

(1990) 08 OHC CK 0010
In the Orissa High Court
Case No : First Appeal No. 65 of 1979

Sudhakar Bhoi and Others

APPELLANT

Vs

Bhadrak Co-operative Land Development Bank Ltd. and
Others

RESPONDENT

Date of Decision : 16-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 80

Citation : (1990) 70 CLT 562

Hon'ble Judges : A.K. Padhi, J

Bench : Single Bench

Advocate : R. Ch. Mohanty and J.P. Das, for the Appellant; K.N. Jena, for Respondent No. 1, Sarat Kumar Mohanty and A.G., for the Respondent

Judgement

A.K. Padhi, J.—Plaintiffs are the Appellants. In the plaint it is alleged that Plaintiffs had mortgaged the suit property with Defendant No. 1, a Co-operative Land Development Bank. Defendant No. 1 initiated dispute before the Assistant Registrar, Co-operative Society. No notice before passing of award was served on the Plaintiffs and an ex parte award has been obtained by Defendant No. 1 and in execution of the said ex parte award the disputed property was sold in auction sale. Since the award is void as has been passed without notice, all the subsequent actions are also void and with these averments, the suit for declaration that the sale in favour of Defendant No. 6 be set aside and for injunction was filed.

2. The Defendants filed written statement. Besides denying all the facts the Defendant raised the question that as no notice u/s 127 of the Orissa, Co-operative Societies Act (hereinafter referred to as "the Act") has been served, the suit is not entertainable.

3. The trial Court raised the preliminary issue on the question of non-service of notice u/s 127 of the Act and has given the findings:

(a) The Plaintiffs have sought for the relief touching the business of the society as society in order to realise their loan amount have taken steps resulting the alleged loss to the Plaintiffs;

(b) Section 127 of the Act is mandatory; and

(c) The suit has been filed without notice u/s 127 of the Act.

With these findings dismissed the suit deciding on the preliminary issue. This judgment of the trial Court dismissing the suit on preliminary issues is challenged in this First Appeal.

4. The only question which arises for consideration in this appeal is that, when an award passed u/s 68 of the Act passed by the Assistant Registrar is challenged on the ground that it is void as the same has been passed without notice to the Plaintiff and the subsequent actions are also void since they were in execution of a void award whether the notice u/s 127 of the Act is required to be served and the consequence of non-service of notice. Section 127 of the Act reads as follows;

Notice necessary in suits-No suit shall be instituted against a society or any of its officers in respect of any act touching the constitutions, management or the business of the society until the expiration of two months after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place or residence of the Plaintiff and the relief he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

Interpreting as to whether the service or notice is mandatory or not it has been held in 1975 (1) C.W.R. 366, (Manmohan Das v. Madhunagar Powerloom Weavers Co-operative Society and Ors.), that the service of notice u/s 127" of the Act is in pari materia with Section 80. Code of Civil Procedure. A suit without compliance of the Section when required to be complied is liable to be dismissed in limine as absence of notice touches the root of the matter and affects the jurisdiction of the Court. Hence the law is well settled that when a suit is instituted against a Society or of any of its Officers challenging any of its act touching the constitution) Management or business of the society, compliance of notice as contemplated u/s 127 of the Act is mandatory.

5. The next question which arises for consideration as to whether in this suit the action of the society or any of its officers is challenged which relates to the constitution, management or business of the society, the main challenge being the award passed u/s 68 to be void ab initio due to want of service of notice and consequential actions.

6. The disputes was referred to the Assistant Registrar u/s 68 of the Act. Section 68 of the Act vests jurisdiction on the Assistant Registrar to adjudicate a dispute when it touches the constitution, management and business of a society. Section 70 of the Act envisages a reference to the Assistant Registrar; Rule 77 of the Orissa Co-operative Societies Rules (hereinafter referred to as "the rules") lays

down the procedure to be followed by the Assistant Registrar while adjudicating a dispute. Rule 77 read with Rule 150 lays down the procedure of service of notice. Any award passed without notice shall be void ab initio. Non service of notice amounts to violation of natural justice and as such a decision incorporated in an award without notice is null and void and touches the jurisdiction of the Court. This view of mine finds support from Second Appeal No. 395 of 1961, (decided on 2-4-1968), (Fakir Mohan Senapati v. State of Orissa and Ors.)

7. The Assistant Registrar deciding the dispute u/s 68 of the Act is a quasi judicial authority. The Defendant Bank as well as the Plaintiffs were parties before the Assistant Registrar while he was required to adjudicate the dispute u/s 68 of the Act. In 31 (1965) C.L.T. 154, (Rajendranath Dhar and Ors. v. Assistant Registrar Balasore Co-operative Central Bank Ltd. and Anr.), this Court has observed that the Assistant Registrar of Co-operative Society functions like a quasi judicial Officer, while deciding the dispute, the real parties being the persons who raised the dispute before him namely the Plaintiff on one hand and the Co-operative Society and the Central Co-operative Bank on the other. This observation was made by his Lordship while considering the scheme u/s 48 of Bihar and Orissa Co-operative Societies Act, Section 48, which is pari materia same as Section 68 of the Orissa Co-operative Societies Act. In Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, , while considering a case as to whether Contempt of Courts Act shall be applicable when the Assistant Registrar is discharging the functions of Registrar u/s 48 read with Section 62 of the Bihar and Orissa Co-operative Society Act, their Lordships have observed:

It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted u/s 57 of the Act in case of disputes which fell u/s 48. A Registrar exercising powers u/s 48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in any respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of CPC including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in Section 151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred u/s 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the simple manner as a Court of law is expected to do.

Hon"ble Justice R.C. Patnaik while analysing the object and scheme of the Orissa Co-operative Societies Act, 1962 Section 68(l) along with its Explanation-1 has observed in 53 (1982) C.L.T. 279 (The workmen of the Orissa Police Co-operative Syndicate v. The State of Orissa and Ors.):

Under the scheme of the Co-operative Societies Act, the Registrar is the

substitute for the Civil Court. As the Supreme Court said the object of the Act is to "shorten litigation, lessen its costs and to provide summary procedure for the determination of the disputes relating to the internal management of the societies. Such reliefs which the Civil Court is incompetent to grant are equally out of bounds of the Registrar....

Hence it is clear that the Assistant Registrar of the Co-operative Societies Act discharges quasi judicial functions while adjudicating a dispute u/s 68 of the Act on being referred u/s 10 of the Act and is a Court and does not act on behalf of the society or is not an Officer of the society. The adjudication process challenged is not relatable to business, management or constitution of the society. It" is the action of the Assistant Registrar as a quasi judicial authority is under challenge.

8. In conclusion I hold that an award passed u/s 68 of the Act without notice is an award, void ab initio and without jurisdiction as it violates the principles of natural justice. When an award passed by the Assistant Registrar is challenged as being without jurisdiction for want of notice it does not touch the business, management or constitution of the society nor it challenges of any order of the Officer of the Society. Notice u/s 127 of the Act is not necessary, and the finding of the trial Court that the suit is liable to be dismissed in limine, for want of notice is not a correct finding.

9. Since I have already held that no notice was necessary to be served as per the provision of Section 127 of the Act, the appeal is bound to succeed.

In the result, the findings of the trial Court on the preliminary issue is set aside and the suit be remitted to the trial Court to be decided on merit. In the circumstances of the case, there shall be no order as to cost.

Ordered accordingly.