

(2014) 12 BOM CK 0171

In the Bombay High Court

Case No : Review Petition (L.) No. 88 of 2014 in Notice No. 1015 of 2011 in Case No. CC-I/242 of 1999 and Review Petition (L.) No. 89 of 2014 in Notice No. 1014 of 2011 in Case No. CC-I/241 of 1999

Vikas T. Chudiwala

APPELLANT

Vs

Shamrao Vithal Co-Operative Bank

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, 9
Maharashtra Co-operative Societies Act, 1960 — Section 91
Multi-State Cooperative Societies Act, 1984 — Section 18, 2(27), 74

Citation : (2014) 12 BOM CK 0171

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : Sharan Jagtiyani, Sheetal Shah, Advocates instructed by Mehta and Girdharilal, Advocates for the Appellant

Judgement

R.S. Dalvi, J.—The petitioner is the judgment debtor who has sought to have the order of this Court dated 26th November, 2014 reviewed in this petition. That order came to be passed in a notice taken out under Order 21 Rule 22 of the CPC for proceeding with the above execution application. The notice was challenged on the ground that the judgment of the Co-Operative Court was without jurisdiction and consequently a nullity.

2. This contention has been taken on the ground that the respondent No. 1 bank is a Multi State Co-Operative Society governed by the Multi State Co-operative Societies Act, (MSCS Act,) 1984, but has filed its dispute in Co-operative Court which has jurisdiction over co-operative societies registered under the Maharashtra Co-Operative Societies Act, 1960 (MCS Act).

3. It was seen by the Court whilst passing the impugned order that the validity of the MSCS Act was challenged in Writ Petition No. 755 of 1998 in which the operation of the Act was stayed. It was after the stay order that the order in the

above dispute in the Co-operative Court came to be passed. During that period the respondent bank which was entitled to a forum for the remedy that it sought availed of that forum. The petitioner herein contended that in other matters the co-operative Court had not exercised its jurisdiction. Those were the matters after the new MSCS Act was enacted in 2000. Hence those cases became distinguishable for the disputes filed between 1998 when the writ petition came to be filed and in 2002 when the Act which was challenged was repealed by the Act of 2002. The only forum available to respondent bank for seeking the remedy against the petitioner herein was the co-operative Court.

4. It is contended in this review petition that the petitioner has since come to know of an order in the co-operative Court filed during the aforesaid period holding its lack of inherent jurisdiction which order was challenged in a writ petition filed by the respondent bank herein and which petition though having been admitted, the stay of that order was not granted. The petitioner would, therefore, require the Court to reconsider the above order in the light of those two judgments.

5. The judgment of the Co-operative Appellate Court dated 20th April, 2000 is in respect of the respondent bank against other members of the respondent. The dispute was filed for recovery of the unpaid loan by the bank against its members and guarantors. Since the respondent bank is a Multi State Co-operative Society it was observed that it was not a co-operative bank deemed to be registered under the MSCS Act. It was considered that only the society which was registered under the MSCS Act could fall within the definition of society and only the society which was registered under the erstwhile Multi-Unit Co-operative Societies Act, 1942 could be the deemed society under Section 2(27) of MSCS Act. Hence it was observed that the respondent bank is neither a society nor a deemed society under the MSCS Act. It was also observed that under Section 18 of the MSCS Act a society could be converted in to Multi State Co-operative Society. Such application was made in respect of the respondent bank. Though an order was not passed upon an application made it was observed that the respondent bank ceased to be the society under the MCS Act because an order was presumed to have been passed by the Registrar who was duty bound to pass it.

6. The Court observed that when the Act was stayed in the writ petition challenging its validity Section 74 was kept in abeyance. The only forum which would otherwise be open for respondent bank was not available to it. The Court considered another order passed by the High Court which was passed while dismissing the writ petition without prejudice to the contentions for the reasons given in that order. The order of the High Court stated that the dispute should be heard by the Co-operative Court expeditiously. The learned Judge, however, observed that because it was without prejudice to the contentions the order would not be a guide to seeing the jurisdiction of the Co-operative Court. Observing that it was no concern of the Court to see that the litigant must find a

forum, the Court held the lack of its inherent jurisdiction.

7. It must be borne in mind that the order of the High Court was directing the Co-operative Court to hear the dispute and to hear it expeditiously. That order was in view of the stay granted to the enforcement of the Act. The validity of the Act was challenged before the Court. The spirit of the order was much like the spirit of the impugned order herein. It was because the Act was stayed that the respondent bank could not sue under the Act. Consequently it could not sue before Registrar who is the competent authority under the Act. Consequently it could sue as co-operative society under the MCS Act.

8. The order of Division Bench of this Court in the Writ Petition filed by the respondent bank challenging the aforesaid order of the Co-operative Appellate Tribunal was an order admitting that petition. The admission of the petition would mean and imply that the order of the Co-operative Appellate Court has not become final. That petition has been expedited. It is argued that the order was not stayed. However, the order deciding lack of the Courts inherent jurisdiction does not call for a stay. The jurisdiction would be decided in the lis between the parties whenever the writ petition is decided.

9. However the observation of the Court at the time of admission of the writ petition may become material to consider. The Court observed that the respondent herein was not governed by the MCS Act. It was also not governed by Multi-Unit Co-operative Societies Act, 1942 as that was repealed. The respondent was governed by the MSCS Act and the officers appointed thereunder. However, it was also observed that the officer appointed under the MCS Act was concerned with respondent bank for the purposes of the MSCS Act as a delegate of the Central Registrar. Consequently the delegation of powers was contemplated by the High Court whilst the Act remain stayed. The delegation of powers upon the officer of the MCS Act would imply that he would be the competent authority until such period that the Act remained stayed and consequently exercised the powers otherwise under the MSCS Act, under the MCS Act instead. The Court also considered the direction of the High Court in the earlier judgment directing Co-operative Court to dispose of dispute expeditiously. The Court, however, considered that the prima facie those orders could not be relied upon to clothe the co-operative Court with the jurisdiction under Section 91 of MCS Act. However, the Court did not consider which Court was clothed with such jurisdiction. The Court nevertheless admitted the petition and hence that aspect would be considered only when the petition is heard. Consequently the observations made would not be binding law until that time.

10. Reading both aforesaid judgments now relied upon the petitioner herein two facts become material to consider one from each of the judgments.

a) the Co-operative Appellate Court had a precedent before it in which the High Court had directed it to expeditiously dispose of the dispute of Multi State Co-operative Bank and consequently allowed such societies to file dispute under

Section 91 of the MCS Act despite which it held the lack of its jurisdiction. So holding the Court only returned the application to the parties to move the appropriate Court.

b) The High Court specifically noted such a direction and also noted amongst the four facts applicable to the respondent bank fact that the officer of the MCS Act was the delegate of the Central Registrar and consequently was enjoined to exercise powers under the MCS Act itself.

Thus seen, whilst the writ petition remained pending after admission and whilst this matter was not decided so as to be a binding precedent, the recourse which the respondent bank had to a Co-operative Societies Act cannot be faulted.

11. Counsel on behalf of the petitioner would contend that if operation of MCS Act was stayed the respondent bank could always invoke the civil court's jurisdiction under Section 9 of the CPC. That, however, was not the direction of the High Court when the High Court directed the Co-operative Court to dispose of the dispute in a similar earlier matter. Hence whilst one forum for co-operative societies is not available to parties, the other forum with a registrar who is the delegate under that Act is opened. Availing of that forum, therefore, cannot be faulted or challenged. The order, therefore, cannot be stated to be a nullity as being devoid of inherent jurisdiction.

12. Consequently Review Petitions are dismissed.

13. The petitioner shall pay necessary Court fee and register the Review Petitions.