

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 30th October, 2012

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LPA No.717/2012

**M.P. COOPERATIVE CONSUMER FEDERATION
LTD.**

..... Appellant

Through: Mr. Vikrant Singh Bais, Adv.

Versus

**NATIONAL COOPERATIVE CONSUMER
FEDERATION LTD. & ANR.**

..... Respondents

Through: Mr. J.P. Sengh, Sr. Adv. with Mr.
Sumeet Batra & Ms. Ankita Gupta,
Adv. for R-1.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 4th May, 2012 of the learned Single Judge, though dismissing the W.P.(C) No.6767/2007 preferred by the appellant against the order dated 20th March, 2007 of the Appellate Authority under the Multi State Cooperative Societies Act, 1984, but also modifying the order of the Appellate Authority to the prejudice of the appellant. The counsel for the contesting respondent no.1 appears on advance notice. Even though none appears for the respondent no.2 Chhattisgarh State Cooperative Consumer Federation Ltd. (CHATCOPFED)

but for the reasons recorded herein below need is not felt to issue notice to the said respondent and we have with consent, heard the counsel for the appellant and the senior counsel for the respondent no.1 finally at the admission stage.

2. The respondent no.1 approached the Central Registrar of Cooperative Societies (CRCS) with a dispute against the appellant for recovery of Rs.12,96,332/- stated to be due from the appellant to the respondent no.1 towards balance price of goods sold by respondent No.1 to the various branches of the appellant and admitted by the appellant to be so due in a reconciliation of accounts as on 31st March, 1999. The appellant opposed the said claim *inter alia* on the ground that in the wake of re-organization of the State of Madhya Pradesh into two States of Madhya Pradesh and Chhattisgarh, the appellant Society had been bifurcated and respondent no.2 CHATCOPFED with respect to the State of Chhattisgarh had been formed. The CRCS however negatived the said plea and finding that the appellant on merits had not denied its liability for the claimed amount to the respondent no.1, on 5th December, 2002 passed an award in the said sum of Rs.12,37,312.94p together with interest @ 15% per annum from the due

dates and up to the dates of actual payments in favour of the respondent no.1 and against the appellant.

3. The appellant appealed against the aforesaid award of the CRCS. The Appellate Authority, in its order dated 24th January, 2005 held that since the bifurcation of appellant had already taken place prior to filing of the dispute by the respondent no.1, the liabilities of appellant had to be shared with respondent no.2 CHATCOPFED. The Appellate Authority accordingly passed the following order:-

“Accordingly, I hereby set aside the impugned order dated 5.12.2002 and remand back the case to the CRCS with directions to implead CHATCOPFED as a necessary respondent alongwith MPCOPFED and to apportion the amount payable to the NCCF between the two Federations, in accordance with the law.”

4. The respondent no.1 on remand aforesaid filed an amended claim petition before the CRCS. CHATCOPFED failed to appear inspite of notice. The appellant filed a response to the said amended claim petition and in which for the first time a plea was taken that the reconciliation statement on which the claim petition of the respondent no.1 was based pertained to some branches only of the appellant and as per the consolidated statement of all

the branches, instead of any amount being due to the respondent no.1, rather a sum of Rs.1,56,283.43p had been paid in excess to the respondent no.1.

5. The CRCS however vide its order dated 7th December, 2006 observed that since the appellant in the reply to the original claim petition had admitted the liability, the earlier order dated 5th December, 2002 had to be upheld save that the amount awarded had to be shared in the ratio of 50:50 by the appellant and respondent no.2 CHATCOPFED. Liberty was however granted to the appellant to raise a fresh dispute to seek recovery of monies if any due from the respondent no.1 to the appellant.

6. The appellant again preferred an appeal to the Appellate Authority which was however dismissed vide order dated 20th March, 2007 observing that the dispute raised by the appellant in the reply to the amended claim petition appeared more of an afterthought and showed lack of seriousness on the part of the appellant to settle the disputed claims. It was also observed that the liberty already granted to the appellant to raise a fresh dispute sufficiently protected the interest of the appellant. CHATCOPFED though impleaded as party to appeal, again did not appear inspite of notice.

7. The learned Single as aforesaid, dismissed the writ petition. It has been held that the amendment to the claim petition was necessitated only to implead the State of Chhattisgarh and for no other reason and the defence set-up by the appellant in the reply filed to the amended claim petition had rightly not been entertained in the dispute raised by the respondent no.1. However finding that as per the agreement between the State of Madhya Pradesh and State of Chhattisgarh the liability was to be shared in the ratio of 70:30, the learned Single Judge modified the award of the CRCS and the order of the Appellate Authority from that of sharing of the liability in the ratio of 50:50 between the appellant and CHATCOPFED to that of 70:30.

8. During the pendency of the writ petition, the appellant was directed to deposit the 'decretal amount' with the respondent no.1, to be kept by the respondent no.1 in a separate interest bearing deposit. The said deposit was made. Accordingly the learned Single Judge directed the respondent no.1 to refund 30% of the amount along with interest accrued thereon to the appellant. It was further observed that observations in the said order shall not come in the way of fresh dispute if any raised which the appellant had been permitted to raise.

9. As the aforesaid narrative would show, the controversy hinges on, whether the order dated 24th January, 2005 supra of the Appellate Authority, operative portion whereof has been set-out hereinabove, is of open remand or of limited remand. The counsels agree that if the said order is to be read as that of open remand, the appellant on such remand would have been entitled to raise a fresh defence and merits whereof have admittedly not been gone into, neither by the CRCS nor by the Appellant Authority.

10. The Appellate Authority in the order aforesaid had 'set aside' the earlier order dated 5th December, 2002 of the CRCS. We are of the view that once the order of the CRCS was set aside, and particularly when an amended claim petition was filed by the respondent no.1 on such remand before the CRCS, the appellant could not have been stopped from taking a new plea in response thereto. It is a different matter that the said new plea could have been resisted on the grounds of estoppel, limitation etc. However CRCS and the Appellate Authority have refused to go into the merits of the said plea and merely held the interest of the appellant to have been protected by the liberty granted to the appellant to raise a fresh dispute. We find the aforesaid approach to be perverse. The new plea taken by the appellant was of reconciliation statement showing outstanding to the respondent no.1, and on

which alone the claim of the respondent no.1 was based, pertained to some of the branches only and a consolidated statement of all the branches revealing not only all dues of the respondent no.1 to have been paid but an outstanding of Rs. 1,56,283.43p due from the respondent no.1 to the appellant. Though the senior counsel for the respondent no.1 has argued that the appellant can raise a claim before the CRCS for recovery of Rs.1,56,283.43 stated to have been paid in excess, but the said argument loses sight of the fact that if the new plea aforesaid of the appellant were to be correct, then no amount as claimed by the respondent no.1 also would be due from the appellant.

11. Faced therewith the senior counsel for the respondent no.1 has contended that the claim of the appellant would be barred by time, that the new plea is false in as much as the reconciliation statement signed contains entries of branches stated to be excluded therefrom also, etc. We however do not find any merit in the plea of the claim/defence of the appellant being time barred. In fact the appellant in its reply to the amended claim petition had not prayed for recovery of Rs.1,56,283.43p but had merely stated that the amount claimed by the respondent no.1 was not due if the payment pertaining to all branches were reconciled. The other arguments now raised

before us cannot be gone into at this stage. We may highlight that the claim of the respondent no.1 is based solely on the reconciliation statement and not on accounts for the entire period.

12. In the light of the above and further finding, the parties to be cooperative societies, and the monies claimed having already been received by the respondent no.1, we are of the view that an opportunity be given for adjudication on merits of the defence of the appellant of the reconciliation statement pertaining to only some of the branches and otherwise all dues of the respondent no.1 having been paid and rather excess payment of Rs. 1,56,283.43p having been made by the appellant to the respondent no.1.

13. We accordingly allow this appeal and set aside the order of the learned Single Judge as well as the order dated 20th March, 2007 of the Appellate Authority and the order dated 7th December, 2006 of the CRCS and remand the matter to the CRCS for adjudication on merits of the aforesaid new plea in the reply to the amended claim petition. Though, respondent no.2 CHATCOPFED did not appear before the CRCS as well as the Appellate Authority or before the learned Single Judge but it is deemed appropriate to direct service of a fresh notice on respondent no.2

CHATCOPFED also. The appellant and the respondent no.1 to appear before the CRCS on 4th December, 2012 on which date the CRCS shall issue notice to the respondent no.2 CHATCOPFED. Since considerable time has lapsed, the CRCS is requested to pass an award within three months of 4th December, 2012. A copy of this order be immediately forwarded to the CRCS. This will however not come in the way of the respondent no.1 refunding 30% of the amount earlier deposited by the appellant, to the appellant. As far as the balance amount deposited by the appellant with the respondent no.1 under interim orders of the learned Single Judge is concerned, the fate thereof will be dependent upon the outcome of the remanded proceedings before the CRCS.

14. The appeal is accordingly disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 30, 2012

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