
(2005) 11 AHC CK 0179
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31071 and 33097 of 1996

Vijay Kumar

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Citation : (2006) 2 AWC 1433

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : Umesh Chandra Mishra, for the Appellant; H.R. Misra and R.P.S. Chauhan and S.C., for the Respondent

Final Decision : Allowed

Judgement

Bharati Sapru, J.—These are two writ petitions being writ petitions being writ petition No. 31071 of 1996 and 33097 of 1996 arising out of the same impugned order dated 11.7.1996 passed by the District Judge, Budaun in Civil Revision No. 14 of 1995.

2. I have heard S/Sri U.C. Mishra and H.R. Mishra learned Counsel appearing in both the writ petitions and Sri R.P.S. Chauhan who is appearing on behalf of the respondents.

3. The facts of the case are that there is a society by the name of U.P. State Co-operative Land Development Bank Ltd., Branch Sahaswan, District Budaun, (hereinafter referred to as the Co-operative Society) which is apex society within the meaning of Section 2(a-4) of the U.P. Co-operative Societies. Act, 1965 (hereinafter referred to as the Act, 1965). Out of the regular business of the Co-operative Society, one of the businesses of the society is also to give loans.

4. The respondent No. 2 Jograj Singh applied and obtained a loan from the Co-operative Society after he had been duly co-opted as a member of the said society. There is also evidence to the effect that the respondent No. 2 Jograj Singh was a member of the society. This finding has also been recorded in the

order of the trial Court dated 14.2.1995.

5. It is alleged that since respondent No. 2 Jograj Singh was unable to pay off his loan disbursed by the Co-operative Society, the property "pledged" by him was auctioned, the Petitioner Vijay Kumar purchased the said auctioned property and the auction was settled in his favour.

6. The respondent No. 2 Jograj therefore moved to the trial Court by filing a suit being suit No. 2,3 of 1984. The suit was opposed by both the Co-operative Society as well as by the auction purchaser (petitioner-Vijay Kurnar) that the suit filed by the respondent No. 2 Jograj Singh was not maintainable being barred by virtue of the provisions of Section 19 of the U.P. Co-operative Land Development Bank Act as well as u/s 70, 11, 117 of the U.P. Co-operative Societies Act, 1965. While deciding the matter the learned trial Court came to the firm conclusion that the co-operative bank was a society within the meaning of Section 2 of the Act, 1965 and the finding given was that the respondent No. 2 Jograj Singh had been inducted as a member of the said society before he was given the loan.

7. Learned trial Court therefore rightly came to the conclusion that the U.P. Co-operative Societies Act, 1965 being a complete Code provides a statutory remedy to the respondent No. 2 Jagraj Singh by way of seeking a reference u/s 70 of the Act, 1965 as the dispute between the two parties definitely constitutes a matter relating to the business of the said society.

8. Being aggrieved by the order of the trial Court, the respondent No. 2 preferred a revision being Civil Revision No. 14 of 1995 in which the revisional Court reversed the order of the trial Court.

9. I have heard learned Counsel for the parties and I have gone through the complete record. There is no dispute with regard to two admitted facts firstly that the society is indeed a society within the meaning of Section 2(a-4) of the Act, 1965 and the secondly the respondent No. 2 Jograj Singh was a member of the said society, it is only upon his becoming a member that he was given a loan by the society. The third admitted fact is that indeed that since the respondent No. 2 Jograj Singh has failed to pay off his loan, the Co-operative Society was well within its right to take necessary and proper action for recovery of the said loan.

10. Upon asking a question from the respondent No. 2, it is also clear to the Court that if the respondent No. 2 had not been a member of the society, he would not have received the loan from the Co-operative Society at all. Such being the fact and upon reading the provisions of Section 70(1)(c), there is no room for doubt that indeed the Act, 1965 provides for an adequate and proper remedy under the Act itself and therefore the civil suit itself was not maintainable.

11. Learned Counsel for the respondent No. 2 Jograj Singh has strenuously argued that the remedy provided under the Act, 1965 is not adequate and civil suit was properly maintainable. This argument of the learned Counsel for the

respondent No. 2 has no substance. In not one but several decisions of the Hon"ble Supreme Court, it has been laid down that where the Act itself provides for statutory remedy, an alternative remedy would not normally be availed of.

12. Taking into consideration the entire facts and circumstances of the case, I am of the opinion that the impugned order deserves to be set aside and finding of the trial Court is liable to be affirmed.

13. In the result, the writ petitions succeed, and are hereby allowed. The impugned order dated 11.7.1996 passed by the revisional Court is quashed and the findings recorded in the order dated 14.2.1995 by the trial Court are affirmed. No costs.