

(1998) 09 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No's. 2640 and 2676 of 1984 & Writ Petns. No's. 2640 and 2676 of 1984

Shetkari Sahakari Sangh Ltd.

APPELLANT

Vs

Shahuwadi Taluka Shetkari Sahakari Kharedi Vikri Sangh and others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Limitation Act, 1963 — Section 3, 9(1)

Citation : (1998) 4 ALLMR 261 : (1999) 1 BomCR 143 : (1998) 3 BOMLR 600 : (1998) 3 MhLj 648

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

Bench : Single Bench

Advocate : M.A. Rane, for the Appellant; V.B. Rajure, for the Respondent

Judgement

R.M. Lodha, J.—These two writ petitions involve common question of law relating to sections 91 and 92 of the Maharashtra Co-operative Societies Act and, therefore, both the writ petitions have been heard together and are disposed of by common order.

2. For the sake of convenience I intend to refer to the facts of Writ Petition No. 2640 of 1984. The petitioner is the original disputant u/s 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "Co-operative Societies Act"). The disputant is registered under the provisions of the Co-operative Societies Act. The respondent No. 1 is also a society registered under the Co-operative Societies Act and respondent No. 2 is the District Central Co-operative Bank which too is registered under the Co-operative Societies Act. It is the case of the disputant that it carries on business in wholesale of fertilisers. The disputant appointed the respondent No. 1 as sub seller of the fertilisers as per the terms and conditions of letter dated 17-6-1968. According to the terms and conditions of the said agreement the disputant supplied the fertiliser to the respondent No. 1 on credit for sale. Respondent No 2 stood guarantee for 10% of the value of

the fertiliser supplied by the disputant to the respondent No. 1. It is the case of the disputant that respondent No. 1 failed to pay a sum of Rs. 1,45,854.56 being the amount of credit as on 30-6-1970. A meeting took place between the disputant and the respondent No. 1 in the office of the District Deputy Registrar on 25-3-1974 wherein the respondent No. 1 admitted the claim and agreed to pay the entire amount by installments. The respondent No. 1 did pay some installments as admitted by him before the District Deputy Registrar but later on failed and neglected to pay further installments. A sum of Rs. 1,13,116.52 remained due and payable by the respondent No. 1 to the disputant and, therefore, the disputant filed dispute against the respondent No. 1 and the respondent No. 2 herein as well as guarantor. The respondent No. 2 herein filed the written statement, disputed its liability and denied the claim of the disputant qua him. The respondent No. 2 set up the plea that it was not liable for claim which was decided before the District Deputy Registrar on 25-3-1974 between the plaintiff and respondent No. 1. The plea of limitation was also set up by respondent No. 2 and it was submitted in the written statement that the claim against him was barred by time. The Co-operative Court No. 1 by its judgment and order dated 21-2-1980 decreed the claim of the disputant to the sum of Rs. 1,13,116.52 and further interest at 12% on Rs. 1,07,699.11 from the date of the filing of the suit. The trial Court further decreed that if the respondent No. 1 failed to pay the suit claim, the respondent No. 2 guarantor was liable to pay 10% of the suit claim. The disputant was not satisfied with the judgment and order passed by the trial Court and, therefore, carried the matter in appeal before the Co-operative Appellate Court. The respondent No. 2 herein was also not satisfied and it also challenged the order passed by the trial Court. Both the appeals were heard together and by common order the Co-operative Appellate Court allowed the appeal filed by respondent No. 2 and set aside the judgment and decree passed against the respondent No. 2 guarantor on the ground that the claim against the guarantor respondent No. 2 herein, was barred by limitation and not maintainable. In view of this finding in the appeal filed by the respondent No. 2 guarantor, the appeal filed by the disputant was dismissed. The order passed by the Co-operative Appellate Court on 1-12-1983 is under challenge in the writ petition.

3. Sections 91 and 92 of the Co-operative Societies Act read thus:-

"91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies including its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to a Co-operative Court, if both the parties thereto are not or either of the following:

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal

representatives of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the Official Assignee of a de-registered society:

(b) a member, past member or a person claiming through a member, past member or a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society:

(c) a person other than a member of the society, with whom the society, has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed u/s 43, 44 or 45 and any person claiming through such person:

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restrictions have been prescribed u/s 45, whether such surety or person is or is not a member of the society:

(e) any other society, or the Liquidator of such a society or de-registered society or the Official Assignee of such a de-registered society:

Provided that, an industrial dispute as defined in Clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society other than a notified society u/s 73-C or a society specified by or u/s 73-G, or refusal of admission to membership by a society to any person qualified therefore, or any proceeding for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, shall not be deemed to be a dispute for the purpose of this section.

(3) Save as otherwise provided under sub-section (2) of section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1.-- A dispute between the Liquidator of a society or an Official Assignee or a de-registered society and the members (including past members, or nominees, heir or legal representative or deceased members) of the same society shall not be referred to the Co-operative Court under the provisions of sub-section (1).

Explanation 2. -- For the purposes of this sub-section, a dispute shall include

(i) a claim by or against a society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member, or servant for employee whether such a debt or demand be admitted or not :

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default to the principal borrower, whether such a sum or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee; past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of condition as the assignment."

"92. (1) Notwithstanding anything contained in the Limitation Act, 1963 but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Co-operative Court under the last preceding section shall ---

(a) when the dispute relates to the recovery of any sum, including interest thereon, due to a society by a member thereof be, computed from the date on which such member dies or ceases to be a member of the society:

(b) when the dispute is between a society or its committee, and any past committee, any past or present officer, or past or present agent, or past or present servant or the nominee, heir or legal representative or a deceased officer, deceased agent or deceased servant of the society, or a member, or past member, or the nominee, heir or legal representative of a deceased member, and when the dispute relates to any act or omission on the part of either party to the dispute, be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(c) when the dispute is in respect of any matter touching the constitution, management or business of a society which has been ordered to be wound up u/s 102, or in respect of which a nominated committee or an administrator has been appointed u/s 77-A or 78, be six years from the date of the order issued u/s 102, or section 77-A or 78 as the case may be ;

(d) when the dispute is in respect of an election of a committee or officers of the society, be two months from the date of the declaration of the result of the election.

(2) The period of limitation in the case of any other dispute except those mentioned in the foregoing sub-section which are required to be referred to the Co-operative Court under the last preceding section shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute were a suit, and the (Co-operative Court) a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Co-operative Court may admit a dispute after the expiry of the limitation period, if the applicant satisfies the Co-operative Court that he had sufficient cause for not referring the dispute within such period, and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation had expired."

Quote

4. A close look of section 91 of the Co-operative Societies Act would reveal that special jurisdiction has been conferred on the Co-operative Court relating to disputes touching the constitution, elections of the committee or its officers other than elections of committees of the specified societies, conduct of general meetings, management or business of society. For such dispute to be decided by the Co-operative Court parties must be the parties which are specified in sub sections (a), (b), (c), (d) and (e) of sub -section (1) of section 91. Section 92 of the Co-operative Societies Act provides for special limitation in the case of the dispute referred to the Co-operative Court u/s 91 and the period of limitation provided in Limitation Act of 1963 is excluded. Since the present controversy is confined to the dispute relating to recovery of amount due to the society by a member, the relevant provision for consideration is section 92(1)(a) of the Co-operative Societies Act. Scan of section 92(1)(a) would show that in the case of the dispute relating to the recovery of sum due to a society or a member referred to a Co-operative Court u/s 91, the limitation shall be computed from the date on which such member dies or ceases to be member of the society. The limitation therefore for a dispute to be referred to a Co-operative Court u/s 91 of the Act relating to the recovery of the amount including interest thereon runs from the date on which member dies or ceases to be member of the society and not before that. Section 91 contemplates claim being filed against the surety of a member in addition to the member himself. It would be, thus, seen that by expression "in the case of a dispute referred to the Cooperative Court under the last preceding section" occurring in section 92, all disputes falling u/s 91 are covered and special period of limitation is provided in sub- sections (a), (b), (c) and (d). The special limitation provided in section 92 excludes the applicability of the Limitation Act, 1963. In this background of legal position when the facts of this case are adverted to it would be noticed that the disputant filed the claim for recovery of amount against its member respondent No. 1 herein and also against the surety the respondent No. 2. There is no dispute and rather it is admitted by the learned Counsel for respondent No. 2 that as against respondent No. 1 the dispute has not become time barred. When the dispute has not become time barred against respondent No. 2 u/s 92(1)(a), apparently and obviously the said claim cannot be said to be time barred against the surety i.e. respondent No. 2. When a dispute relates to the recovery of amount due to the society by a member and such dispute is referred to Co-operative Court, the limitation runs from the date on which such members dies or ceased to be member of the society irrespective of the fact whether the claim is against borrower only or

jointly against the borrower and the surety. The legal position is very clear regarding the borrower and surety and that is that the liability of the borrower and surety is coextensive. In other words, the borrower and the surety are jointly and severally liable to the creditor. In the facts and circumstances of the case therefore, the special limitation prescribed u/s 92(1)(a) is clearly attracted not only against the respondent No. 1 borrower alone but is also applicable qua respondent No. 2. On the face of it, therefore, the finding recorded by the Appeal Court that the claim against the respondent No. 2 borrower is barred by time is unsustainable and has to be set aside. In view of this finding I do not intend to go further into the matter on facts and the matter needs to be sent back to the Co-operative Appellate Court for fresh decision on the two appeals.

5. In view of the discussions aforesaid, the order passed by the Cooperative Appellate Court on 1-12-1983 is set aside and the Co-operative Appellate Court is directed to hear and decide Appeal Nos. 416 of 1980 and 482 of 1980 in accordance with law in the light of the observations made herein above. Rule in Writ Petition No. 2640 of 1984 is made absolute in aforesaid terms.

6. The order passed by the Co-operative Appeal Court on 1-12-1983 impugned in Writ Petition No. 2676 of 1984 is also set aside for the aforesaid reasons and the Co-operative Appellate Court is directed to hear and decide Appeal No. 696 of 1981 afresh in accordance with law in the light of the aforesaid observations. Rule in Writ Petition No. 2676 of 1984 is made absolute accordingly.

No costs.

7. Petition allowed.