

(1995) 12 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 7 of 1994

Sumer Chand Katoch

APPELLANT

Vs

The Kangra Central Co-Operative Bank Ltd.

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, Order 7 Rule 11, 100, 80
Himachal Pradesh Co-operative Societies Act, 1968 — Section 148(2), 72, 76
Limitation Act, 1963 — Article 58, 3

Citation : (1996) 2 ShimLC 134

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : Ankush Sood and K.C. Rana, for the Appellant; Rakesh Kanwar, for the Respondent

Judgement

Kamlesh Sharma, J.—This appeal is directed against the decree and judgment dated 23-3-1993 passed by the District Judge, Kangra at Dharamshala whereby the appeal of the Respondent-Defendant bank was allowed and the decree and judgment dated 31-8-1992 of the Senior Sub-Judge, Kangra at Dharamshala was set aside and the plaint of the Appellant-Plaintiff was rejected under Order VII, Rule 11(d) of the Code of Civil Procedure. Hence, the present regular second appeal u/s 100 of the CPC by the Appellant-Plaintiff.

2. At the time of admission, the following substantial questions of law were framed:

1. Whether it can be held that the termination of the services of the Appellant-Plaintiff is an act touching the management of the society?
2. Whether Section 76 of the Himachal Pradesh Co-operative Societies Act is applicable to the facts and circumstances of the case?
3. The brief facts of the case are that the Appellant-Plaintiff was appointed as a clerk-cum-supervisor with the Respondent-Defendant bank on 15-5-1982. On

18-4-1985 he was served with a charge-sheet containing 18 charges and was called upon to file reply thereto within a period of two weeks. On failure to file the reply within the stipulated period, his services were terminated on 27-5-1985. However, in the appeal preferred by the Appellant-Plaintiff, the Board of Directors of the Respondent-Defendant bank revoked the order dated 27-5-1985, as conveyed by the General Manager of the Respondent-Defendant bank on 18-6-1985 and the Appellant-Plaintiff was reinstated. Again, on 24-6-1985, the Appellant-Plaintiff was informed that an Enquiry Committee consisting of S/Shri Baldev Raj, Kashmir Singh Rana and N.C. Katoch would enquire into the charges against him. On the objection raised by the Appellant-Plaintiff that Shri N.C. Katoch, Zonal Manager of the Respondent-Defendant bank was himself the complainant, he did not participate in the enquiry, which was conducted by other two members. As per the allegations of the Appellant-Plaintiff, he was not given opportunity to lead evidence in defence and the Enquiry Committee proceeded to give its report, on the basis of which the services of the Appellant-Plaintiff were again terminated by the Board of Directors on 26-8-1985. The termination order was given to him on 30-8-1985 According to the Appellant-Plaintiff, neither the copy of the enquiry report was supplied nor notice to show cause was served upon him before terminating his services.

4. Feeling aggrieved, on 27-9-1985 the Appellant-Plaintiff filed appeal before the Registrar, Co-operative Societies, who instead of deciding it himself, forwarded it to the Additional Registrar, Co operative Societies, who in turn forwarded it to the Chairman of the Respondent Defendant bank for reviewing the decision on the ground that under the service bye-laws of the Respondent-Defendant bank, the appeal did not lie to the Registrar, Co-operative Societies. Thereafter, on 19-1-1986, the Appellant-Plaintiff was informed by the Acting General Manager of the Respondent-Defendant bank that his appeal stood consigned to record as there is no provision under Rule 64(a) of the Rules relating to the terms of employment and working conditions of the employees of this bank for second appeal or review. It was also mentioned in the letter that the decision to terminate the services of the Appellant-Plaintiff was taken by the Board of Directors as Appellate Authority after proper enquiry and satisfaction vide its Resolution No. 6 dated 26-8-1985.

5. In this background the Appellant-Plaintiff filed civil suit on 1-10-1988 for declaration that termination order dated 26-8-1985/30-8-1985 passed by the Respondent-Defendant bank is illegal, void, against law and is liable to be set aside, and he be reinstated and paid back wages with all other consequential benefits.

6. The Respondent-Defendant bank resisted the suit and took number of preliminary objections including that the suit was not maintainable without service of notice u/s 76 of the Himachal Pradesh Co-operative Societies Act, 1968 (hereinafter called "the Act") and the Court of the Senior Sub-Judge, Kangra at

Dharamshala had no jurisdiction to entertain the suit. On merits, it was admitted that first termination order dated 27-5-1985 was revoked in the appeal filed by the Appellant-Plaintiff and the subsequent termination order dated 30-8-1985 was passed after the findings of the Enquiry Committee were accepted by the Board of Directors on 26-8-1985. It was specifically denied that the Appellant-Plaintiff was not afforded the opportunity to lead defence evidence before the Enquiry Committee. According to the Respondent-Defendant bank, there is no requirement of law to supply a copy of enquiry report or issue notice to show cause before passing the termination order.

7. On the pleadings of the parties, the following issues were framed:

1. Whether the termination order dated 30-8-1985 is illegal and void, against law and liable to be set aside? OPP
2. Whether the suit without serving notice u/s 76 of the H.P. Co-operative Societies Act is not maintainable? OPD
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the Plaintiff is estopped by his act and conduct to file the present suit? OPD
5. Whether this Court has no jurisdiction to entertain the suit? OPD
6. Relief.

8. Issue No. 1 was answered in affirmative holding that the enquiry conducted against the Appellant-Plaintiff was vitiated being violative of principles of natural justice, inasmuch as, the Directors conducting the enquiry were biased and no opportunity was afforded to the Appellant-Plaintiff to adduce evidence in his defence. It was further held that non-supply of the copy of the enquiry report and denial of opportunity of hearing before imposing penalty of termination of services was also against the principles of natural justice. Issue No. 2 was answered in negative holding that Section 76 of the Act is not mandatory, as such, the suit was maintainable without giving notice. In answer to Issue No. 3, it was held that the Registrar, Co-operative Societies was not necessary party. So far Issues No. 4 and 5 are concerned, these were not pressed. In view of these findings the suit filed by the Appellant-Plaintiff was decreed as prayed for.

9. The Respondent-Defendant bank filed appeal against the decree and judgment of the trial Court, which has been allowed by the District Judge reversing the findings on Issue No. 2 holding that in the absence of service of notice u/s 76 of the Act, the suit was not maintainable and the plaint has been rejected under Order VII, Rule 11(d), Code of Civil Procedure, and no finding has been given on merits of the case.

10. This Court has heard learned Counsel for the parties and gone through the record. Mr. Ankush Sood, learned Counsel appearing for the Appellant-Plaintiff, has urged that the dispute in respect of the termination of the services of an

employee of a Co-operative society does not pertain to an act touching the management of the co operative society, as held by the District Judge, as such, notice u/s 76 of the Act was not required and the plaint of the Appellant-Plaintiff has been wrongly rejected In support of his submissions, Mr. Sood has relied upon the judgment of the Supreme Court in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, According to him, the District Judge is not right in relying upon the judgment of Rajasthan High Court in Sawai Madhopur Co-op. Marketing Society Ltd. Vs. Rajasthan State Co-operative Tribunal, Jaipur and Another, on the ground that the scheme and the rules under the Rajasthan Co-operative Societies Act and that of the State of Himachal Pradesh are para materia. Mr. Sood has also drawn the attention of this Court to a judgment dated 8th September, 1995 passed by this Court in Dina Nath v. The Kangra Central Co-operative Bank Ltd, Dharamshala and Ors. R.S.A. No. 282 of 1994, wherein relying upon the judgment of the Supreme Court in The Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and Anr. (supra), it was held that the dispute in respect of appointment of an employee of the Co-operative society is not a dispute pertaining to the management of the society.

11. On the other hand, Shri Rakesh Kanwar, learned Counsel for the Respondent-Defendant bank, has supported the judgment of the District Judge on the point of notice u/s 76 of the Act but has assailed it on the point of limitation Referring to Section 3 of the Limitation Act, Shri Rakesh Kanwar has urged that even if cross objections have not been filed by the Respondent-Defendant bank, this Court should examine the point of limitation in exercise of powers under Order 41, Rule 33, Code of Civil Procedure. In view of Section 3 of the Limitation Act, his submission is that it is for the Court to dismiss the suit if it is barred by limitation, although limitation has not been set up as a defence. According to Shri Kanwar, the suit of the Appellant-Plaintiff was time barred from the date of termination of the services of the Appellant-Plaintiff i.e. 30-8-1985.

12. Dealing first with the point of limitation, this Court finds that the District Judge has correctly held that the cause of action had arisen to the Appellant-Plaintiff lastly on 19-3-1986 when his appeal was dismissed and he had filed his suit on 1-10-1988, within a period of limitation of three years, as prescribed under Article 58 of the First Schedule of the Limitation Act. It is not in dispute that against the termination order dated 30-8-1985, the Appellant-Plaintiff did file the appeal irrespective of the controversy to whom it lay and the Registrar, Co-operative Societies had instead of deciding it himself forwarded it to the Chairman of the Respondent-Defendant bank and the Board of Directors of the Respondent-Defendant bank held it not maintainable on the ground that they had passed the order of termination as an Appellate Authority and there was no provision to entertain the second appeal or review. Without going into the controversy whether the appeal filed by the Appellant-Plaintiff was maintainable or not, the fact remains that the Appellant-Plaintiff remained under bona fide belief that the matter was under consideration of the competent authorities and

he had rightly waited for the final decision till 19-3-1986.

13. The next question is whether the District Judge is right in rejecting the plaint under Order VII, Rule 11(d), CPC on the ground that the suit was not maintainable without giving notice u/s 76 of the Act. Section 76 of the Act is:

76. Notice necessary in suits.-No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, 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 of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

14. By now it is well settled that Section 76 of the Act is mandatory and its compliance is must and does not permit any exception as is apparent from its language, which is couched in negative terms. Its language is similar to that of Section 80, Code of Civil Procedure, which fell for consideration of the Supreme Court of India in *The State of Madras Vs. C.P. Agencies and Another*, wherein the learned Judges have held that:

...Section 80 is express, explicit and mandatory and admits of no implications or exceptions.... The object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the Plaintiff should be accepted or resisted. In order to enable the Government or the public officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for.

15. u/s 76 of the Act also notice of two months is required to be delivered to the Registrar, Co-operative Societies or left at his office, stating the cause of action, the name, description and place of residence of the Plaintiff and the relief which he claims so that the Registrar may look into the matter and issue appropriate directions to the management of the Co-operative society either to contest the claim or to accept it in the interest of the society. From the scheme of the Act it is clear that the Registrar, Co-operative Societies is a statutory authority who exercises overall control in respect of constitution, management and business of a Co-operative society, as such, he plays a vital role in respect of a disputes touching the constitution, management and business of the society. Section 76 of the Act further provides that the plaint shall contain a statement that such a notice has been so delivered or left. Therefore, if the mandatory notice u/s 76 of the Act is not delivered or left, the plaint can be rejected under Order VII, Rule 11(d), Code of Civil Procedure. In view of this, the District Judge is right to the extent that compliance of Section 76 of the Act is mandatory before a suit is entertained in respect of a dispute touching the constitution, management or the

business of the society. (Please see: Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, and The Jawali Harijan Co-operative Agricultural Society Vs. Maghu etc. etc., .

16. However, the vital question for the application of Section 76 of the Act is whether the matter in respect of setting aside the termination order and grant of consequential relief is a matter touching the constitution, management or the business of the society, as stated in Section 76 of the Act. This Court may hold without any fear of contradiction that it is not an act touching the constitution and the business of the society. In Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, ; Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, and The Allahabad District Co Operative Ltd v. Hanuman Dutt Tewari AIR 1982 SC 120, it is held by the learned Judges of the Supreme Court that since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, the dispute relating to conditions of service of the workman employed by the society cannot be held to be a dispute touching the business of the society.

17. The words "touching the constitution, management or the business of a Co-operative society" used in Section 76 of the Act also occur in Section 72 of the Act. which provides that any dispute touching the constitution, management, or the business of a Co-operative society arising between the parties stated therein, shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Undoubtedly, these words used in both these sections carry the identical meaning. Section 72 of the Act is para materia to Section 96 of the Gujarat Co-operative Societies Act, 1961, which fell for consideration of learned Judges of the Supreme Court in The Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and Anr. (supra) Interpreting the expression "management of the society", it was held that:

35. ...Grammatically, one meaning of the term "management" is: "the Board of Directors" or "the apex body" or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society" In this sense, it may not include the individuals who under the overall control of that governing body or Committee, run the day-to-day business of the Society.... Another meaning of the term "management" may be: "the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a society".

36. A still wider meaning of the term which will encompass the entire staff of servants and workmen of the Society, has been canvassed for by Mr. Dholakia. The use of the term "management" in such a wide sense in Section 96(1) appears to us, to be very doubtful.

37. Be that as it may, what has been directly bidden "out-of-bounds" for the Registrar by the very scheme and object of the Act, cannot be indirectly inducted

by widening the connotation of "management". A construction free from contextual constraints, having the effect of smuggling into the circumscribed limits of the expression "any dispute", a dispute which from its very nature is incapable of being resolved by the Registrar, has to be eschewed. Thus considered, a dispute raised against the Society by its discharged servant claiming reliefs such as reinstatement in service with back wages, which are not enforceable in a Civil Court is outside the scope of the expression "touching the management of the Society" used in Section 96(1) of the Act of 1961, and the Registrar has no jurisdiction to deal with and determine it. Such a dispute squarely falls within the jurisdiction of the Labour Court under the B.I.R. Act.

18. In view of these clear observations of the learned Judges of the Supreme Court, the District Judge was not right in relying upon the judgment of Rajasthan High Court in *Sawai Madhopur Co-operative Marketing Society Ltd v. Rajasthan State Co-operative Tribunal, Jaipur and Anr.* (supra). The learned Judge of Rajasthan High Court took the view that having regard to the provisions of the Rajasthan Co-operative Societies Act and the Rules, the dispute in question relating to validity of the suspension and termination is a dispute touching the management of the society and falls within the ambit of Section 75 of the Rajasthan Co-operative Societies Act. According to them, the ambit and import of word "touching" are very wide and it includes any matter which relates to the management of the society, more particularly, when the Registrar deals with the matters relating to the officers and employees as provided in the Act and the Rules. Section 75 of the Rajasthan Co-operative Societies Act is para materia to Section 72 of the Act and also Section 96 of the Gujarat Co-operative Societies Act, which was under consideration of the learned Judges of the Supreme Court in *The Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and Anr.* (supra). The learned Judges of the Rajasthan High Court have tried to distinguish the judgment of the Supreme Court by stating that, "it appears that attention of their Lordships of the Supreme Court was not drawn to the provision of Section 76 under Chapter VII of the Gujarat Act and the Rules made thereunder". Section 76 of the Gujarat Co-operative Societies Act falls under Chapter VII, which deals with the management of societies and reads as under:

76. The qualifications for the appointment of a manager, secretary, accountant or any other officer or employee of a society and the conditions of service of such officers and employees shall be such as may, from time to time, be prescribed:

Provided that no qualification shall be prescribed in respect of any officer not in receipt of any remuneration.

19. The reasoning of learned Judges of Rajasthan High Court is that consideration of Section 76 of the Gujarat Co-operative Societies Act and the Rules made thereunder prescribing the qualification for the officers and employees of the society would have assisted the learned Judges of the Supreme Court to give wider meaning to the term "management" covering within its compass the disputes of appointment, termination and other conditions of

service of the officers and the employees of the society. With all respect to the learned Judges of Rajasthan High Court, this Court finds it difficult to agree with this reasoning given by them. It cannot be presumed that the learned Judges of the Supreme Court did not consider Section 76 of the Gujarat Co-operative Societies Act for coming to their conclusion inspite of their not referring this section in their judgment. Even if the provision like Section 76 of the Gujarat Co-operative Societies Act figures in a chapter pertaining to the management of the societies, it does not lead to the conclusion that the term "management" which grammatically means "the Board of Directors" or "the apex body" or "Executive Committee at the helm" would include the officers and employees of the society, who run the day-to-day business under their overall control. Moreover, the Rajasthan Co-operative Societies Act and Rules and the Act and Rules of the State of Himachal Pradesh materially differ in respect of the provisions pertaining to the Officers and employees of the society, more specifically, Section 148(2) (xxvii) and (xxx), as reproduced in paragraph 6 of the judgment in Sawai Madhopur Co-operative Marketing Society Ltd. v. Rajasthan State Co-operative Tribunal, Jaipur and Anr. (supra), on which the learned Judges of Rajasthan High Court mainly based their conclusion. Therefore, applying the ratio of the judgment of the Supreme Court in The Gujarat State Co-operative Land Development Bank Ltd. v. P.R. Mankad and Anr. (supra), this Court holds that the dispute pertaining to termination of the services of the Appellant-Plaintiff is not the dispute touching the management of the Respondent-Defendant bank for which notice u/s 76 of the Act was required before filing of the suit.

20. In the result, the appeal is accepted and the impugned decree and judgment dated 23-3-1993 passed by the District Judge, Kangra at Dharamshala is set aside.

21. With the consent of the parties, this Court has proceeded to consider the case of the Appellant-Plaintiff on merits. Mr Rakesh Kanwar, learned Counsel for the Respondent-Defendant bank, has not been able to point out any infirmity in the findings of fact arrived at by the trial Court that the enquiry was vitiated being violative of principles of natural justice, inasmuch as, the Directors conducting the enquiry were biased and no opportunity was granted to the Appellant-Plaintiff to adduce defence evidence. It is also not in dispute that he was not supplied the copy of enquiry report and no hearing was given before inflicting the major penalty of termination of his services, which make the order of termination bad. In this view of the matter, this Court affirms the decree and judgment of the trial Court and declare the order of termination dated 30-8-1985 as null and void, as a result of which the Appellant-Plaintiff is deemed to be in service and entitled to all consequential benefits thereof but he will be given pay and salary w.e.f. the decree and judgment of the trial Court i.e. 31-8-1992. No costs.