

(2004) 10 BOM CK 0035

In the Bombay High Court

Case No : Civil Revision Application No. 334 of 2000

Vidyut Karmachari Pat Sanstha Maryadit

APPELLANT

Vs

Ratansingh Ramsingh Khande

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2005) 1 ALLMR 530 : (2005) 107 BOMLR 99

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Judgement

A.H. Joshi, J.—This is revision application u/s 115 of the C.P.C. filed by original defendant. The admitted facts can be narrated briefly as follows.

2. The non-applicant/ori. plaintiff is a member of applicant/defendant, which is a co-operative society registered under the Maharashtra Cooperative Societies Act, 1960. The non-applicant admits to have borrowed from the applicant in 1994 and had received the disbursement of a sum of Rs. 20.000/- and commenced with the repayment by monthly installment of Rs. 500A by deduction from salary. According to the non-applicant/ plaintiff, that apart from the monthly deduction, in total approximately a sum of Rs. 43.000/- which is more than double the loan amount, however, the society was still showing the outstanding debt of Rs. 11.320/-.

3. As regards cause of action, the plaint discloses the statement contained in Para 14 as follows:

14.- The plaintiff, therefore, issued notice through his Counsel to the defendant on 30.7.1999 for withdrawing the said demand. It is submitted that "the notice was duly served on and received by defendant society". Despite it, the accounts department of M.S.E.B. at Chandrapur Thermal Power Station deducted an amount of Rs. 752/- from the salary payable to the plaintiff for the month of August, 1999. A copy of notice was also served and delivered to the Chief

Engineer (O & M) Chandrapur Thermal Power Station, with a request not to deduct the amount from the salary of plaintiff, as per the demand sent by defendant society. The plaintiff being left with no other alternative is filing this suit. Hence this suit.

17. The cause of action for this suit arose in or about August, 1999, when an amount of Rs. 752/- was deducted from the salary of plaintiff payable in the month of August, 1999, as per the "demand allegedly to be illegal by defendant society". The cause of action arose within the territorial and pecuniary jurisdiction of Hon"ble Court, Thus, the Hon"ble Court is empowered to try the present suit.

Plaintiff ultimately prayed for relief of perpetual injunction.

4. The defendant filed application under Order 7, Rule 11 of the C.P.C. and claimed that in view of plaintiffs status as member of co-operative society, and Section 91 of the Co-operative Societies Act, as well as for want of notice u/s 164 of the Maharashtra Co-operative Societies Act, the suit was not maintainable and the jurisdiction of Civil Court was barred. The objection as to the jurisdiction has been repelled by the plaintiff by bare denial, however, in so far as the aspect of want of notice u/s 164 is concerned, the plaintiff has not asserted that any notice u/s 164 of the Act was issued.

5. The learned Trial Judge heard and decided the application filed by the defendant raising the objection as to jurisdiction and rejection of plaint under Order 7, Rule 11 of the C.P.C. by order dated 11th January, 2000, which is impugned in the present revision application.

6. The learned Trial Judge found that the present suit prima facie would not fall within the compass of the matters covered by Section 91 of the Maharashtra Co-operative Societies Act and consequently question of bar u/s 163 does not apply. The learned Trial Judge has failed to advert and deal with the point of want of notice u/s 164 of the Maharashtra Co-operative Societies Act.

7. It would, therefore, be necessary to deal with the aspect on which the learned Trial Judge has held against the defendant and in favour of the plaintiff. The learned Trial Judge found that the case was governed by the reported judgment in Bhabdara Zilla Sahakari Shetki Kharedi Vikri Samiti Ltd. Vs. Damodar and Others, . The pivotal question that arises, is as to whether the dispute between the member of the society as to loan availed by borrower member shall fall within the ambit of Section 91 of the Act. The learned Judge, however, proceeded to hold that:

3....

In the instant case also, the dispute does not come under the purview of Section 91 of the Co-operative Societies Act. Therefore, I do not accept the submission of the learned Counsel for the defendant that as the dispute in the present case is governed by Section 91 and Section 163 of Co-operative Societies Act, this Court

has no jurisdiction. Therefore, I proceed to pass following order....

The learned Trial Judge, however, failed to assign reasons as to why and under what circumstances the factual dispute in question falls outside the compass of matters covered by Section 91.

8. Admittedly the defendant is a co-operative society of the employees of Electricity Board, and the plaintiff is its member. The society runs the business of accepting deposits and lending money to the members, which is its primary activity and the plaintiff borrowed the loan and repaid it, which, according to him, was fully repaid, was rather over paid and therefore, in the background of aforesaid admitted position, the present dispute falls squarely within the compass of disputes which are entrusted to the jurisdiction of Courts constituted under the Maharashtra Cooperative Societies Act. The term "business of society" used in Section 91 of the Maharashtra Co-operative Societies Act, encompasses within its fold the dispute of present nature without ambiguity whatsoever. The reliance placed by the learned Judge on the reported judgment in AIR 1984 Bom. 362 is totally misplaced. In the said case the dispute pertained to satisfaction of recovery of amount defalcated by employee of co-operative society, as the said employee had sold his property in lieu of repayment thereof. It is specifically observed in paragraph 5 thereof for holding that the dispute between them fell outside the compass of Section 91 holding that the dispute pertains not to the business of the society but its relation to purchase of property from employee by the society. It is observed as follows:

The petitioner's case is that respondent No. 1 is a cashier of the petitioner and he had defalcated the amount to the extent mentioned by the petitioner, and the petitioner in fact found out a way to recover the defalcated amount and the petitioner took sale deed to the extent of the defalcated amount from the respondent No. 1. Consequently, the amount of the petitioner stands satisfied on taking a sale deed from respondent No. 1. Thereafter, the petitioner alleges agreement of reconveyance, disturbance in possession, agreement to sell the suit lands for recovery of the amount of the petitioner, for recovery of any balance left from out of the sale proceeds personally from respondent Nos. 1 and 2 and also for injunction. For deciding such an issue, which does not relate to the business of the petitioner, the proper forum would not be a Co-operative Court but a Civil Court. The dispute contemplated u/s 91 is a dispute touching the constitution, election of the office-bearers, conduct of general meeting, the management or the business of the society and the explanation mentioning dispute will obviously mean that such a dispute will be a dispute touching the constitution, election of the office-bearers, conduct of general meeting, management or business of the society. In my opinion the claims mentioned in the sub-clause have to be touching the constitution, election of the office-bearers, conduct of general meeting, management or business of the society. Relying upon the principles laid down in the aforesaid Supreme Court Ruling, I also hold that the reliefs claimed by the petitioner in dispute on the basis of the

averments in the dispute do not concern the business of the society. It does not obviously come within the ambit of Section 91 Explanation 2.

9. It is clear from the discussion hereinbefore that the Trial Court has erroneously placed reliance on the reported Judgment in the case of Bhandara Zilla Sahakari Shetki Kharedi Vikri Samiti Ltd. (supra) and reached erroneous conclusion and has passed the order impugned. The order is based on total misconception as to the jurisdiction of the Cooperative Court vis-a-vis the Court. In the result a by the impugned judgment the Civil Court has assumed the jurisdiction which was rather specifically excluded from its purview.

10. In view of the aforesaid findings, the result that ensues is that the rule is liable to be made absolute and is accordingly made absolute in terms of prayer Clause (ii). The application Exh. 16 is allowed and the plaint in R.C.S. No. 192/99 on the file of 3rd Joint Civil Judge, Junior Division, Chandrapur, is rejected. In view of the circumstances, there shall be no order as to costs.