

(2000) 06 BOM CK 0109

In the Bombay High Court

Case No : Writ Petition No. 2231 of 1987

Shri Manmal Hirachand Kothari since deceased, through his legal heirs and representatives APPELLANT

Vs

Pune Zilla Krishi Audyogik Sarwa Seva Sahakari Society Limited RESPONDENT

Date of Decision : 07-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2000) 4 BomCR 793 : (2000) 2 BOMLR 729 : (2000) 4 MhLj 451

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

Bench : Single Bench

Advocate : S.G. Surana, for the Appellant; Ms. Gauri Jadhav, for the Respondent

Judgement

A.M. Khanwilkar, J.—This petition under Article 227 of the Constitution of India takes exception to the order passed by the Appellate Court in awarding compensation to the respondent at the rate of 50% of Rs. 69,282.50 Ps. for unauthorized retention of advances till 15-1-1976. Brief facts leading to the present petition are that dispute was filed by the respondent society against the petitioner who was its member. The petitioner is said to be a contractor and was provided advances for transport by the respondent society. According to the respondent society, the petitioner was liable to pay certain amounts under different heads for a total sum of Rs. 3,65,757.35 Ps. Consequently, notice was given to the petitioner by the respondent society on 4-6-1975. Since the amount was not tendered, the respondent society filed a dispute before the Co-operative Court, Pune, for recovery of the said amount. The petitioner appeared in the said dispute and filed written statement. The petitioner admitted the dues of the respondent society, but denied the interest charged by the respondent society. According to the petitioner, he did not take any loan from the respondent society and as such there was no agreement about interest. The petitioner further contended that he was not liable to pay future interest given by the respondent society. The Cooperative Court, Pune, after considering the rival stand was

pleased to allow the dispute preferred by the respondent society by its judgment and order dated 31-8-1976. The Co-operative Court directed the recovery of a sum of Rs. 3,65,757.35 Ps. as well as costs of the dispute quantified in its order. The Co-operative Court, Pune, however, granted liberty to the petitioner to pay the principal amount in installments and in the event the petitioner defaults in paying the amount in installments the entire amount was to be recovered at once. The Co-operative Court further awarded interest to be paid on Rs. 3,65,757.35 Ps. at the rate of 6 per cent from 1-9-1976 till the dues were actually realized.

2. The respondent society, being aggrieved by the said order, preferred an appeal before the Co-operative Appellate Court at Bombay, chiefly, asking for enhancement of the rate of future interest awarded by the Co-operative Court. On the other hand, the petitioner accepted the award passed by the Cooperative Court in so far as the principal amount as well as future interest at the rate of 6 per cent per annum was concerned. It appears from the record that before the hearing of the appeal, notice was duly served on the petitioner, but he did not choose to appear before the Appellate Tribunal. The Appellate Tribunal; by its judgment and order dated 29-12-1986 was pleased to allow the appeal and enhance the future interest by awarding amount towards compensation being 50% of Rs. 69,282.50 Ps. for unauthorized retention of advances till 15-1-1976 to the respondent society.

3. It is this decision of the Appellate Tribunal which is taken exception to by the petitioner in the present writ petition. According to the petitioner, the Appellate Tribunal has exceeded its authority in awarding future interest in excess of what is provided u/s 34 of the Code of Civil Procedure, 1908, namely, 6 per cent per annum on the principal amount. This contention is resisted by learned Counsel for the respondent relying on section 96 of the Maharashtra Co-operative Societies Act, 1960, which provides that the Co-operative Court is competent to award suitable amount representing the interest which shall not be less than the amount of interest accrued thereon in accordance with the contractual rate of interest. According to the respondent, section 34 of the CPC shall have no application to the present case as it would be governed by section 96 of the Maharashtra Cooperative Societies Act, 1960.

4. I have considered the rival submissions and I am inclined to accept the defence taken by the respondent society that the compensation awarded by the Appellate Tribunal was in effect in exercise of power u/s 96 of the Cooperative Societies Act, 1960. The basis adopted by the Appellate Tribunal for awarding the enhanced compensation is evident from the following observations which are reproduced thus :

"The learned Advocate has, however, not produced any evidence that the mercantile custom of charging 15% rate of interest was prevailing in the market. However, he submits that considering the rate of interest at which the disputant raised money from the central financing agency, the rate of 15% per annum is

reasonable and should be allowed. He further submits that considering the circumstances of the case, he is willing to accept even 50% of the total amount of Rs. 69,282.50, claimed in the dispute. Considering the submission made before me, I am inclined to agree that the opponent should pay at least 50% of the interest charges of Rs. 69,282.50 to the appellant for unauthorised retention of the advances outstanding against him till 15-1-76, on the basis of equity."

5. From the above, it is seen that the petitioner is not seriously challenging the compensation award at the rate of 6 per cent per annum. Whereas, from the reasoning given by the Appellate Tribunal, what appears is that the amount at the rate of 15 per cent per annum would work out to Rs. 69,282.20 Ps. However, the Appellate Tribunal, instead of awarding compensation at the said rate, chose to grant only 50% of the said amount as, in its view, the same would meet the ends of justice. In other words the enhancement of amount would work out to additional 1.5 per cent only and the Appellate Tribunal has given very good reasons for adopting the said approach. I find no merits in the contention raised by the petitioner for interfering with the said approach of the Appellate Tribunal.

6. At this stage, learned Counsel for the petitioner submits that since the order was passed by the Appellate Tribunal without hearing the petitioner, it would be appropriate if the matter is remitted back to the Appellate Tribunal for passing order after hearing both side. I am not inclined to accept the said request for two reasons; firstly, because the record indicates that the petitioner was duly served with the notice, but he did not appear before the Appellate Tribunal, and secondly, at any rate, the enhanced amount is only 1.5 per cent per annum and the Appellate Tribunal has given cogent reasons for adopting the said approach. According to me, no fruitful purpose will be served by remanding the matter to the Appellate Tribunal.

7. In the circumstances, the writ petition is dismissed with no order as to costs.

8. Petition dismissed.