

(2013) 10 CHH CK 0030
In the Chhattisgarh High Court
Case No : Second Appeal No. 221 of 1999

Zila Sahakari Kendriya Bank Ltd.

APPELLANT

Vs

Purshottam Ram Lakda

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 1 CGLJ 380 : (2014) 1 MPHT 25

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Rakesh Pandey, for the Appellant; Lalit Jangde, for the Respondent

Final Decision : Allowed

Judgement

P. Sam Koshy, J.—Heard. This Second Appeal has been preferred by the appellant/defendant against the judgment and decree dated 20-11-1998 passed by 1st Additional District Judge, Ambikapur, District Sarguja, in Civil Appeal No. 2-B/1988, whereby the learned Lower Appellate Court has confirmed the judgment and decree dated 6-11-1987 passed by 2nd Civil Judge, Class II, Ambikapur, in Civil Suit No. 26-B/1984.

2. Facts leading to the present second appeal are that the respondent/plaintiff (Purshottam Ram Lakda) was an employee of the appellant/defendant (Zila Sahakari Kendriya Bank Ltd.) and he was working in the said Bank on the post of Manager. On account of certain alleged act of serious misconduct, services of the respondent/plaintiff were terminated vide order dated 15-3-1984, by way of disciplinary action.

It is this order of termination, which has been challenged by the respondent/plaintiff through the Civil Suit, which has been filed for declaring the order of termination dated 15-3-1984 to be void and for making the unpaid salary and other payable dues to him. The Trial Court vide its order dated 6-11-1987 decided the said Civil Suit in favour of the respondent/plaintiff holding that the order of termination dated 15-3-1984 is bad in law and further directed that the

respondent/plaintiff was entitled to be reinstated in services and would also be entitled for all consequential benefits from the time of his suspension order till the order of reinstatement, including the cost of litigation. The Trial Court while deciding the said civil suit, framed an issue, i.e., issue No. 6 as to whether the Court below has the jurisdiction of deciding the issue. After considering the submissions of the rival parties, the Court below reached to a conclusion that the Civil Court has the jurisdiction to entertain the said suit. While dealing with the said issue, though the Court below has referred to the provisions of Section 55(2) of the Co-operative Societies Act, 1960 (for short, "the Act, 1960"), but without further dealing with the issue, has only held that since the defendant/appellant has not been able to convince the Court below as to how it has no jurisdiction to entertain the suit, the issue was decided.

The said order of the Trial Court was further assailed by the appellant/defendant by way of Civil Appeal No. 2-B/1988 before the Appellate Court, i.e., 1st Additional District Judge, Ambikapur. Learned Appellate Court also while deciding the said issue reached to the conclusion that the dispute raised by the plaintiff/respondent was in fact maintainable before Civil Court and categorically given a finding that it is not a case where such a dispute raised by the plaintiff/respondent is one which is barred u/s 82 of the Act, 1960, and the appeal preferred by the defendant/appellant was dismissed vide judgment and decree dated 20-11-1998 confirming the judgment and decree dated 6-11-1987 passed by the Trial Court. It is this judgment and decree dated 20-11-1988 passed in Civil Appeal No. 2-B/1988, which has been assailed in the instant Second Appeal.

3. On going through certain provisions of the Act, 1960, it reveals that Section 55 empowers the Registrar to determine conditions of employment in societies. For ready reference Section 55 of the Act, 1960 is reproduced below:--

55. Registrar's power to determine conditions of employment in societies.-- (1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned:

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

4. Further, Section 64 of the Act, 1960 deals with Disputes and Arbitration, wherein it categorically holds that in case of any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society, the dispute shall be referred to the Registrar, Co-operative Societies and, in the instant case, terms and conditions of the Society includes that of an action taken by the Society by way of disciplinary proceeding. For ready reference Section 64 is reproduced below:--

64. Disputes.--(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following:--

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society;

(c) a person other than a member of the society who has been granted a loan by the society or with whom the society has or had business transactions and any person claiming through such a person;

(d) a surety of a member, past member or deceased member or a person other than a member who has been granted a loan by the society, whether such a surety is or is not a member of the society;

(e) any other society or the liquidator of such a society; and

(f) a creditor of a society.

(2) For the purpose of sub-section (1), a dispute shall include--

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant or deceased servant, or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc., including tenancy rights between a Housing Society and its tenants or members; and

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society:

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the results.

(3) If any question arising whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

5. Section 82 of the Act, 1960 also bars the jurisdiction of Courts and, in very categorical terms, says that no Civil or Revenue Court shall have any jurisdiction in respect of any dispute required to be referred to the Registrar or his nominee or board of nominees, and Section 64 of the Act, 1960, clearly stipulates that any dispute touching the constitution, management or business, terms and conditions of employment of a society or the liquidation of a society, shall be referred to the Registrar. For ready reference Section 82 of the Act, 1960 is reproduced below:--

82. Bar or jurisdiction of Courts.-- (1) Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of--

(a) the registration of a society or of bye-laws or of an amendment of a bye-law;

(b) the removal of a Committee and the management of the society after such removal;

(c) any dispute, required to be referred to the Registrar or his nominee or board of nominees;

(d) any matter concerning the winding up and the dissolution of a society.

(2) While a society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with, or instituted against, the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever.

6. From the bare perusal of the dispute pertaining to the appellant/defendant with that of respondent/plaintiff would reveal that the dispute as raised by the respondent/plaintiff squarely falls within the ambit of Section 55(2) of the Act, 1960 and for which, the Forum for redressal of his grievance is specifically the authorities appointed by the Registrar and against which there are also provisions appeal available. The Act, 1960 further provides a period of limitation also for raising a dispute for being referred to the authorities under the Act, 1960

and if we read the provisions of Sections 55(2) and provisions of Section 82, it would be evidently clear that the makers of the law, i.e., the Act, 1960 had very clear intentions in their mind while precluding the jurisdiction of the Civil Courts for deciding the dispute pertaining to the Co-operative Societies.

7. From perusal of the said provisions of the Act, 1960, it is evidently clear that the Civil Court in fact while deciding an action under challenge, which was disciplinary action could not have been decided and, as such, the Civil Court as well as the Lower Appellate Court have exceeded in its jurisdiction in entertaining the suit as well as appeal.

8. Learned Counsel for the respondent/plaintiff has relied upon the two judgments passed in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, and Rajasthan State Road Transport Corporation and Another Vs. Bal Mukund Bairwa,

9. On going through the contents of appeal and judgments, the principle that has been accepted by Hon''ble Supreme Court in both the cases cited above is that the jurisdiction of the Civil Court would not be taken away in the case of service dispute, but what is to be seen is whether the dispute arising between an employer and employee would be an industrial dispute or not and the question in regard to jurisdiction of the Civil Court must, therefore, be addressed having regard to the fact as to which rights or obligations are sought to be enforced for the purpose of invoking or excluding the jurisdiction of a Civil Court. In the judgment passed by the Supreme Court in the case of Rajasthan State Road Transport Corporation and another Vs. Bal Mukund Bairwa (supra), the Hon''ble Supreme Court has categorically held that if a statute while creating rights and obligations did not constitute a Forum for enforcing the same, plenary jurisdiction of the Civil Court, in view of The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, could not be held to have been taken away.

10. A plain reading of Para 33 of the judgment passed in the case of the Rajasthan State Road Transport Corporation Vs. Krishna Kant (supra), also establishes the same principle, wherein the Supreme Court has held that the power of Civil Court would be, only, in a case where there is no other alternative remedy available for a person and for the recognition, observance and enforcement of his right, the recourse to the Civil Court would be open. The Hon''ble Supreme Court has, in very categorical terms, held that where the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the Forums created by the said Act.

11. In the instant case, the law which would be applicable would be the Co-operative Societies Act and the Forums created under the said Act. Reading down the two judgments, it is indisputably clear that in the event, if there is an alternative Statutory Forum available enacted under the statutes itself, the Civil

Courts would be precluded from its jurisdiction. In the instant case, the statutes itself provides for appeal, revision and review against an order passed by the officers of the Co-operative Societies.

12. On reading Chapter 9 of the book "Principles of Statutory Interpretation" by Justice G.P. Singh dealing with the statutes affecting jurisdiction of the Court, it is evidently clear that the exclusion of jurisdiction of Civil Courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied. It is a principle by no means to be whittled down. As a necessary corollary of this rule provisions excluding jurisdiction of Civil Courts and provisions conferring jurisdiction on authorities and Tribunals other than Civil Courts are to be strictly construed. The general jurisdiction conferred upon a Civil Court is a matter of right, unless expressly or impliedly debarred to insist for free access to the Courts of general jurisdiction of the State.

13. The said rule as stated above relating to strict construction of provisions excluding jurisdiction of Courts of general jurisdiction was recently expressly approved by Hon''ble Supreme Court in the case of Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others,

14. Hon''ble Supreme Court in the case of Abdul Gafur and Another Vs. State of Uttarakhand and Others, , has categorically held in Paragraph 16, which reads thus:--

16. Section 9 of the Code provides that the Civil Court shall have jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. To put it differently, as per Section 9 of the Code, in all types of civil disputes, the Civil Courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on other Tribunal or Authority. Thus, the law confers on every person an inherent right to bring a suit of civil nature of one''s choice, at one''s peril, howsoever frivolous the claim may be, unless it is barred by a statute.

15. Similarly, the Hon''ble Supreme Court in the case of United India Insurance Co. Ltd. Vs. Ajay Sinha and Another, relying upon the Principles of Statutory Interpretation by Justice G.P. Singh, has held that provisions excluding jurisdiction of Civil Courts should receive strict construction.

16. From the plain reading of the above principles laid down by the Hon''ble Supreme Court, it is evidently clear that since the respondent/plaintiff had a statutory remedy available to him and the said statutes governing the service conditions of the respondent/plaintiff, the jurisdiction of the Civil Court also was specifically barred. That being so, the Trial Court has committed an error of law in entertaining Civil Suit No. 26-B/1984 and passing the judgment and decree dated 6-11-1987, which has also been affirmed and confirmed by the Lower Appellate Court vide its judgment and decree dated 20-11-1998 passed in Civil Appeal No. 2-B/88. Needless to say, if the law permits the respondent/plaintiff

may approach the Competent Authority under the provisions of law governing the service conditions of an employee of a Co-operative Society for redressal of his grievance. For the reasons stated in the preceding paragraphs, this Second Appeal is allowed. Consequently, judgment and decree dated 6-11-1987 passed by 2nd Civil Judge, Class II, Ambikapur, in Civil Suit No. 26-B/1984 and judgment and decree dated 20-11-1998 passed by 1st Additional District Judge, Ambikapur, District Sarguja in Civil Appeal No. 2-B/1988, being in excess of its jurisdiction, are set aside. The suit filed by the plaintiff is accordingly dismissed. No order as to costs.