

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.1504 OF 2015

Mrs. Katie Darayus Bhathena & Anr. .. Petitioners
Versus
The Zoroastrian Coop. Bank Ltd. & Anr. .. Respondents

Ms. Deepti Panda with Ms. Kainaz Irani i/b. Pushpa Thapa for petitioners
Mr. Ravi Irle with Ms. Preeti Shah for respondent No.1
Ms. Anita Castellino with Siddharth Chandrashekhar i/b. Li Shu Fen for respondent No.2.

CORAM : R.D.DHANUKA, J

DATE : 16th March 2016.

P.C.

1] By this petition filed under section 37 of the Arbitration and Conciliation Act, 1996 (for short the Act), the petitioner has impugned an order dated 9th July 2015 passed by the learned Arbitrator, appointed under the provisions of section 84 of the Multi-State Cooperative Societies Act, 2002 (for short Multi State Act). The petitioner No.1 is wife of respondent No.2. Petitioner No.2 is son of petitioner No.1 and respondent No.2.

2] The parties have borrowed certain amounts from respondent No.1 bank. There was a mortgage of an immovable property by

deposit of title deeds created in favour of the Respondent No. 1 bank. There is no dispute that the entire loan has been repaid. On 8th November, 2013, the respondent No.1 bank issued "No Dues" certificate and called upon the parties to collect the title documents jointly from the bank. However, in view of the dispute inter se between the petitioner on one hand and respondent No.2 on the other, the respondent No.1 bank did not hand over the title documents to any party. The petitioners herein accordingly filed Dispute under section 84 of the said Multi State Act before the learned Arbitrator, inter alia, praying for handing over the original title deeds of the property described in the said application to the petitioners and for compensation for Bank's failure to hand over the original title documents valued at Rs.15.44 Crores within fifteen days from the date of repayment of loan and for damages.

3] In the said dispute, the respondent No.1 bank filed an application dated 12th February 2015 raising an issue of jurisdiction of the learned Arbitrator and about the maintainability of the dispute. Similar application was also made by respondent No.2 herein before the learned arbitrator for deciding his jurisdiction and maintainability

of the application. By an order dated 9th July 2015, the learned Arbitrator held that though the subject matter of the dispute was touching the business of the bank and parties as contemplated under section 84 of the said Multi State Act, the main relief claimed in the dispute was to hand over original documents being of similar nature of family dispute inter se between the parties, as held by this Court in W.P.569 of 2014, the present dispute cannot be covered under section 84 of the said Multi State Act.

4] It is also held that since the dispute pertains to handing over of original title deeds the borrowers who are family members in dispute inter se, with regard to the handing over the title documents, the arbitrator does not have jurisdiction to decide the dispute under section 84 of the said Multi State Act. The learned Arbitrator accordingly allowed the application filed by the respondent No.2, raising issue of jurisdiction and maintainability of the dispute. The learned Arbitrator dismissed the dispute for want of jurisdiction. This order was impugned by the original applicants (disputants) under section 37 of the Arbitration Act.

5] The learned Counsel for the petitioners submits that though the learned Arbitrator has rendered a finding that the dispute filed by the petitioners was touching the business of the bank and the parties as contemplated under section 84 of the said Multi State Act, in view of the reliefs sought before the learned Arbitrator being similar to the family dispute raised in the petition, the relief could not be granted under section 84 of the said Multi State Act. She submits that since the loan was already repaid, the bank could not have refused to hand over the original title deeds. She submits that there is no dispute about the title in respect of the said property. It is submitted that the conclusion drawn by the learned Arbitrator is contrary to the observations made about the subject matter of the dispute falling under section 84 of the said Multi State Act.

6] Learned Counsel for the respondent No.1 bank submits that they had called upon the parties to collect the title documents jointly. He submits that the learned Arbitrator has allowed the application filed by the bank on the ground that the dispute was not covered under section 84 of the said Act, the dispute being inter se within the family members. He submits that the respondent No.1 has no

objection to deposit the title deeds in this Court. The Statement is accepted.

7] Learned Counsel for the respondent No.2 on the other hand submits that since there is dispute between the parties i.e. petitioners and respondent No.2 in respect of the title in respect of the property in question and though the bank is impleaded as party respondent to the said dispute, there is no lis between the petitioners and respondent No.2 on one hand and bank on the other. She submits that no part of section 84 of the said Act thus, would have attracted to the dispute filed by the petitioners inter alia praying for return of original title documents. She submits that the dispute was inter se between the petitioners and respondent No.2 in respect of suit property in question. Thus, the learned Arbitrator was right in allowing the application filed by the respondent No.1 bank and respondent No.2 raising the issue of jurisdiction of Arbitrator and maintainability of the dispute filed by the petitioner. My attention is also invited to the provisions of section 84 of the said Act in support of this submission.

8] The learned Counsel for the petitioners in rejoinder submits that the petition referred by the learned Arbitrator in the impugned order has been disposed of by this Court by an order dated 1st March 2016 recording that since the arbitration petition filed by the petitioners was pending, the said issue could not be entertained in the writ petition. The Division Bench of this Court kept all points open so far as the petition was concerned and the issue involved therein.

9] There is no dispute that the respondent No.1 bank had agreed to return the title documents to the petitioners and respondent No.2 jointly after the entire liability of the borrower of the bank was cleared. In view of the inter se dispute between the petitioners and respondent No.2, the respondent No.1 bank did not return the documents to any of the parties. The learned Counsel for the respondent No.1 bank has already made a statement before this Court that the respondent No.1 bank has no lien on the documents and the bank is ready and willing to deposit the documents in this court within such time as this court may direct. The dispute as filed by the petitioners before the learned Arbitrator clearly indicates that

the main prayer in the dispute was against the bank for return of documents. In my view, there was no lis between the petitioners and the bank which would fall within the purview of section 84 of the said Multi State Act. Section 84(2) of the Multi State Act clearly provides the nature of the dispute which shall be deemed to be the dispute touching the constitution, management or business of a multi-State Cooperative Society. Section 84(2) reads as under:-

“84(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-state co-operative society, namely:-

(a) a claim by the multi-state co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State Cooperative 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;

(c) any dispute arising in connection with the election of any officer of a multi-State Cooperative society.”

10] According to the learned Counsel for the petitioner, the dispute filed by the petitioners would fall under section 84(2)(a). A perusal of the section 84(2)(a) clearly indicates that the claim has to be filed by the Multi-State Coop. society for any debt, demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not.

11] The dispute in this case is not filed by the Multi-state cooperative society i.e. respondent No.1 but by the petitioners, who were the borrowers of the respondent No.1 bank. Be that as it may, in my view the dispute about the return of the documents in view of the title dispute inter se between the petitioners and respondent No.2 would not be a dispute touching the constitution, management or business of the Multi-state cooperative society. The learned Arbitrator was right in allowing the application filed by the respondent No.1 and 2 raising issue of jurisdiction of the learned Arbitrator under section 84 of the said Act to entertain such a dispute and about the maintainability of such dispute.

12] A bare perusal of the impugned order passed by the learned Arbitrator indicates that though the learned Arbitrator has observed that the subject matter of the dispute was touching the business of the bank and the parties as contemplated under section 84 of the said Multi State Act, the main relief claimed was to hand over the original title documents and in view of the dispute between the family members inter se with regard to handing over the documents, the learned Arbitrator did not have jurisdiction to decide the dispute under section 84 of the said Act. In my view, the said view taken by the learned Arbitrator is in conformity with the provisions of section 84 of the said Act. There is no infirmity in the view taken by the Arbitrator by allowing the applications filed by the respondents. The learned Arbitrator did not have jurisdiction to entertain such dispute filed by the petitioners, which would be in my view, the dispute in respect of the title of the property in question inter se between petitioners and respondent no. 2 which can be decided only by the civil court.

13] I, therefore, pass the following order:-

- (a) The arbitration petition is dismissed;
- (b) Respondent No1 is directed to deposit the original title deeds with the Prothonotary & Senior Master within two weeks from today;
- (c) On deposit of such title deeds, the Prothonotary & Senior Master shall keep such documents in safe custody;
- (d) The Prothonotary & Senior Master shall hand over the title deeds to the parties in whose favour there is an order passed by the competent court for handing over the documents;
- (e) Respondent No.1 bank shall inform the petitioner as well as respondent No.2 when the title deeds are deposited with the Prothonotary & Senior Master.
- (f) No order as to costs.

(R.D.DHANUKA, J)