

(2009) 11 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 7389 of 1991 and Civil Application No. 15515 of 1999 in Special Civil Application No. 7389 of 1991

Vithalbhai R. Limbachaia General Managar

APPELLANT

Vs

Poly-Pipes Packing Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Gujarat Co-operative Societies Act, 1961 — Section 45, 96, 96(1)

Citation : (2009) 11 GUJ CK 0080

Hon'ble Judges : D.A. Mehta, J

Bench : Single Bench

Advocate : Viral K. Shah, for Tushar Mehta and K.G. Vakharia, for the Appellant; J.R. Shah, for Respondent Nos. 1 - 3, Parul R. Patel and V.M. Trivedi, for the Respondent

Judgement

D.A. Mehta, J.—This petition under Article 227 of the Constitution of India has been preferred challenging common order dated 1.8.1991 made by Gujarat State Co-operative Tribunal, Ahmedabad in Revision Application Nos. 58 & 59 of 1991 as well as 69 & 70 of 1991. The dispute between the parties is, as to whether the petitioner Bank can initiate proceedings u/s 96 of the Gujarat Cooperative Societies Act, 1961 (the Act), against the respondents who were not the members on the date of transaction. According to the facts available on record loan was disbursed by the petitioner Bank to respondent No. 1, wherein respondent No. 4 is the Guarantor while the membership fees were paid on 26.3.1980 and the membership was granted on 28.3.1980. The Board of Nominees vide order dated 5.3.1991 held that it has jurisdiction to try the suit against which, the present respondents carried the matter in Revision as referred to hereinbefore. The Tribunal has for the reasons recorded in impugned judgment dated 1.8.1991 come to the conclusion that the Board of Nominees did not have jurisdiction to hear the suit, and hence, directed to return the plaint to the plaintiff, viz. the petitioner Bank.

2. Learned Advocate appearing for the petitioner has placed reliance on judgment of this High Court rendered on 10.11.2009 in Special Civil Application No. 6958 of 1999 in the case of Registrar Cooperative Society v. Shantaben Nanjibhai Mistry, to submit that the issue stands concluded in favour of the petitioner considering the fact that the Lavad Suit had been filed on 8.12.1983 and on the said day all the respondents were members of petitioner Bank.

3. As against that on behalf of respondents, learned Advocate placed reliance on following two judgments:

[i] Textile Traders Co-operative Bank Ltd. v. P.K.Thakker Construction Pvt. Ltd. 2004(1) GLH 335,

[ii] Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, to submit that the view adopted by the Tribunal was correct and no interference was warranted.

4. In the aforesaid judgment delivered on 10.11.2009 in the case of The Registrar Co-operative Society v. Shantaben Nanjibhai Mistry (supra) this Court has held as under:

7. Section 96 of the Act which appears in Chapter-IX of the Act relates to Disputes. Sub-section (1) of Section 96 of the Act in simplest form provides that any dispute touching the constitution, management or business of a society shall be referred in the prescribed form by any of the parties to the dispute, if the parties satisfy the description set out in any one of the Clauses (a) to (e) as appearing in the said Section. Hence for determining whether a person is entitled to make a reference there should be existence of a dispute, such a dispute must be between the parties described in the provision, and any of the enumerated party could seek reference by applying in the prescribed form. In the present case it is not in dispute that the petitioner is a society who answers the description of the entity as mentioned in Section 96 of the Act. The only question which then remains to be answered is whether deceased - Nanjibhai Dungarbhai answers the description of being a member of the petitioner - society, and if yes, what would be the relevant date for being such a member. The stand of the respondent, which has been accepted by the Board of Nominees and the Tribunal, is that the relevant date for this purpose, viz., for being a member, would be the date of transaction. On the other hand the case of the petitioner is that it is the date of dispute which is material for the purpose of deciding whether the parties are governed by provisions of Section 96 of the Act.

8. It is necessary to record that the submissions made on merits would have no bearing because as can be seen from the order made by Board of Nominees after framing five issues it is recorded that issue No. 1 is answered in the negative while it was not necessary to answer issue Nos. 2, 3 and 4, while in relation to issue No. 5 the answer is as per the order. Issue No. 1 was whether the suit relates to a dispute u/s 96 of the Act. Holding that the suit is not in relation to a dispute u/s 96 of the Act the Board of Nominees has categorically recorded in

paragraph No. 3 of the judgment that as the Board of Nominees does not have jurisdiction to hear and conduct the suit against the respondents it is not necessary to record any other finding in relation to other issues. This order has been upheld by the Tribunal.

9. In the aforesaid circumstances various submissions made on merits of the controversy, viz., whether the respondents, having stepped into shoes of deceased - Nanjibhai Dungarbhai, are liable to make payment or not need not be dealt with in absence of any findings either by the Board of Nominees or the Tribunal.

10. As noted herein before provisions of Section 96 of the Act can be invoked by any of the specified parties by making a reference to the Registrar in the prescribed form in relation to a dispute touching the constitution, management or business of a society and therefore in the first place a dispute has to arise. The dispute has to be between parties. It is not possible to accept the stand of the respondents that on the date a loan transaction is entered into between a creditor and a borrower, which is guaranteed by a surety, a dispute has arisen. The reason is not far to seek. If the principal borrower discharges the liability within the stipulated period, as originally contracted or within the extended period, no dispute would arise between the parties and the date of transaction would have no relevance. Similarly, in a given case where the principal borrower is discharged from his liability by the creditor either by squaring off of the account on receipt of a lesser amount, or in a case where the creditor arrives at a conclusion that raising a dispute would not yield any result considering the sum involved (which may be petty), or due to the financial position of the borrower, or due to the borrower and surety not being traceable or alive, there would be no dispute and no occasion to invoke provisions of Section 96 of the Act. In such an eventuality also the date of transaction would have no relevance.

11. Then, only because in a given case the creditor decides to initiate proceedings for recovery of the outstanding amount it cannot be stated that the date of transaction becomes relevant for invoking provisions of Section 96 of the Act. It is only when a claim is made by the creditor and the defaulting borrower either denies his liability or, even while accepting the liability refuses to pay, or while accepting the liability does not agree to pay the entire amount, can one say that a dispute between the parties has arisen. The dispute is in relation to the amount claimed and not paid. The amount may be the entire amount or may be part amount. There could be a dispute as to the entire amount or there could be a dispute as to the part amount. For example, a borrower may dispute the rate of interest or liability to pay penal interest. Hence it becomes apparent that the concept of dispute as appearing in Section 96 of the Act would not be relatable to the date of transaction but would be a date subsequent to the point of time when the transaction is entered into. The last such point being the date on which a suit is preferred, viz., when remedy under provisions of the Act is availed of. Merely because the dispute is relatable to the transaction that does not mean that for

the purpose of resorting to a legal remedy u/s 96 of the Act the date of transaction is the relevant date.

12. The plain language of Section 96 of the Act cannot be ignored. A Court is not empowered or entitled to either add or substitute words in a statute, unless and until a plain construction of a provision results in absurdity. That is not the situation in this case.

13. The term dispute in common parlance means to question the correctness or validity of a statement. A disagreement, a quarrel between the parties. Between a creditor and a debtor (in whatever capacity, a borrower or a guarantor) where the parties do not agree on the amount to be repaid/repayable it can be termed to be a dispute.

5. The judgment of this High Court in the case of The Registrar, Cooperative Society v. Shantaben Nanjibhai Mistry (supra) has after extracting Section 45 of the Act laid down as under:

A bare reading of the aforesaid Section would also indicate that a co-operative bank can advance loans only to its members. It is, therefore, obvious that making an application for membership by a prospective loanee would always precede the co-operative bank making a loan to such an applicant and therefore, when the Board of Directors accepts the membership application and enrolls the applicant as a member of the co-operative society doing banking business, it is possible to construe the resolution enrolling the member as relating back to the date on which the membership application was submitted by the prospective loanee.

Thereafter, the High Court has gone on to observe that in the facts of the case the loanees were members on the date of disbursement. Hence, in so far as the said judgment is concerned nothing contrary to what is held in judgment rendered on 10.11.2009 has been laid down. In fact the said judgment goes on to record that membership, even if granted subsequently would relate back to the date of application and disbursement cannot precede application for membership.

6. In so far as the Apex Court judgment in the case of Deccan Mercants Co-operative Bank Ltd. (supra) is concerned, the Apex Court was not called upon to decide the question arising in the present case. The observations made in paragraph No. 25 of the judgment are primarily in relation to a person claiming through a member and the fact that the claim should arise through a transaction or deal which the member entered into with the society as a member. In the said case, the Apex Court has also read limitation on the word "dispute" so as to mean only those which are capable of being resolved by the Registrar or his Nominee. It has been held that the term dispute would not include a dispute between a landlord society and a tenant when the landlord society has not been set up for the purpose of constructing or buying and letting out houses. Hence, none of the judgments cited on behalf of the respondent can assist the case of

the respondents.

7. In the facts of the present case it is not disputed that on the date of filing of the suit when the dispute arose it was a dispute between society and its members. Therefore, the view adopted by the Board of Nominees was just and proper and the Board of Nominees was correct in law in coming to the conclusion that it had jurisdiction to try the suit.

8. Accordingly impugned judgment and order dated 1.8.1991 made by the Tribunal is hereby quashed and set aside and order dated 5.3.1991 made by Board of Nominees stands restored to the file. Accordingly, Board of Nominees is directed to proceed as expeditiously as possible with the Lavad Suit which is pending before it. Rule made absolute with no order as to costs.

9. Though the Registry has listed Civil Application No. 15515 of 1999 the same already stands allowed, though no order recording same has been made, while granting interim relief. Hence, Civil Application No. 15515 of 1999 stands disposed of in terms of order dated 5.4.2000.