(2002) 10 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 397 of 2002

The Bhutti Weavers Production-Cum-Sales Co-operative Industrial Society Ltd. — APPELLANT

Vs

Shri Amarjeet Singh — RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 100
Himachal Pradesh Co-operative Societies Act, 1968 — Section 10, 72, 76
Punjab Co-operative Societies Act, 1961 — Section 79

Citation : (2003) 2 ShimLC 32

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Ramesh Thakur, for the Appellant; Deepak Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—At the time of hearing, Mr. Ramesh Thakur, learned Counsel for the appellant (hereinafter referred to as Defendant) submitted that following two substantial questions of law arise for determination in this appeal:

1. Whether the appellant was sued through a proper person and if not, its effect?

2. What is the effect of non-issuance of mandatory notice u/s 76 of the H.P. Co-operative Societies Act, 1968 upon the Defendant by the Respondent (hereinafter referred to as Plaintiff before instituting the suit?

2. According to Mr. Thakur, Defendant was sued through Ramesh Kumar whereas it should have been sued through its Managing Committee. That having not been done, the suit was not properly instituted. Similarly, notice as above was not issued, which was a condition precedent for maintaining the suit, as such on both these grounds this appeal deserves admission.

3. With a view to properly appreciate this submission, a few facts need to be noted which are as under:

Plaintiff filed a suit for declaration to the effect that he is the owner of the land in question measuring 0-10-0 bighas as detailed in the plaint (hereinafter referred to as ''suit property''), as per jamabandi for the year 1984-85. By way of consequential relief, it was prayed that Defendant may be restrained from interfering in his ownership and possession in any manner. In the alternative a decree for possession was also prayed for. Further averments made in the plaint were that the Plaintiff purchased suit land for Rs. 17,000 from its previous owner E. Goldsmith. This sale deed was registered on 6.5.1985. According to the Plaintiff, Defendant with a view to grab the land, in connivance with the revenue officials managed to get the entry changed by showing it as a tenant at will under the previous owner. Order dated 9.6.1986 was passed by the Assistant Collector, IInd Grade in case No. 76-CE/NT. This order is null and void as it'' was passed without notice to him or to his predecessor. This entire exercise is the result of conspiracy on the part of the Defendant to grab the land in question. In the first week of June, 1992, Defendant threatened to interfere with the possession of the Plaintiff on the basis of the aforesaid order and taking the undue advantage of his ill health, an attempt was made to interfere with his ownership and possession. When the Defendant was called upon to desist and forego its claim, there was blank refusal. Hence this suit.

4. In the suit Defendant was sued through Alam Chand, its General Manager/ Secretary. Vide order dated 12.9.1996, issue No. 6A was framed and an application for amendment of title of the suit was filed because Alam Chand had retired from service. This amendment was allowed and amended memo was taken on record which is on the trial Court file at page 56. Vide this amended memo, Defendant was sued through General Manager/Secretary.

5. When put to notice, Defendant contested and resisted the suit of the Plaintiff. In the written statement filed by the General Manager of the Defendant, it was alleged that replying Defendant has got no authority to peruse the matter as the suit had not been properly instituted. It was beyond limitation and was also not maintainable in its present form. Delay as well as Plaintiff having not come to court with clean hands, having suppressed true and material facts, disentitled him from claiming any relief, Non-issuance of the notice was also set up as a ground for dismissal of the suit. On merits, averments made in the plaint were denied. It was further pointed out that the Defendant is in possession for the last 29 years. Thus, documents of title are illegal and not binding on it. Order of the Revenue Officer was stated to be legal and valid. Defendant prayed for dismissal of the suit.

6. In replication filed on behalf of the Plaintiff all the statements made in the plaint were reiterated and those to the contrary were denied. Trial Court framed the following issues:

1. Whether the Plaintiff is owner in possession of the suit land? OPP

2. Whether the order dated 9.1.1986 of AC IInd Class Kullu ordering the

Defendant to be tenant at will of the suit land is illegal, null and void, as alleged? OPP

3. Whether the suit not within time? OPD

4. Whether the suit is not maintainable in the present form? OPD

5. Whether the Plaintiff is guilty of delay and laches? OPD

6. Whether the Defendant has become owner in possession of the suit land as alleged? OPD

6-A. Whether the Defendant has become owner in possession of the suit land as alleged? OPD

7. Relief.

7. After conclusion of trial, suit was decreed. When the matter was taken up in appeal, the same was dismissed.

8. Learned Counsel for the parties were not at variance that the suit was dismissed for default for appearance of the Plaintiff on 1.9.1999. An application was filed under Order 9 Rule 9 CPC and the same was allowed on 14.11.2000. It was allowed subject to payment of costs of Rs. 250 and the suit was ordered to be restored. Against this order Defendant filed Civil Revision No. 375 of 2000 in this Court. Memo of parties in this revision is extracted hereinbelow:

Bhutti Weavers Production-cum-Sale Co. Op. Industrial Society Ltd., Bhutti Colony, P.O. Shamshi, through its Dy. General Manager/Secretary.

Defendant/Petitioner.

v.

Shri Amarjit Singh S/o Shri Santokh Singh R/o Village and Phati Shamshi Kothi Khokhan, Teh. and District Kullu, at present residing at D-11-2233 Basant Kunj, New Delhi.

Plaintiff/Respondent

What is the effect of this memo of parties in the civil revision will be dealt with hereinafter.

9. In the stay application, affidavit was filed by Ramesh Kumar, Deputy General Manager.

10. Mr. Ramesh Thakur, learned Counsel for the appellant submitted that his client ought to have been sued through its Managing Committee. As per provisions of Section 10 of the H.P. Co-operative Societies Act, 1968, effect of registration of a co-operative society renders it a body corporate by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and

other legal proceedings and to do all things necessary for the purposes for which it is constituted. Once it is held to be a body corporate, then the rigours of Order XXIX of the CPC are attracted.

11. It could not be disputed, though an attempt was made by Mr. Thakur that the General Manager/Secretary through whom the Defendant was sued, were not its Principal Officers. Despite this position, Mr. Thakur submitted that his client should have been sued through the Managing Committee and not through its General Manager/Secretary. Section 10 of the H.P. Co-operative Societies, 1968 is extracted hereinbelow for ready reference:

10. Societies to be bodies corporate.--The registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

The section lays down that as a result of registration the society becomes a body corporate. It becomes entitled to all rights and privileges provided under this section and also those contained in Chapter VI of this Act.

12. When Defendant had filed Civil Revision No. 375 of 2000 in this Court, it had itself sued as Petitioner through its Deputy General Manager/Secretary. It is not understood how the party was changed from General Manager to Deputy General Manager in this revision. Mr. Thakur was unable to say anything in this behalf. Whether Inder Singh personally financed the litigation or the Defendant-society fought this litigation from the stage of filing of the suit till the second appeal including above revision. Mr. Thakur was unable to inform this Court about this.

13. Mr. Thakur submitted that he has instituted this appeal on behalf of Ramesh Kumar individually and not on behalf of the Defendant-society.

14. Mr. Deepak Gupta, learned Counsel for the Plaintiff submitted that since there is no decree personally against Ramesh Kumar, his client will execute the same only against the Defendant-society which is a body corporate and not against Ramesh Kumar. He further submitted that since the society is a Corporation and is thus a juristic person, it had to be sued through someone. Therefore, no exception can be taken to the Defendant having been sued through its Principal Officer, namely, General Manager/ Secretary. Nothing was brought to my notice by Mr. Thakur as to how Defendant was not sued through a proper person despite a preliminary objection having been taken to that effect.

15. In view of this discussion, first substantial question of law raised by Mr. Thakur does not arise for determination in this apepal and plea in this behalf is hereby rejected.

16. Now coming to the plea of non-issuance of notice u/s 76 of the H.P. Co-operative Societies Act, 1968 and its effect in the present appeal. For ready reference, this section is extracted hereinbelow:

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.

Notwithstanding anything contained in Section 72 a suit cannot be instituted against a society or any of its officers (concerning the constitution, management or business of the society) unless two months period has expired after notice in writing has been delivered to the Registrar, stating the cause of action. The object is to save the societies from unnecessary involvement in litigation and further to apprise the Registrar of the prospective disputes in which the society would be a party.

17. A plain reading of this section shows that where an act touching the constitution, management or business is involved, no suit can be instituted until the expiry of two months notice to the Registrar or left at his office giving details as required under this section.

18. Mr. Thakur by referring to Ext. D-1 urged that keeping in view the objects as detailed in the bye-laws of his client, the creation of tenancy was an object which should be read down as one of the main objects for the purpose of owning/ acquiring land to raise orchards, buildings, business premises, therefore, the act of having got the revenue entry corrected in its favour by his client touched the constitution, management as well as business of the Defendant and as such issuance of notice was a condition precedent.

19. This plea was seriously contested by Mr. Deepak Gupta on behalf of the Plaintiff. He submitted that his client has not issued the notice and there was no necessity of its having been issued. He pointed out that the obtaining of land on tenancy is not either the main or secondary object of the Defendant-society. He placed reliance on Clause 4 of Ext. D-1. Since both sides are relying on this clause, it is extracted hereinbelow:

OBJECTS

4. Its objects shall be:

(a) to make the arrangements for raising funds required for its own business or for lending to its members;

(b) purchase of raw material and appliances for its own use or supply to members;

(c) (i) make arrangement for the marketing of the finishing goods of the society or its members by the establishing showrooms at suitable towns cities.

(ii) To make arrangements to procure Readymade garments, knitwear?s and to sell it out on outright purchases/consignment basis.

(d) (i) To make arrangements for the outright purchase of finished goods of weavers Co-operative societies and market the finished goods through its own showrooms.

(ii) Provision of business and technical training to its members.

(e) to carry on production of finished products on co-operative basis;

(f) to acquire and hold in common or let on hire to members improved appliances connected with the industry;

(g) (i) To own or acquire land, to raise orchard, buildings business premises, machinery, furniture and fixture, vehicles and other equipments, or to take them on hire rent or lease for the business of the society and to provide residential facilities to its members, artisans, etc. in the business premises of the society.

(ii) To raise construction of tourist huts/to promote sale of products manufactured by the society.

(h) to do such other acts as may be conducive to the attainment of the general objects of the society and creation of spirit of thrift mutual help and self help amongst members;

(i) To make the arrangements for Dyeing and finishing of goods.

(j) To make the advances and Supplies.

(k) To produce and marketing of all kinds of Handicrafts product.

(l) To carry on production of Angoora rabit wool in the (illegible).

The words "touching the business of the society", are there in Section 79 of the Punjab Co-operative Societies Act. This question came up before a Division Bench of Punjab and Haryana High Court in the case of The Jullundur Central Co-operative Bank Ltd. v. Gian Singh ILR 1973 P&H 453. What was held in this case is as under:

(2). In our opinion, the notice is required to be delivered only if the suit against a co-operative society arises out of any act touching its business and not in every suit. The Registrar has been given certain powers to supervise and control the working and business of the co-operative society in order to see that it is carried on in accordance with the principles of co-operation and according to the provisions of the Act. He is not concerned with other activities of the co-operative society and its disputes with the strangers or its employees arising out of their service conditions. It is, therefore, not necessary to serve a notice as prescribed in Section 79 on the Registrar of Co-operative Societies as he has no jurisdiction in the matter. The legislature only intended the delivery of notice to the Registrar in order to enable him to mediate with the co-operative society for settling the claim of the Plaintiff who intended to file the suit. The power of the Registrar can be invoked for this purpose only if he has jurisdiction in the matter and he can exercise his power in that behalf to compel the co-operative society to decide the matter in certain manner. If he cannot exercise that power, then there is no point in giving a notice to him before filing any suit against the co-operative society.

20. In Punjab National Bank Ltd. v. Panchsheela Industrial Co-operative Society Ltd. and Ors. ILR (1979) 1 Del 300, a suit was filed by the bank and controversy arose and one of the issues in this case was as under:

(5) Whether the provisions of Section 79 of the Punjab Co-operative Societies Act are attracted in the present suit? If so, to what effect?

While dealing with this issue and interpreting this section and considering the words ''touching the business'' this Court in Sumer Chand Katoch v. The Kangra Central Co-operative Bank Ltd. 1996 (2) Sim. L.J. 134, held that the dispute pertaining to termination of service of an employee of the bank is not a dispute touching the management of the Respondent-bank for which notice u/s 76 was required before filing the suit. In this case, issue No. 2 was in the following terms:

2. Whether the suit without serving notice u/s 76 of the H.P. Co-operative Societies Act is not maintainble? OPD.

It was held that dispute pertaining to termination, of 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.

21. Similarly, the dispute relating to acquisition of tenancy rights in the peculiar background of the present second appeal cannot be held to be a dispute touching the constitution, management or business of Defendant-society. Words touching the constitution, management or business of the society also occur in Section 96 of the Gujarat Co-operative Societies Act, 1961.

22. Supreme Court in Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Others, held as under:

35. Gramatically, 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 invididuals who under the over all 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-bonds 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.

In this case, appeal of the employee was allowed and it was held that the matter relating to termination of service of the employee was not an act touching the management of the society.

23. Keeping in view the objects of the society as extracted hereinabove, and after having examined the case law, I am of the view that the acquisition of tenancy rights was not an object of the Defendant-society nor it can be read down into the objects which are specific and particular. Once this conclusion is arrived at, then no substantial question of law is involved in this appeal based on Section 76 of the H.P. Co-operative Societies Act.

24. Faced with this situation, Mr. Thakur placed reliance on a decision of this Court reported in The Jawali Harijan Co-operative Agricultural Society Vs. Maghu etc. etc., wherein appeal of the Appellant-society was allowed for want of issuance of notice u/s 76 of the Act. The requirement of issuance of notice would only arise when act complained of touches the constitution, management or business of the society. The use of these words in Section 76 of the Act is not without meaning and/or purpose because/it is not in all cases it was intended by the legislature that issuance of notice u/s 76 of the Act was necessary. For whatever purpose society was established, its objects assumes significance which have been extracted hereinabove. Neither on a plain reading nor by any stretch of interpretation it can be said that it was the object of the society to acquire tenancy rights over the and in question. That being the position, other conditions of Section 76 are not attracted to the facts of the present case. In this view of the matter, this decision is wholly inapplicable to the facts of this case. Above all, it cannot be laid as a matter of universal application that in all cases issuance of notice is a must whether the act complained of touches the constitution, management or business of a society or not. In this view of the matter reliance placed on this decision is wholly misplaced on behalf of the Defendant.

25. On the basis of the evidence on record, it cannot be said that this is either a case of no evidence or conclusions arrived at by the courts below were not possible on appreciation of evidence. At the same time, the impugned judgment cannot be said to be perverse so as to warrant consideration by this Court.

Simply because on re-appreciation of evidence, this Court would take a different view is no ground to interfere in this second appeal. Even an erroneous finding unless shown to be perverse or being the result of non-consideration of a document having material bearing is no ground for considering the case u/s 100 of the CPC after its amendment by Central Act No. 104 of 1976. By referring to oral as well as documentary evidence, learned Counsel for the Defendant was unable to make out any such ground.

25. No other point was urged.

26. As a result of the aforesaid discussion, there is no merit in this appeal which is accordingly dismissed at the admission stage after having heard the learned Counsel for the parties and after having examined the record of both the courts below. No costs.

