

Moolraj Vs. Gulab Singh

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Court : Rajasthan

Decided On : Nov-24-1982

Reported in : 1982WLN588

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Revision Petition No. 341/1982

Appellant : Moolraj

Respondent : Gulab Singh

Advocate for Pet/Ap. : Shri. Daulal Vyas

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. This revision petition is directed against the order dated 7-7-1982 passed by the Additional Munsif No. 2, Jodhpur, whereby he rejected the petitioner's application under Order 7, Rule 11, C.P.C.

2. The material facts, which are essential to be noticed for the disposal of the revision petition, are that Mool Raj Vyas, defendant No. 1 in the suit, borrowed loan from the Railway Employees-Co-operative Banking Society Ltd., Jodhpur

(hereinafter referred to as the 'Society'), defendant No. 2. The said debt was not discharged fully by defendant No. 1 Moolraj. There upon the debt was recovered from the surety Gulab Singh, who has now instituted a suit for the recovery of the amount against the principal debtor Moolraj Vyas and he also impleaded the Society as defendant No. 1, that is the present petitioner, moved an application under Order 7. Rule 21 C. P.C., in which he raised a ground that the civil court has no jurisdiction to entertain the suit, as such a suit before the civil court is barred under Section 75 of the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as 'the Act'). The learned Munsif, after hearing the parties, found that Section 75 of the Act has no application, as the dispute does not relate to the constitution, management, or the business of a co-operative society. Consequently, he rejected the application under Order 7, Rule 11, C P.C. Dissatisfied with the order of the learned Additional Munsif, the defendant has preferred this revision.

3. I have heard Shri Daulal Vyas, learned Counsel for the petitioner and Shri Ranjeetmal Bhansali, learned Counsel for the non-petitioner No. 1 and Shri M. L. Chhangani, learned Counsel for non-petitioner No. 2.

4. A short question arises for consideration that whether a suit by a surety, who is the member of the Society, against the principal debtor, who is also a member of the Society, is maintainable before the Civil Court or such suit is barred under Clause (e) of Sub-section () of Section 137 of the Act Section 137 provides that no civil or revenue court shall have any jurisdiction in respect of any dispute required under Section 75 to be referred to the Registrar, though, there is also a saving provision, as it further lays down 'save as provided in the Act.' I have not been referred to any such provision, which may save the application of Section 137 of the Act, so it would appear from the provision contained in Section 137 of the Act that if any dispute is required to be referred under Section 75 to the Registrar, then in relation to such dispute, the civil court would have no jurisdiction.

5. The question then arises whether dispute between the surety and the principal debtor in the present case is a dispute, which is required to be referred to the Registrar under Section 75 of the Act. If Section 75 of the Act is perused, it would

be clear that Clause (b) of Sub-section (2) of Section 75 of the Act is in the nature of a deeming provision. It has been provided under Clause (b) of Sub-section (2) of Section 75 that 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 is admitted or not, shall be deemed to be a dispute touching the constitution, management or the business of the co-operative society. Such a claim by a surety against the principal debtor may not otherwise be in the nature of the dispute touching the constitution management or the business of a co-operative society, but still a fiction has been introduced in Sub-section (2) of Section 75 and it shall be deemed that such a claim is a dispute touching the constitution management or the business of the co-operative society. Admittedly, the plaintiff and the defendant, principal-debtor, are the members of the Society and only a member can be a surety of another member. Thus, the other condition required under Section 75 as to who should be parties to the dispute, is also fulfilled That being so, the dispute is of a nature which is required to be referred to the Registrar for arbitration under Section 75 of the Act. In respect of such a dispute, under Section 137 of the Act, the civil court possesses no jurisdiction and the suit before the civil court is barred. It appears that the provision contained in Clause (b) of Sub-section (2) of Section 75 and the provision contained in Section 137 of the Act, were not brought to the notice of the learned Additional Munsif, else the clear provision contained in Clause (b) of Sub-section (2) of Section 75 would not have been ignored. The very object of the deeming provision appears to be that even if the dispute may not strictly fall under Sub-section (1), still the various disputes in Clauses (a) to (c) of Sub-section (2) would be deemed to be the disputes touching the constitution, management, or the business of a co-operative society. If the dispute between the surety and the principal debtor, who are the members of the co-operative society, are excluded from the operation of Section 75, then the very object of the deeming provision contained in Sub-section (2) would be defeated. The object of the deeming provision appears to be that when a dispute arises between the surety and the principal debtor, who are the members of the Society, then such dispute should not go beyond the purview and scope of Section 75 of the Act and such dispute

should necessarily be referred to the Registrar for arbitration and jurisdiction of the civil court should stand barred. In the light of the provision contained in Sub-section (2) of Section 75 of the Act, [am clearly of the opinion that the present dispute between the parties is of a nature, which is covered under Section 75 of the Act.

6. In this view of the matter, the impugned order deserves to be set aside.

7. Accordingly, the revision is allowed and the order of the learned Additional Munsif No. 2, Jodhpur, is set aside. As the Civil Court has no jurisdiction to entertain the suit, the plaint shall be returned to the plaintiff. The parties shall bear their own costs.

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