
(2018) 04 BOM CK 0160

In the Bombay High Court

Case No : CIVIL REVISION APPLICATION (CRA) NO. 19 OF 2018

TAMRALIPTA CO-OPERATIVE SPINNING MILLS LTD. KOLKATA
AND ANOTHER

APPELLANT

Vs

SMT. SEETADEVI JAGDISHPRASAD CHANDAK AND ANOTHER

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Civil Procedure Code, 1908 — Order 7 Rule 11

West Bengal Co-operative Societies Act, 2006 — Section 102, 102(1)(d), 102(4), 145

West Bengal Co-operative Societies Act, 1983 — Section 95, 95(1)(d), 134(2)

Limitation Act — Section 14

Citation : (2018) 04 BOM CK 0160

Hon'ble Judges : MANISH PITALE, J

Bench : Single Bench

Advocate : S.A. Mohata, N.R. Saboo

Final Decision : Allowed

Judgement

1. Heard.Â Admit.Â Heard finally with the consent of the learned Counsel appearing on behalf of the respective parties.Â

2. The applicants herein are the original defendants who have challenged the order dated 05.04.2017 passed by the Court of Civil Judge, Senior

Division, Khamgaon (trial Court) rejecting their application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure.

3. The facts leading to filing of the instant revision application are that the respondents herein (original plaintiffs) filed Special Civil Suit No. 5 of 2013

for recovery of money against the applicants herein.Â It was claimed by the respondents that the applicants had placed orders for purchasing cotton

bales and that they had failed to pay balance amount in respect of the said transactions.Â In this suit, the applicants appeared and filed an application

under Order 7 Rule 11 of the Code of Civil Procedure claiming that the suit was barred by the provisions of West Bengal Co-Operative Societies Act,

2006. It was pleaded that under Section 102 of the aforesaid Act, any dispute between the Cooperative Society like applicant No.1 herein and any

person having transaction with it, shall be resolved by approaching the Registrar appointed under the said Act and that Civil Courts were barred from

entertaining any proceedings in respect of such dispute. On this basis, it was contended that the suit for recovery filed by the respondents was

barred by law and that the plaint deserved to be rejected. The respondents resisted the said application and contended that the Civil Court had

jurisdiction in the matter and that the plaint could not be rejected at the threshold.

4. By the impugned order dated 05.04.2017, the trial Court has considered the provisions of the aforesaid Act and it has come to the conclusion that

since the respondents were not members of the applicant/ Cooperative Society, it could not be said that they were required to approach only the

Registrar under the said Act and that the suit could not be said to be barred by law. On this basis, the trial Court rejected the aforesaid

application. Aggrieved by the same, the present revision application has been filed.

5. Shri Mohata, learned Counsel appearing on behalf of the applicants submits that the trial Court has failed to appreciate the provisions of the said

Act, particularly Sections 102(1)(d) and 102(4) read with Section 4(25) of the said Act, while passing the impugned order. It is contended that a

proper reading of the said provision would show that a dispute between a cooperative society registered under the said Act and any person having

transaction with it, was necessarily required to be decided by the Registrar under the said Act and the Civil Court was barred from exercising

jurisdiction for resolution of such dispute. It was submitted that there were provisions in the said Act pertaining to appeals for challenging the order

of the Registrar.

6. Learned Counsel for the applicants has placed reliance on the judgment of the Special Bench of the Calcutta High Court in the case of Anjan

Choudhury .v. Anandaneer Co-Operative Registered Housing Society and others (reported in AIR 1990 CALCUTTA 380) concerning a para?

materia provision wherein Special Bench held that a plaint was liable to be rejected in circumstances similar to those in the present case.

7. Shri Saboo, learned Counsel appearing on behalf of the respondents opposes the contentions raised on behalf of the applicants herein. It is

submitted that the contentions raised on behalf of the applicants were a matter of trial and that the plaint could not be rejected at the threshold.

8. A perusal of the relevant provisions in the present case is necessary to decide whether the impugned order passed by the trial Court was

justified. The relevant provisions of the aforesaid Act read as follows :

(25) "dispute" means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a

co-operative society;

102. Disputes to be filed before Registrar. (1) Any dispute concerning the management or business or affairs of a co-operative society other than

the dispute relating to election in a co-operative society as and when such election is conducted by the Co-operative Election Commission and

disciplinary action taken by cooperative society against its paid employees regarding the terms and conditions of the service shall be filed before the

Registrar for settlement if it arises

(a) among members, past members and persons claiming through members and deceased members or then sureties; or

(b) between members, past member or a person claiming through a member, past member or deceased member representing through heirs or legal

representatives and the co-operative society, its board or any officer, agent or employees of the co-operative society or liquidator, past or present; or

(c) between the co-operative society or its board and any past board, any officer, agent or employee or any past officer, past agent; or past employee

or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the co-operative society; or

(d) between two co-operative societies or between a co-operative society and a liquidator of another co-operative or between liquidator of two

different co-operatives or between a co-operative society and any person having transaction with it or between a co-operative society and its

financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to

recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force, the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation.

(4) Any civil court or any Consumers' Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1).

(5) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed.

145. Indemnity and bar to jurisdiction of courts. (1) No suit, prosecution or other legal proceedings shall lie against the Registrar or any person authorised by him or against a board of directors in respect of anything done or purported to be done in good faith under this Act.

(2) Save as provided in this Act, no Civil Court or Revenue Court or Consumer Disputes Redressal Forum shall have jurisdiction in regard to anything done or any action taken or any order passed under this Act and, in particular, in regard to

(a) the registration of a co-operative society or its by-laws or an amendment of its by-laws; or

(b) the dissolution of the board of a co-operative society and the management of such co-operative society on such dissolution; or

(c) any matter concerned with dissolution or liquidation of a co-operative society;

(d) any dispute required to be referred to the Registrar under section 102.

(3) While a co-operative society is being dissolved, no suit or other legal proceeding relating to the affairs of such cooperative society shall be proceeded with or instituted against the liquidator, or such co-operative society or any member thereof except by leave of the Registrar and subject to such condition as the Registrar may impose.

(4) Save as provided in this Act, no order, decision or award made under this Act shall be challenged, set aside, modified, revised or declared void in

any court on any ground whatsoever except for want of jurisdiction.â??

9. A conjoint reading of the aforesaid provisions shows that when there is a dispute between a cooperative society and any person having transaction

with it, it could be resolved by approaching only the Registrar under the said Act and that the Civil Court has no jurisdiction to try such a dispute.Â

The jurisdiction of Civil Court is expressly barred on a proper reading of the aforesaid provisions.Â

10. A perusal of the impugned order in the present case shows that while analyzing the said provision in paragraph 5, the trial Court has committed an

obvious error in stating that the said provisions would not apply because the respondents were not members of the applicant/ Cooperative Society.Â

The words, â??between a cooperative society and any person having transaction with itâ? have escaped the attention of the trial Court, which has

resulted in erroneous findings rendered by it.Â

11. The Special Bench of Calcutta High Court in the case of Anjan Choudhury .v. Anandaneer CoÂoperative Registered Housing Society and others

(supra) has considered a pari materia provision under Section 95 of the then existing West Bengal CoÂoperative Societies Act, 1983.Â Section 95(1)

(d) of the said Act of 1983 is similar to Section 102(1)(d) of the present Act of 2006, relied upon in the instant case.Â Section 134(2) of the West

Bengal CoÂoperative Societies Act, 1983, which was also considered by the Special Bench, is similar to Sections 102(4) and 145 of the said Act of

2006 quoted above.Â Upon consideration of the question, as to whether a suit was maintainable in respect of a dispute with a Cooperative Society

and whether plaint deserved to be rejected under Order 7 Rule 11 of the Code of Civil Procedure, the Special Bench of the Calcutta High Court in the

aforesaid judgment has held as under :Â?

â??22. This brings us to the case in hand where the promoters of a CoÂoperative Housing Society, before its formation and registration as such,

entered into a written agreement to purchase some land and having failed to obtain conveyance from the seller, instituted this suit in the Civil Court in

the name of the Society after the same was duly formed and registered.Â As would appear from the plaint and the Deed of Agreement, the land was

sought to be purchased for the CoÂoperative Society and for the avowed purpose (vide, Clause 2(c) of the Deed of Agreement) of constructing

houses thereon for allotment of apartments to the members. The dispute in this case therefore directly concerns the business and relates to the affairs of the Society which is patently a Cooperative Housing Society and is therefore clearly a dispute within the meaning of Section 86(1) of the Old and Section 95(1) of the new Act. The dispute also is one between a Cooperative Society and any person having transactions with the Cooperative Society within the meaning of Clause (d) of Section 86(1) and the Clause (d) of Section 95(1) as aforesaid. The fact that the Cooperative Society was not formally formed and registered when the Agreement was entered into is immaterial for the Society has already come into jural existence when the suit was filed and the question of maintainability would obviously have to be decided on the state of affairs prevalent at the time when the suit was instituted. The suit, therefore, could not be entertained by the Civil Court under the provisions of Section 132(2)(d) of the then prevailing Act of 1973, now replaced by Section 132(2)(d) of the then prevailing Act of 1973, now replaced by Section 134(2)(d) of the present Act, 1983. The Court below was accordingly wrong in entertaining the suit and in holding that it had jurisdiction and that the plaintiff was not liable to be rejected under the provisions of Order 7, Rule 11 of the Code of Civil Procedure and that the Court had jurisdiction to proceed with suit.

12. The facts in the present case show that in the plaint, in paragraphs 1 and 2, the respondents themselves have stated that the applicant No.1 Society was a Cotton Marketing Division, Cooperative Spinning Mill formed by and under the administrative control of Department of Micro and Small Scale Enterprises and Textiles, Government of West Bengal, in the business of cotton bales and resale of them to different parties and manufacturers. This itself shows that the respondents conceded to the fact that applicant No.1 Society was in the business of sale and purchase of cotton bales, which was subject matter of the dispute and the disputed transaction between the parties herein. As per settled law, while deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the Court can only look at the plaint and the documents filed therewith. Perusal of the plaint itself shows that the applicant No.1 Society had indeed entered into the aforesaid business transaction with the respondents and that the above quoted provisions of the said Act would apply to the facts in the present case.

13. In this backdrop, it is evident that the trial Court committed an error in appreciating the facts as well as the position of law in the context of the provisions of the said Act, while holding that the suit filed by the respondents was maintainable and that the plaint could not be rejected.

14. On a proper reading of the facts of the present case and the provisions of the law quoted above, it becomes evident that the Civil Court in the present case had no jurisdiction and that the trial Court ought to have allowed the application of the revision applicant and the plaint ought to have been rejected.

15. Accordingly, this application is allowed.Â The impugned order passed by the trial Court is set aside.Â The application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure filed by the applicants before the trial Court is allowed and the plaint is rejected.Â Needless to say that the respondents may avail of the remedy under the provisions of aforesaid Act before the appropriate forum, wherein they may apply for benefit under Section 14 of the Limitation Act for condonation of delay in approaching such forum.Â There shall be no order as to costs.