

(2003) 09 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 5565 of 2003

Shri. Laxmi Vividh Karyakari Sahakari (Vikas) Seva Sanstha Ltd.

APPELLANT

Vs

Kolhapur District Co-operative Bank Ltd. and Shri. Rayat Vividh Karyakari Sahakari (Vikas) Seva Sanstha Ltd.

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 1 ALLMR 97 : (2004) 4 BomCR 400

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : P.D. Dalvi, for the Appellant; T.S. Ingale and M.L. Patil, for the Respondent

Judgement

A.M. Khanwilkar, J.—Rule. Rule made returnable forthwith, by consent. Counsel appearing for the respective Respondents waive service.

2. As short question is raised, Petition taken up for final hearing forthwith, by consent.

3. This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Maharashtra State Co-operative Appellate Court, Mumbai Bench, Pune dated August 1, 2003 in Appeal No. 108 of 2003. The Petitioner Society filed dispute u/s 91 of the Maharashtra Co-operative Societies Act (hereinafter referred to as the said "Act") before the Co-operative Court No. 1, Kolhapur being CCS No. 5001 of 2003. The background in which the said dispute has been filed is that the Respondent No. 2 Society has been permitted to be registered as a Co-operative Society, whose area of operation would be overlapping with the area of operation of the Petitioner Society. The Petitioner has challenged the said decision of the Competent Authority, according permission to register the Respondent No. 2 Society. That matter is subjudice before the appropriate forum. In that proceedings, grievance has been made that

the list of members produced by the Respondent No. 2 Society for seeking registration is not genuine and that the names referred to in the said list are already members and continue to be members of the Petitioner Society. It appears that the Respondent No. 2 Society has been registered on 28th July, 2002. Be that as it may, the Respondent No. 2 Society, after registration, applied for loan on behalf of its members to the Respondent No. 1 Bank. That request has been acceded to by the Respondent No. 1 by Resolution dated 17th March, 2003. It is this Resolution which has been made subject matter of dispute before the Co-operative Court. In substance, the Petitioner Society has asserted that the Respondent No. 1 has committed impropriety and illegality in allowing the loan application and to permit the Respondent No. 2 Society to disburse the loan to its members, especially, when the Respondent No. 1 Bank was aware about the dispute raised by the Petitioner Society regarding the manner of registration of the Respondent No. 2 Society and the grievance that the members enrolled by the Respondent No. 2 Society are bogus. It is on this basis, the dispute has been filed by the Petitioner for the following reliefs:

"(A) The dispute may be allowed together with cost.

(B) It may be declared that the loan sanction letter, got sanctioned by the defendant No. 2, the alleged society, from defendant No. 1 under an executive committee Resolution No. 30 dt.17.3.2003, in the name of defaulter members of plaintiff society at Sr.No.1 to 328, mentioned in the Appendix "A" for the year 2003-2004, is illegal and a declaration may be made to that effect.

(C) The perpetual injunction order may be passed against Defendant No. 1 restraining the Defendant No. 1 society from disbursing the loan amount as per abovementioned sanctioned loan sanction letter to the Defendant No. 2, the alleged society.

(D) The perpetual injunction order may be passed against the Defendant No. 2, the alleged society, restraining the Defendant No. 2 from withdrawing the loan amount as per the abovementioned sanctioned loan - sanction letter.

(E) Leave may be granted to amend the suit if required.

(F) Other incidental reliefs may be granted in favour of the plaintiff."

4. During the pendency of this dispute, application for interim relief was preferred by the Petitioner. While opposing the said application, the Respondent No. 2 Society raised objection regarding the jurisdiction of the Co-operative Court to decide the dispute as filed. That objection was decided as preliminary issue by the Co-operative Court by Judgment and Order dated 25th July, 2003. The Co-operative Court has found that since the Petitioner has described the Respondent No. 2 Society in the Plaint as alleged Society, it necessarily follows that no dispute before the Co-operative Court u/s 91 of the Act could be maintained. The Co-operative Court has further found that the nature of controversy raised in the dispute is relating to fraudulent bogus membership list

prepared by including the names of members of the Petitioner Society and of registration given to Respondent No. 2 Society, which matter cannot be gone into in this dispute, because that pertains to events prior to the registration of the Respondent No. 2 Society and that subject matter would be outside the purview of adjudication u/s 91 of the Act. Reliance was placed on the decision of this Court reported in Shankar Y. Gavli Vs. Vishakha Sadan Co-operative Housing Society and Another, to support this proposition. It is on this basis, the Co-operative Court proceeded to answer the issue of jurisdiction against the Petitioner and consequently, dismissed the dispute as filed by the Petitioner. Against this decision, the Petitioner carried the matter in appeal before the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Pune. That appeal is also dismissed by the impugned Judgment and Order dated August 1, 2003 for the same reasons assigned by the Co-operative Court.

5. After considering the rival submissions and perusing the pleadings and the Judgments of the two Courts below, I have no hesitation in taking the view that both the Courts below have misdirected themselves in dismissing the dispute being not maintainable u/s 91 of the Act. Both the Courts below have misinterpreted the averments in the Complaint and on that erroneous basis, proceeded to hold that the dispute as filed was not maintainable. It is well settled that the issue of jurisdiction needs to be decided on the basis of the averments in the Complaint. Besides, the Complaint will have to be read as a whole. In the present case, on reading the Complaint as a whole it is not possible to countenance the view expressed by the Courts below. In fact, on plain reading of paragraphs 3 and 4 of the Complaint, it appears that, in substance, the grievance made by the Petitioner was that, although the Respondent No. 1 Bank was fully aware about the controversy between the Petitioner and Respondent No. 2 regarding inappropriate and illegal registration of the Respondent No. 2 Society on 28th July 2002, as well as the issue of bogus membership was subjudice before the appropriate forum, in spite of that, the Respondent No. 1 Bank proceeded to sanction loan to Respondent No. 2 for disbursement to persons who are stated to be members of the Respondent No. 2 Society. That has been done in collusion by the concerned officers of the Respondent No. 1 Bank. No doubt, the Petitioner has described the Respondent No. 2 as the so called society, but that does not mean that the Respondent No. 2 Society is not registered at all. Whereas, as the Respondent No. 2 Society is duly registered, the fact that the registration is subject matter of challenge, would not, by itself, mean that the Respondent No. 2 Society is not a registered Society. In that sense, the description of the Respondent No. 2 as the so called Society would make no difference to the maintainability of the dispute as filed. Moreover, the allegation in the Complaint as filed, is regarding the bogus names included by the Respondent No. 2 Society as its members when in fact those persons were already members of the Petitioner Society. It is in this backdrop, the Petitioner Society has essentially challenged the action of Respondent No. 1 Bank in according loan on the request of the Respondent No. 2 Society in spite of the fact that it was fully aware of all these

controversies. And, therefore, the reliefs as claimed in the dispute are essentially to challenge the Resolution passed by the Respondent No. 1 Bank dated 17th March, 2003. Obviously, no relief is sought to challenge the registration or the membership of the Respondent No. 2 Society because such relief was not available in the present proceedings and is matter in issue before the appropriate forum. Viewed in this perspective, the reasons assigned by the two Courts below for dismissing the dispute as being without jurisdiction, is wholly untenable. As mentioned earlier, as the Respondent No. 2 is a registered Society, obviously, the matter in relation to the business of Respondent No. 1 Bank which is intended to favour Respondent No. 2 Society in preference to the claim of Petitioner Society and, which is likely to adversely affect the Petitioner Society, would surely be amenable to dispute with in the meaning of Section 91 of the Act.

6. The other reason which has heavily weighed with the two Courts below is that the registration of the Respondent No. 2 Society as well as its membership is also challenged in the present dispute. As observed earlier, that is not the subject matter of challenge, but the grievance in the dispute as filed is that inspite of the fact that the challenge to the registration as well as the genuineness of the membership of the Respondent No. 2 is pending before the appropriate forum, and even though the Respondent No. 1 Bank was fully aware of the same, it has proceeded to extend loan facility to the Respondent No. 2 Society. The issue specifically raised in the Complaint has nothing to do with in the events that have occurred prior to the registration of the Respondent No. 2 Society. In other words, both the Courts below have proceeded on erroneous premise and therefore, have misapplied the ratio of the decision in Shankar Gavli's case (Supra). In this view of the matter, both the Judgments and Orders passed by the Appellate Court as well as the Co-operative Court are set-aside and instead, the dispute is restored to the file of the Co-operative Court for being proceeded further, in accordance with law.

7. Accordingly, this Petition succeeds. The impugned Judgments and Orders are set-aside and the dispute is restored to the file of the Co-operative Court No. 1, Kolhapur for being proceeded further in accordance with law. No order as to costs.

8. The parties shall appear before the Co-operative Court on 15th September, 2003, so as to enable the Co-operative Court to pass further directions regarding hearing of the dispute. Besides, the Co-operative Court will proceed to decide the application for interim relief on its own merits in accordance with law. Till such or further orders are passed by the Co-operative Court, parties are directed to maintain status-quo as of today.

9. All concerned to act on the ordinary copy of this order, duly authenticated by the Personal Secretary.