inspection of the books of indebted society. Section 88 provides power of Registrar to assess damages against delinquent promoters, etc. Section 88 reads thus:

88 Power of Registrar to assess damages against delinquent promoters, etc.:

(1) Where, in the course of or as a result of an audit u/s 81 or an inquiry u/s 83 or an inspection u/s 84 or the winding up of a society, the Registrar is satisfied on the basis of the report made by the auditor or the person authorised to make inquiry u/s 83 or the person authorised to inspect the books u/s 84 or the Liquidator u/s 105 or otherwise that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of commencement of such audit or date of order for inquiry, inspector or winding up, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in

relation to the society, the Registrar or a person authorised by him in that behalf may frame charges against such person or persons, and after giving a reasonable opportunity to the person concerned and in the case of a deceased person to his representative who inherits his estate, to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determine.

(2) The Registrar or the person authorised under Sub-section (1) in making any order under this section, may provide therein for the payment of the cost or any part thereof, as he thinks just, and he may direct that such costs or any part thereof shall be recovered from the person against whom the order has been issued.

(3) This section shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

17. Thus, on perusal of the provisions of the Maharashtra Cooperative Societies Act, 1960, it is clear that a scheme is provided for conducting inquiry and for holding the Directors / members of the managing committee responsible for any act done by them, which is detrimental to the society. On conducting inquiry u/s 88, the Registrar is empowered to assess the damages against delinquent and fix the liability. During the course of inquiry u/s 88, if the Registrar comes to the conclusion that a person has become liable for payment of money or the property or in respect of restoration of the property or any part thereof, he is empowered to pass an appropriate order. On determination of the amount, the Registrar may direct such person, by way of compensation in regard to misapplication, retention, misfeasance or breach of trust, as he may determine. The amount so arrived at can also be directed to be recovered u/s 155 as arrears of land revenue.

18. Thus, it is clear that the Maharashtra Cooperative Societies Act, 1960 provides for a scheme for holding an inquiry against member of managing committee, past or present, to assess the damages, to pass order in respect of payment of amount towards compensation, etc. and also provides for recovery of the same. The Consumer Protection Act, 1986, however, does not provide for any such scheme. The Director or member of the Managing Committee, present or past, can be held responsible in respect of payment of amount only after observance of procedure prescribed under the Cooperative Societies Act. The rights and liabilities of the managing committee are prescribed under the Maharashtra Cooperative Societies Act and it also provides for a scheme for determining the liability. Thus, in view of the specific provisions of the Maharashtra Cooperative Societies Act, providing for the scheme in respect of determination of liability against a member of managing committee, past or present, unless such procedure prescribed by the Act is adopted, the members of

the managing committee cannot be held responsible in respect of payment of any amount independently unless it is investigated and liability is settled against the members of the managing committee in respect of any loss occasioned to the society on account of mismanagement of the affairs of the society by the members or in respect of misapplication or retention of the funds or misfeasance or breach of trust by them.

19. As stated above, in view of the provisions of Section 36 of the Maharashtra Cooperative Societies Act, the society can be proceeded against and can be sued or the society may defend any action in Civil Court or forum. However, so far as members of the managing committee are concerned, they stand on totally different footing and they cannot be held responsible to contribute to the damages or make payment in respect of dues recoverable from the society unless the methodology prescribed under the Act for holding them responsible for making such payment is adopted. In my view, the Consumer Protection Act, 1986, does not prescribe modalities for holding inquiry against the Directors in respect of acts or omissions committed by them. Unless the members of the managing committee are held responsible for any act detrimental to the interest of the society or any inaction on their part, which caused wrongful loss to the society, they cannot be held responsible to contribute the loss or in respect of liability, which is required to be born by the society. The forum created under the Consumer Protection Act, 1986 does not provide for an audit, inquiry or inspection, as laid down under Sections 81, 83 and 84 of the Maharashtra Cooperative Societies Act, 1960, nor provides for any methodology for assessing the damages against the members of the managing committee, as contemplated by Section 88 of the Act. The members of the managing committee or the directors cannot be held responsible in their individual capacity. The complaint can be instituted against the society before the Consumer Forum by a depositor or a member of the society and a relief can also be granted as against the society. However, so far as members of the managing committee/ directors are concerned, they stand on a different footing and unless the procedure prescribed under the special enactment i.e. Maharashtra Cooperative Societies Act,1960 is followed and unless the liability is fixed against them, they cannot be held responsible in respect of payment of any dues recoverable from the society.

20. Reliance can also be placed on the judgment in the matter of P.C. Agarwala v. Payment of Wages Inspector, M.P. and Ors., reported in AIR 2006 SCW 146. In the reported matter, the Directors of the Company were held personally liable for payment of wages to the employee under the Payment of Wages Act, 1936. While dealing with the issue, the Apex Court has considered the liabilities of the Director and ruled that:

The Directors cannot be held personally liable for making the payment.

The status of a Director of Company is at par with the member of managing committee of the society. The society is a body corporate having a common seal and is entitled to sue and also be sued.

21. Learned Counsel for Respondents have contended that this Court, in exercise of powers under Articles 226 and 227 of the Constitution of India, need not cause interference in the matter, as there is an alternate remedy provided under the provisions of Consumer Protection Act, 1986 by preferring an appeal to the State Consumer Forum.

22. As has been recorded above, I am of the view that a society registered under the provisions of Maharashtra Cooperative Societies Act, 1960, although can be proceeded against and a complaint under the provisions of Consumer Protection Act is entertainable against the society, the Directors or members of the managing committee cannot be held responsible in view of the scheme of Maharashtra Cooperative Societies Act. To hold the Directors of the banks / members of the managing committee of the societies responsible, without observing the procedure prescribed under the Act, would also be against the principles of cooperation, which is the very foundation of establishment of the cooperative societies.

23. So far as the jurisdiction exercisable by this Court under Articles 226 and 227 is concerned, availability of alternate remedy in itself is not a bar. There are self imposed restrictions in the matter of exercise of extraordinary jurisdiction by this Court, as has been held by the Apex Court in the matter of State of Karnataka v. Vishwabharati House Building Coop. Society and Ors.:

The provisions relating to power to approach appellate court by a party aggrieved by a decision of the forums / State Commissions, as also the power of High Court and this Court under Article 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards.

The Apex Court, while considering permissibility to approach the Apex Court and High Court to take recourse to the remedy of judicial review, has observed that:

There are sufficient safeguards provided and remedy of judicial review is undoubtedly available.

24. In the peculiar facts and circumstances of this case and in view of the reasons recorded above, I am of the considered view that the orders passed by the District Consumer Forum saddling liability in respect of payment of dues / damages on the members of the Managing Committee / Directors / past Directors is concerned, the same is erroneous and, therefore, liable to be quashed and set aside.

25. In the result, the petitions are allowed and orders passed by the District Consumer Forum saddling the liability, so far as it relates to the Petitioners herein, are concerned, are quashed and set aside. At the same time, it is clarified that the Cooperative Societies / Credit societies / banks are liable to meet the liability and the orders passed by the Consumer Forum can very well be executed against such banks / cooperative credit societies.

26. Rule is accordingly made absolute. In the facts and circumstances of this

case, there shall be no order as to costs. Pending Civil Applications, if any, stand disposed of.

