

(1990) 11 GUJ CK 0019
In the Gujarat High Court

Case No : First Appeal No's. 462 and 463 of 1976 and F.A. No. 1099 of 1977

Shankerbag Co-operative Housing Society Ltd.

APPELLANT

Vs

Sarojben Maganbhai

RESPONDENT

Date of Decision : 21-11-1990

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 167

Citation : AIR 1991 Guj 147

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : J.M. Patel, for the Appellant; P.J. Bhatt, for the Respondent

Judgement

1. The appellant in this group of three appeals has invoked the aids of the provisions of Section 96 of the CPC ("Code" for short, hereinafter).

2. Since a group of these three appeals arise out of a common judgment and raise identical questions, with the consent of the learned counsel for the parties, they are being disposed of by this common judgment. The sole question which is posed for consideration before this Court in this group of three appeals is: whether an act of taking deposits by a co-operative society would be an act of business of the defendant co-operative society and, if yes, whether a notice u/s 167 of the Gujarat Co-operative Societies Act ("Act" for short, hereinafter), is mandatory?

3. In order to appreciate the sole question raised before this Court in these three appeals, material facts may be stated, shortly, at the outset.

4. The appellant in all these three appeals is original defendant No. 1 against whom respondent No. 1 in all these appeals, who are the original plaintiffs, had filed suits for the recovery of different amounts. Respondent No. 2 in all these appeals is the original defendant No. 2 in all the suits who was an Administrator of appellant-co-operative society. The plaintiffs who are the daughters of Maganbhai Karsanbhai Patel, who instituted three different suits. Since the

plaintiffs were minor daughters of said Maganbhai, he had filed three suits as guardian of minors. The suits were filed against the appellant, original defendant No. 1, co-operative society and respondent No. 2, an administrator of the society. The parties are, therefore, hereinafter referred to as "original plaintiff, original defendant No. 1 and original defendant No. 2" for the sake of convenience and brevity.

5. The plaintiffs filed three different suits on the same day, i.e., on 2-3-1971 against original defendant No. 1-Shankerbaug Cooperative Housing Society Limited ("Society" for short, hereinafter) and also defendant No. 2 who was an administrator of the society at the relevant point of time. The other relevant facts leading to the rise of the present three appeals, may be stated, and tabulated as follows:

6. As per the case of the plaintiffs, the deposit of Rs. 20,000/- was made by each plaintiff with the defend anti-society and the defend ant-society had to pay interest at the rate of 6.5% on the said amount of deposits. Each plaintiff had deposited amount of Rs. 20,000/- with the defend ant-society. The defendant-society had paid certain amounts to the plaintiff by way of interest and certain amount towards the principal amount of deposits. Since the defendant-society failed to repay full amount, father of all the three minor plaintiffs served the defendant-society with a notice. Notice was not replied or complied with. Therefore, minor plaintiffs who are the daughters of Maganbhai Karsanbhai Patel, filed three suits through their guardian and father, on 2-3-197 1, as stated in the below table.

F.A.No. Appeal Plaintiff Amount of suit claim arising out of the Spl.C.S.No.

462/76 29/1971 Minor Sarojben Rs. 20,000/- by way of by her next principal amount, friend Rs. 1200/- interest. Maganbhai Total Rs. 21,200/ Karsanbhai Trial Court decreed full amount with interest @ 6% p.a. on principal amount of Rs. 20,000/- with costs. 463/76 30/1971 Minor Kapilaben Rs. 13,000 / - by way of by her next principal amount, friend Rs. 2860/- interest. Maganbhai Total Rs. 15,860/ Karsanbhai Trial Court decreed full amount with interest @ 6% p.a. on principal amount of Rs. 13,000/- with costs. 1099/77 Reg.C. S. Minor Rs. 6,000/- by way of No. 252/71 Chandrakantaben principal amount, by her next Rs. 845/- interest. friend Total Rs. 6845/_ Maganbhai Trial Court decreed Karsanbhai full amount with interest @ 6% p.a. on principal amount of Rs. 6,000/- with costs.

7. Defendant No. I society appeared and filed written statement and, inter alia, contended that it is a registered society and, therefore, suit against it is not maintainable without statutory notice u/s 167 of the Act. The transaction of deposit as alleged by the plaintiff was also denied.

8. It was contended on behalf of the defendant-society that the farther of the plaintiffs had started the defendant society and the books of the accounts of the society were maintained as per the instructions of the father of plaintiffs. It was

further contended that the father of the plaintiffs made false entries in the books of accounts of the society. Thus, the suits claims were seriously, challenged. Defendant No. 2- Administrator was sub-sequent joined at the instance of defendant No. 1 -society, who had raised the same contentions.

9. In view of common questions of facts, the above three suits came to be consolidated and common evidence was led. In fact, only one witness's viz., father of the plaintiffs, Maganbhai Patel, was examined, at Ex.82. No other witness was examined. Defendants had led no evidence. Plaintiffs had relied on the documentary evidence in the form of receipts of the deposits.

10. The trial Court, on appreciation of the evidence -on record, was pleased to decree all the three suits as stated in the above table. The original defendant No. I-society has, therefore, challenged the judgment and decree passed in the aforesaid three suits by invoking the provisions of Section 96 of the Code. The original plaintiffs have also filed cross-objections in all the three appeals for the limited purpose by challenging the finding with regard to the latest interest.

11. The learned counsel for the appellant, Mr. Patel, has contended that the plaintiffs do not give notice u/s 167 of the Act before filing the suits and, therefore, the suits were not maintainable. He has placed reliance on a decision rendered in the case of Thakkar Liladhar Vaghji v. Jamnagar Jill Sahakari Kharid Vechan Sangh Limited, reported in (1983) 24 (1) Guj LR 722. In the said case, it was held by this Court that notice u/s 167 of the Act is mandatory. The purpose of notice to Registrar is to put him in the mind about working of the society. Suit should be filed only after 60 days after the receipt of the notice. If the suit is filed before the statutory period, then it would be premature. It is also held that the notice u/s 167 of the Act cannot be waived. There is no dispute about the fact that statutory notice u/s 167 of the Act is mandatory and it cannot be waived. But the question which requires be examining and considering is as to whether the statutory notice was required in the facts of the present case.

12. The provisions of Section 167 may be considered at this stage. Statutory notice u/s 167 of the Act is required only if the suit is in respect of any act touching the business of the society. Whether the suit transaction was an act, touching the business of the society in all the three appeals is considered by the trial Court and it is held that the suit transactions in all the three matters were not in respect of any act of touching the business of the society. The trial Court has found that defendants have not led any evidence to show that the suit dispute was one in respect of act touching the business of the society. This finding of fact has remained unassailable. It is an admitted fact that the suits were filed by the plaintiffs for the recovery of amounts deposited with the defendant-society. Whether the suit transaction or the dispute in the suit is an act touching the business of the society depends upon the facts of the case. Whether the impugned act or the suit dispute pertains to the business of the society can be judged in the light of the facts of a given case. If the Court comes to the conclusion that the impugned action or a dispute is touching the business of the

society, then the statutory notice u/s 167 of the Act is a must.

13. No suits shall be instituted against the society or any one of its officers in respect of any act touching the business of the society until the expiry of two months next after notice in writing has been delivered to Registrar or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which is claimed in the suit. It is also necessary that the plaint shall contain a statement that such notice has been also given as provided u/s 167 of the Act. Therefore, no suit shall be maintainable without statutory notice u/s 167 of the Act in respect of any dispute touching the business of the society. Therefore, it is required to be considered as to whether in the present case the suit disputes or the suit transactions were in any way referable to or attributable to the business of the society. The defendant-society raised this contention in the written statement. Defendant-society has not examined any witness. No documentary evidence is produced by the defendant-society in support of this contention. Therefore, the findings of the trial Court that the defendants have failed to show that the suit dispute was one in respect of an act touching the business of the society is fully justified.

14. Apart from that, it may also be mentioned that the defendant-society is a cooperative housing society. Therefore, taking loan or accepting deposits from non-members can hardly be said to be a dispute touching the business of the society. It is not disputed before this Court that the defendant-society is a co-operative housing society. Therefore, the business of the society would be housing and not taking loan or accepting deposits. There is also no dispute about the fact that plaintiffs were never members of defendant-society. Hence, the question would arise as to whether an act of taking loan or accepting deposits from non-members could, by any stretch of imagination, be said to be an act touching the business of the society? The spontaneous answer would be in the negative.

15. Learned counsel for the defendant society has also placed reliance on a decision of this Court rendered in *Bai Chanchalben, widow of Rambhai Mathurbhai v. Ramanlal Keshavlal Shah* reported in (22 Guj LR 101

AIR 1981 NOC 50). Having examined this decision, it is found that it is inapplicable to the present case. Since the part of said judgment was reported, the original judgment was called for perusal. It was observed on page 15 of the said judgment that one of the objects shown from the evidence on record of the co-operative society was to construct houses in accordance with the co-operative principles and for that purpose it was required to purchase the land and to get the land on lease and to develop it. It was proved in that case that one of the objects of the society was to purchase the land and to develop the same and also to construct the houses. The act of purchasing the land by defendants Nos. 8 and 13 who were registered co-operative societies, was challenged in the suit. Therefore, in the facts of that case, this Court had found that the purchase of land by defendant-societies was an act touching the business of the society and,

therefore, the statutory notice u/s 167 of the Act was necessary. The said decision will not be applicable to the facts of the present case as the defend ant-society failed to prove that the suit dispute was an act touching the business of the society. Not only that but it is apparent from the evidence on record that the action for recovery of amounts deposited with the defend ant-society was not concerning or touching the business of the society. The taking of loan or acceptance of deposits from non-members was not the main object of the society.

16. The learned counsel for the defendant society has also placed reliance on Sections 44, 45 and 46 of the Act. Section 44 of the Act deals with the restrictions on borrowing by the society. A society shall receive deposits and loans from the members and other persons only to such an extent and to such conditions as may be prescribed or specified by the bye-laws of the society. Section 45 of the Act deals with the restrictions on making loans. There is no question of making loans by the society in the present case. Section 44 of the Act prescribes that the society can receive deposits and loans from the members and other persons only to such an extent and to such conditions as may be prescribed or specified by the bye-laws of the society. No such bye-law or any rule in this behalf is relied on or shown on behalf of the defend ant-society. Section 46 of the Act is also relied on. Section 46 of the Act provides that the transaction of the society with persons other than members shall be subject to such restrictions, if any, as may be prescribed. No restriction is shown in this behalf. No relevant bye-law in this connection is pointed out. It is, therefore, rightly held by the trial Court that there is nothing in Sections 44 and 46 of the Act to enable the defend ant-society to take an advantage of its own wrong assuming for the sake of discussion that acceptance of deposits from nonmembers was legal or not. In fact, it appears from the plain perusal of Sections 44 and 46 of the Act that the society can receive loans and deposits from non-members, of course, subject to the amount of such extent, which may be prescribed or specified by bye-laws of the society. Each plaintiff deposited an amount of Rs. 20,000/- in 1968 and defend ant-society accepted the said deposits. There is nothing on record to show any prescription was made in the bye-laws of the society prohibiting taking of loan to the extent of Rs. 20,000/-. Therefore, reliance on Sections 44, 45 and 46 of the Act by learned counsel for defendant society is of no avail to challenge the rightful claims of the plaintiffs.

17. In order to appreciate as to whether a statutory notice u/s 167 of the Act is required or not, the facts of each case are required to be examined first with a view to decide whether the dispute or the impugned action is relatable or attributable to the main object of the society or touching its business. It cannot be contended that all disputes or all actions in a suit against the defend ant-society registered under the Act would be pertaining to business of the society. What is the nature of dispute and what is the scope of controversy in each case has to be examined so as to consider whether it relates to the main object of the society or touching its business. The expression "touching" in Section 167 of the Act would mean, "concerning". If the question is regarding dispute between the

member of the co-operative bank and the registered society essential with main object of it cannot be said to be a dispute pertaining to the business of the society. The expression "business" could be interpreted to mean the "actual trading or commercial or other similar business activity" of the society which the society is authorised to enter into under the rules and its bye-laws. Learned counsel for the plaintiffs has placed reliance on a decision of the Supreme Court in the case of U.P. Cooperative Cane Union Federation Ltd. and Another Vs. Liladhar and Others, . Therein the dispute had arisen out of disciplinary proceedings taken against an employee by the society. The disciplinary proceedings terminated into dismissal of the employee working as a go down-keeper of the society. The Supreme Court was pleased to hold that such a dispute couldn't be said to be a dispute touching the business of the society. Similarly, the Supreme Court, in the case of Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, had an occasion to interpret expression "any dispute touching the business of the society". The Supreme Court in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, , also observed that "any dispute touching the business of the society is limited to dispute directly relating to actual trading or commercial activities of a society". The observation of the Supreme Court in that case would go to show that the Court is required to ascertain from the facts of each case as to whether or not the dispute or impugned action between the members or non-members on one side and the registered co-operative society on the other side, is touching its business, in the light of the facts of each case, keeping in view the main object emerging from the bye-laws of the society and the main business carried on by the society. It was held in that case that the dispute between an employee and the registered society with regard to the conditions of services couldn't be said to be a dispute referable to the main object or the business of the society.

18. In short, in the light of the aforesaid case law and also on the plain perusal of Section 167 of the Act, whether the impugned dispute or an action would be referable to or touching the business of the society depends upon the facts of each case. This Court is of the clear opinion that accepting loan or receiving deposits from non-members by defendant-society by no stretch of imagination can be said to be attributable to the main object of the society or referable to the business of the society. Therefore, the contention that the provisions of Section 167 of the Act were attracted and suits must fail for want of statutory notice, cannot be accepted in the light of the facts of the present case, being totally merit less. The sole contention raised in this group of three appeals cannot be sustained as discussed hereinbefore. Therefore, there is no substance in all these appeals and while dealing with the cross-objections, it may be noted here that the plaintiffs were awarded interest on the principal amount of deposits at the rate of 6 per cent per annum by the trial Court. This finding is questioned by filing cross-objections in all the three appeals. Learned counsel for the plaintiffs has contended that there was a contract with regard to the interest at the rate of

6.5 per cent and, therefore, interest should have been awarded by the trial Court at that rate. When pointed question was put to know as to whether any written agreement or contract in respect of rate of interest was there, it was stated by the learned counsel for the plaintiff fairly that there was none. Not only that, in view of the evidence of Maganbhai Patel, at Ex.82, it is found that there was no written agreement or contract about the rate of interest to be charged on the amount of deposits. It appears that during the course of period running from 1968 to 1971 till the date of filing the suits, the interest on the deposits in some cases was paid at the rate of 6 per cent per annum. This aspect also runs counter to the proposition and the contention that the interest was stipulated at the rate of 6.5 per cent. Be as it may. There is no any evidence on record to show that there was an agreement or contract for awarding interest at the rate of 6.5 per cent. The transaction in question occurred in 1968. Bearing in mind all these facts and circumstances emerging on the evidence on record, that the discretion exercised by the learned trial Court Judge in granting only 6 per cent interest from the date of the suits till realisation of the suits dues would not warrant any interference. Under these circumstances, there is no substance in the cross objections also.

19. In the light of facts and circumstances and evidence on record, all the three appeals and cross-objections in all the appeals are without any merit and, therefore, in the result, all the appeals and cross-objections are dismissed with no order as to costs.

20. Appeal dismissed.