

(2012) 01 KAR CK 0225

In the Karnataka High Court

Case No : Writ Petition No. 7748 of 2010 (GM-RES)

Sri B. Manjunatha

APPELLANT

Vs

The Assistant Registrar of Co-operative Societies, Mangalore
Sub-Division, Mangalore and The Bharath Co-operative Bank
(Mumbai) Ltd.

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 84, 84 (1)

Citation : (2013) 1 ARBLR 149 : (2012) ILR (Kar) 1218

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Harish Poonja, for the Appellant; H.T. Narendra Prasad, HCGP for R1 and Sri S.R. Hegde and Hegde Prakash for R2, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer

1. The petitioner is a member of the Bharath Co-operative Bank (Mumbai) Limited, the second respondent herein having its branch office at K.H. Road, Bangalore. The second respondent is registered under the provisions of the Multi-State Co-operative Societies Act, 2002 ("Act" for short). The petitioner had availed certain financial assistance from the second respondent-society. Since the petitioner failed to repay the amount to the society, it raised a dispute u/s 84 of the Act against the petitioner and two sureties, namely, Mr. Shankar Rae Sidney and Mr. Mallikarjuna M.R. The dispute was referred to arbitration wherein it was numbered as AR/AHN/BCB/KHR/71/07. The Arbitrator has passed an award as per Annexure "A" dated 19.1.2008 holding that the petitioner and two other guarantors are jointly and severally liable to pay a sum of Rs. 1,37,102/- to the society. The petitioner has called in question the validity of the said award in this writ petition. Learned Counsel for the petitioner contends that the award passed by the Arbitrator is arbitrary and illegal. It is contended that the Arbitrator has

not considered the payments made by the petitioner on different dates. Substantial amount has already been paid in discharge of debt to the society. The rate of interest charged by the society is opposed to the Reserve Bank of India Guidelines.

2. On the other hand, learned Counsel appearing for the respondent contends that the petitioner has to challenge the award by filing a petition u/s 34 of the Arbitration and Conciliation Act, 1996 having regard to sub-section (5) of Section 84 of the Act. It is argued that the matter requires factual adjudication and the alternative remedy available to the petitioner is not only adequate but also efficacious in nature. Alternatively, he contends that after deducting the payments made by the petitioner, the Arbitrator has passed an award, which is just and reasonable.

3. At this stage, learned Counsel for the petitioner submits that the award is final and cannot be called in question in any Court because of the bar contained in Section 84(3) of the Act. Therefore, the petitioner has no other option but to file the writ petition challenging the award.

4. Having regard to the rival contentions of the parties, the question for consideration is whether an alternative remedy is available to the petitioner for challenging the award?

5. The Multi-State Co-operative Societies Act, 2002 is an Act to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy, and for matters connected therefor or incidental thereto. Section 84 of the Act provides for reference of disputes. Sub-section (1) of Section 84 states that notwithstanding anything contained in any other law for the time being in force, if any dispute other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of Section 2 of the Industrial Disputes Act, 1947 touching the constitution, management or business of a multi-State co-operative society arises-(a) among members, past members and persons claiming through members, past members and deceased members, or (b) between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or (c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or (d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State

co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society, such dispute shall be referred to arbitration. Sub-section (2) of Section 84 defines "the deemed disputes" touching the constitution, management or business of a multi-State co-operative society for the purpose of sub-section (1) as under:

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not.

(b) xxx

(c) xxx

6. The other relevant statutory provisions are sub-sections (3), (4) and (5) of Section 84, which are as under:

(3) If any question arises whether a dispute referred to arbitration under this Section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any Court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

7. As noticed above, the disputes described in sub-section (2) of Section 84 are "deemed to be disputes" touching the constitution, management and business of a multi-State Co-operative Society for the purpose of sub-section (1) of Section 84. Sub-section (3) of Section 84 makes it clear that if any question arises whether a dispute referred to arbitration u/s 84(1) is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the Arbitrator shall be final and shall not be called in question in any Court. Thus, the order of reference alone becomes final under this provision, which cannot be challenged in any Court. Once the dispute is referred to arbitration and the Arbitrator passes an award under sub-section (4) of Section 84, it does not come within the ambit of sub-section (3) of Section 84 of the Act.

8. Sub-section (5) of Section 84 of the Act starts with a saving clause. The expression "save as otherwise provided under this Act" is used to preserve from destruction certain rights, remedies or privileges already existing. A saving provision or clause merely preserves what exists. "Savings" means that it saves all the rights the party previously had and not that it gives him any new right. In

the instant case, what is saved is the question relating to the reference of a dispute to the arbitration, which is final and cannot be called in question in any Court. Thus, sub-section (3) of Section 84 attaches finality to the question as to whether the dispute referred to arbitration is a dispute touching the constitution, management and business of a multi-State Co-operative Society or not. The aggrieved party can only seek judicial review of the said order by filing a writ petition before this Court. Once an award is passed under sub-section (4) of Section 84, the aggrieved party can file an application for setting aside the same u/s 34 of the Arbitration and Conciliation Act, 1996 before the Court as defined under sub-section (2)(e) of the said Act. It is thus clear that an alternative remedy is available to the petitioner for challenging the arbitral award under the provisions of the Arbitration and Conciliation Act, 1996. The contention of the petitioner is that the society has not given deduction to the payments made by the petitioner from time to time and that the rate of interest charged is excessive. Thus, the matter requires factual adjudication. It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The extraordinary jurisdiction of this Court is not a panacea for all the maladies, which a litigant may suffer from. It is true that the existence of an alternative remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writ. In my view, the alternative remedy available to the petitioner is not only adequate but also efficacious in nature. Therefore, I decline to entertain the writ petition. It is accordingly dismissed reserving liberty to the petitioner to avail the alternative remedy available to him in law. No costs.