

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.C.C.A.No.320 of 2003

Between:

Aryan Co-operative Urban Bank Ltd., Nallakunta,
Rep. by its Liquidator & another.

.....Appellants

And

A.P.Womens Co-operative Finance Corporation Ltd.,
Ameerpet, Hyderabad, rep. by its Managing Director & others.

.....Respondents

JUDGMENT PRONOUNCED ON : **21.09.2017**

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment ?
2. Whether the copies of judgment may be : Yes/No
marked to Law Reporters/Journals ?
3. Whether Their Ladyship/ Lordship wish to : Yes/No
see the fair copy of the judgment ?

SURESH KUMAR KAIT, J

N. BALAYOGI, J

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI

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.....Respondents

For Appellants : Sri Kishore Rai, Advocate.

For Respondent No.1 : Sri J.S.Raju, Standing Counsel for
A.P.Womens Co-operative Finance
Corporation Ltd.

< Gist:

> Head Note:

? CITATIONS:

1. 2000 (1) ALD 499
2. AIR 1981 AP 180
3. 2004 (1) ALD 878

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**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

CITY CIVIL COURT APPEAL No.320 of 2003

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellants have assailed the order dated 11th February 2003, passed by the VII-Additional Chief Judge, City Civil Court, Hyderabad, in O.S.No.246 of 1998, whereby, the aforesaid suit has been decreed for Rs.1,95,30,891.55 ps., with interest @ 13.5% p.a. from the date of the suit till the date of realization. The 1st respondent/plaintiff-Corporation was directed to give credit to the tune of Rs.1,65,76,205/- made by the 1st appellant-Bank during the pendency of the suit on the respective dates of payments.

2. The 1st respondent-Corporation filed aforementioned suit by stating that the A.P. Women Co-operative Finance Corporation Ltd., Ameerpet, Hyderabad (hereinafter shall be referred to as "Corporation") was established in the year 1975 on the eve of the International Women Year. The twin objectives of International Women Year were; promotion of equality between men and women and the active involvement of women in National development. The Corporation had undertaken the massive programme of employment oriented Agro industries, Cottage and small scale industries by providing technical assistance, financial assistance etc. The Corporation, in order to raise funds, advanced loans, encouraged

thrifths and invested surplus funds by depositing in the 1st appellant-Bank (hereinafter shall be referred to as “the Bank”), as under :

- “1. Rs.25,00,000/- (Rupees Twenty Five Lakhs) invested on 5-7-1993 for 90 days @ 14% and renewed for 90 days upto 27-3-1995 and further one year upto 27-3-1996 at 13% and further renewed upto date at the same rate.
2. Rs.24,00,000/- (Rupees Twenty Four Lakhs) invested for one year at 13% upto 31-3-1995 and renewed for a further period of one year upto 31-3-1996 at 13% and further renewed upto date at the same rate.
3. Rs.14,00,000/- (Rupees Fourteen Lakhs only) invested for one year upto 31-3-1995 and renewed for a further period of one year upto 31-3-1996 at 13% and further renewed upto date at the same rate.
4. Rs.12,00,000/- (Rupees Twelve Lakhs only) invested for one year upto 31-3-1995 and renewed for a further period of one year upto 31-3-1996 at 13% and further renewed upto date at the same rate.”

3. Before aforementioned deposits, the Administrative Officer of the Bank addressed a letter dated 14.07.1994 to the Corporation to mobilise deposits in their Bank and promised that they will pay more interest than the other Nationalised Banks i.e. @ 10.5% p.a. on the deposited amount. Basing on the above noted letter, the Corporation was convicted and issued Cheques bearing Nos.740890 and 740891, both dated 15.07.1994, for Rs.50,00,000/- each, in the Bank, with an undertaking to deposit the above said two amounts for a period of

one year with interest @ 10.5% p.a. It was agreed between the Bank and the Corporation to pay interest quarterly. Accordingly, the Corporation requested the Bank to send interest on earlier FDRs as under :

F.D.R. & Date	F.D.R. Amount (Rs.)	Q'ly Int.payable For the period
1. 6892 dt.31-3-1994	25,00,000/-	31-3-94 to 28-6-94
2. 6896 dt.31-3-1994	14,00,000/-	-do-
3. 6895 dt.31-3-1994	12,00,000/-	-do-
4. 6893 dt.31-3-1994	5,00,000/-	-do-
5. 6894 dt.31-3-1994	24,00,000/-	-do-
=====		

However, the 3rd respondent/3rd defendant i.e. the Chief Executive Officer of the Bank, instead of repaying the interest, by letter dated 05.04.1995, requested to renew FDR Nos.6892 to 6896 for a further period of one year. By letter dated 26.07.1995, the 3rd respondent requested to renew FDR Nos.3311 and 3312 of Rs.50,00,000/- each, carrying interest @ 10.5% p.a. The 3rd respondent assured to pay interest quarterly @ 13.5% p.a. if the FDRs are renewed and requested to send two FDRs fell due on 15.07.1995. Accordingly, the Corporation, by a letter dated 28.07.1995, agreed for the renewal for a further period of 180 days from 16.07.1995 and instructed to pay interest on the above deposits with Bankers Cheque in the name of the Managing Director of the Corporation and stated that the agreed interest shall be @ 13.5% p.a. from the date of renewal. The Bank acknowledged the receipt of the above said FDRs. The Bank had issued two cheques vide Cheque No.291936 for an amount of Rs.2,67,123.25 ps., and another Cheque No.291937 for an amount of

Rs.3,02,054.80 ps. The said cheques were dishonoured due to non-availability of funds. However, the Bank, by letter dated 14.09.1995, again sent the Bankers Cheque for the said amounts, vide cheque No.975577.

4. Further case of the Corporation is that by letter dated 26.09.1995, made it clear that if quarterly interest is not paid within two days, the entire deposited amount would be withdrawn from the Bank. In the very same letter, the Corporation made it clear that the Bank is due to pay a sum of Rs.10,37,150.75 ps., towards interest on the total amount i.e. Rs.1,80,00,000/-. The Chief Executive Officer of the Bank, by letter dated 12.10.1995, paid Rs.5,50,630.05 by cheque No.759587, dated 12.10.1995, drawn on Andhra Bank, adjusted towards interest upto 30.09.1995. As the Bank was not paying the interest quarterly as promised even after regular persuasion and letters and telephonic calls and due to dishonouring of cheques, the Corporation had decided to renew the deposits only for 100 days instead of 180 days. The Bank had acknowledged in the same letter dated 19.10.1995 that two FDRs worth Rs.50,00,000/- each were received on 25.10.1995. The Corporation, by letter dated 14.12.1995, made it further clear that the deposit of 100 Lakhs only will be renewed only for a period of 100 days instead of 180 days. The Corporation also requested the 3rd respondent/the Chief Executive Officer of the Bank to make payments along with accrued interest by means of Bankers cheque.

Inspite of the same, the 3rd respondent, by letter dated 15.12.1995, requested to continue the deposits till 31.12.1995.

5. The further case of the Corporation is that the President of the Bank had addressed a letter dated 03.01.1996, expressing regrets over the non-materialisation of FDRs on 31.12.1995 due to financial crisis. However, he assured that necessary arrangements for payment of FDR Nos.3311 and 3312 along with interest due as on that date will be made. By letter dated 29.01.1996, the Corporation requested the 3rd respondent to pay the amount along with interest upto 31.12.1995. However, the 3rd respondent by letter dated 02.03.1996, again requested to renew the FDRs for a further period of one year. The Corporation, again by letter dated 14.03.1996, expressed its regrets over non-payment of Rs.180 Lakhs along with interest. The 3rd respondent, by letter dated 17.10.1996, made it clear that they want to repay all the deposits particularly institutional authorities and requested for extension of deposits and assured for payment upto March 1997. In letter dated 13.06.1996, the Corporation enclosed the Five FDRs worth Rs.80,00,000/- and same was acknowledged by letter dated 13.06.1996. The 3rd respondent, by letter dated 08.11.1996, along with the statement of account of the Bank dated 11.02.1997, sent a letter and statement of account and further requested for extension of time of 10 months to pay atleast the interest.

6. The Bank, by letter dated 16.07.1997, enclosed a cheque bearing No.1537475, dated 16.07.1997 for Rs.5,00,000/- drawn on APCOB, Vidyanagar Branch towards repayment of FDR No.13971 and assured further that he shall make upto date payment by the end of October, 1997. The Bank, in the same letter, mentioned that it shall pay every month certain amounts towards principal and interest adjustments of above mentioned FDRs. However, even after letter dated 16.07.1997, the Corporation did not receive any amount, for which, a legal notice was issued on 22.09.1997 and the same was received and duly acknowledged on 23.09.1997. Thereafter, the Corporation issued rectified legal notice dated 28.09.1997 and received acknowledgement on 03.10.1997 from respondent No.3 vide letter dated 11.02.1997 along with a detailed statement of account of payment of interest on FDRs. Since the Corporation did not receive the amount, it filed a suit with a prayer to pass a decree in it's favour and against the Bank for a sum of Rs.1,95,30,891.55 ps., and grant interest as per the contract rate from the date of suit till the date of realisation and costs.

7. The case of the Bank as per the written statement is that they approached the Corporation in usual course of business for deposits, out of surplus funds available with the Corporation. Accordingly, the Corporation invested an amount of Rs.25,00,000/- on 05.07.1993 for a period of 90 days and the rate of interest @ 14% p.a. and the FDRs were renewed from time to time and further renewed for one year from 27.03.1995 to 27.03.1996 with interest @ 13% p.a. The

same was renewed upto date and the interest payable on above FDRs till 26.03.1996 was already paid. As on 26.03.1998, the amount due was Rs.31.50 Lakhs consisting of Rs.25 Lakhs principal amount and Rs.6.50 Lakhs interest payable from 27.03.1996 to 26.03.1998. The Bank was agreed to pay the above dues within reasonable time. Originally, the deposit was made for a period of one year for a sum of Rs.24 Lakhs vide FDR No.6894, dated 31.03.1994 and the same was renewed for one more year, and further renewed till 31.03.1996 vide FDR No.13969. The interest payable on the above FDR upto 31.03.1996 amounting to Rs.6,24,854.80 was fully paid by the Bank. Apart from the interest, a sum of Rs.4,00,000/- was paid towards partial payment of principal in February, 1998. Hence, the intention of defaulting on the part of the Bank does not arise. The amount payable on the above FDRs till 31.03.1998 would be Rs.26,17,731.50 ps., consisting of Rs.20,00,000/- towards principal and Rs.6,17,731.50 ps., towards interest.

8. Further case of the appellants is that another deposit was made by the Corporation vide FDR No.6896, dated 31.03.1994 for a sum of Rs.14 Lakhs for a period of one year and the same was further renewed for one more year till 31.03.1996. The appellant had paid full principal amount of Rs.14 Lakhs together with interest of Rs.6,40,704/- payable till 31.03.1996. The deposit of Rs.12 Lakhs was made by the Corporation on 31.03.1994 vide FDR No.6895, for one year. The principal amount of Rs.12 Lakhs together with interest of Rs.4,55,178.10 ps., payable till 31.03.1995 was already

paid by the Bank. However, the cheques were dishonoured only on technical grounds and not for want of funds. The Bank was operated by the Committee Members as per the old bye-laws. The said bye-laws were amended with effect from 05.12.1994 and subsequently, the bank operations were entrusted to the Managing Committee. Accordingly, the Bank submitted the signatures of the officers of the concerned Bank for allowing operation of accounts. Meanwhile, the Bank had issued cheques in good faith, however, the concerned Bank i.e. Andhra Bank of Vidyanagar Branch dishonoured the cheques and sought the approval of Registrar for attestation of the new signatures. The attestation process was delayed for want of clarification from the head office i.e. Registrar of Co-operative Societies. These are the circumstances under which the cheques issued in favour of the Corporation were bounced and the said fact was communicated to the Corporation.

9. Further case of the Bank is that inspite of their intention for repaying the amount, the Corporation, in haste, filed the suit instead of approaching the Arbitrator for settlement of dispute under Section 61 of Act, 1964. However, in the interest of business relations, the Bank considered to pay interest only on the outstanding FDRs for further period from the last date with the date of clearance of the FDRs and that the Bank was prepared to pay the FDRs along with interest as stated below :

“F.D.R. 3311	Rs.50 Lakhs
F.D.R. 3311	Rs.50 Lakhs
F.D.R. 3311	Rs.25 Lakhs

F.D.R. 3311 Rs.20 Lakhs (As Rs.4 Lakhs was already
Paid against Rs.24 Lakhs)

Rs.145 Lakhs
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It is the further case of the Bank that if the Corporation is agreeable to convert the above FDRs into lower denominations, renewal of FDRs with lower denominations is proposed as follows:

"March, 1998	Rs.10 Lakhs.
April, 1998	Rs.10 Lakhs.
May, 1998	Rs.10 Lakhs.
June, 1998	Rs.10 Lakhs.
July, 1998	Rs.20 Lakhs.
August, 1998	Rs.20 Lakhs.
September, 1998	Rs.20 Lakhs.
October, 1998	Rs.20 Lakhs.
November, 1998	Rs.20 Lakhs.
December, 1998	Balance amount."

10. Further case of appellants is that the Bank had paid Rs.44,99,901/- towards interest alone against various FDRs apart from the payment of Rs.35 Lakhs towards principal amount. The Bank denied in toto the alleged amount of Rs.1,95,30,891.50 ps., as demanded by the Corporation, as the suit amount was not covered under any specific contract between the Bank and the Corporation. The Bank was agreeable, in the absence of any specific contract, to pay the interest on matured deposits as per the directives of RBI only. Therefore, the interest during the tenure of suit or after the expiry of respective due dates of FDRs, is denied.

11. Basing on the plaint allegations and after considering the written statement of the Bank, the trial Court initially framed the following issues :

- “1. Whether the plaintiff is entitled for recovery of the suit amount ?
2. To what relief ?”

12. After filing written statement by defendant No.4 i.e. Special Category Deputy Registrar/Liquidator, Aryan Co-operative Urban Bank Ltd., Nallakunta, Hyderabad, who was impleaded as defendant No.4 as per order of the trial Court dated 08.12.2002 passed in I.A.No.295 of 2002, additional issues were framed on 11.12.2002 as under :

- “1. Whether the suit is barred U/Sec.121(2) of A.P. Co-operative Act, 1964 ?
2. Whether the suit is maintainable for non-compliance of Sec.126 of the A.P. Co-operative Societies Act, 1964 ?
3. Whether the suit is maintainable in view of the Sec.61(1)(d) of A.P. Co-operative Act, 1964 ?”

13. It is pertinent to mention here that the main dispute between the Bank and the Corporation is with regard to the payment of interest due on matured Fixed Deposits made by the Corporation with the Bank. So far as the transactions i.e. the deposits and the rate of interest are concerned, the same are not in dispute. The main contention of the Bank is that the suit was not maintainable and a reference under Section 61(1)(d) of Act, 1964 should have been made; that no notice had been issued under Section 126 of Act, 1964; and in view of the winding up of the Bank, the Civil Court's jurisdiction is barred under Section 121(2) of Act, 1964.

14. However, the learned trial Court opined that the liability of the Bank arises on account of fixed deposits made by the Corporation under Term Deposit Receipts, which carry interest specified thereon and as such the liability of the Bank arises under a monetary transaction as a Banker and the said liability had also been duly acknowledged under Exs.B-3 to B-19, B-21 and B-22. The said liability is only on Banker and the same is not touching with the management or the business of the Bank so as to attract the provisions under Section 61(1)(d) of Act, 1964. This matter with regard to the issue was negated by the trial Court and the revision preferred vide C.R.P.No.860 of 2002 was dismissed by the High Court confirming the orders of the trial Court. As such, the issue had become redundant and since it does not touch the business or management, the suit filed by the Corporation was maintainable.

15. With regard to issuance of notice under Section 126 of Act, 1964, the learned Court below opined that the same does not arise at all since before filing of the suit, the Corporation addressed various letters calling upon the Bank for payment of outstanding amounts, to which, the Bank replied, requesting for renewal, and thus, there being no specific form of notice prescribed under Section 126 of Act, 1964 and the nature of liability being one of a trustee as a Banker to repay the amounts due as on the date, the said provision is not applicable and on the other hand, duly complied with.

16. Insofar as bar of jurisdiction of civil Court under Section 121(2) of Act, 1964 is concerned, it is held by the trial Court that only in respect of the Societies which are contemplating winding up or being liquidated, and in the present suit, the said defence is not available, since admittedly, by the date of filing of the suit, no such proceedings were either contemplated or pending, but it was only during pendency of suit, the liquidation proceedings were started i.e. nearly three years after filing of the suit, and as such, Section 121 (2) of Act, 1964 has no application.

17. Admittedly, the Bank repaid certain amounts towards the discharge of their liability and the same are reflected in the written arguments of the Corporation. Insofar as the balance amount is concerned, it remains unpaid and in view of admission on the part of the Bank offering a particular rate of interest, they are bound to repay the same with agreed and undertaken interest.

18. We have heard learned counsel for the appellants and the Corporation and perused the material on record.

19. As mentioned above, defendant No.4 i.e. the Special Category Deputy Registrar/Liquidator of the Bank was appointed in pursuance of the order of the Joint Registrar/DCO, dated 05.09.2002, whereunder, the Joint Registrar passed orders to liquidate the Bank. The copy of the order was filed before the trial Court. In view of the same, the Corporation, without seeking leave of the Registrar of

Co-operative Societies, is not entitled to sue the Bank, in view of Section 121(2) of Act, 1964, which reads as under :

“While a society is being wound up, no suit or other legal proceeding 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 on any matter touching the affairs of the society except by leave of the Registrar and subject to such terms and conditions as he may impose :

Provided that where the order of winding up is cancelled, the provisions of this sub-section shall cease to apply in relation to the society and any member thereof, but shall continue to apply to the person who acted as liquidator.”

20. As per the said provision, without seeking leave of the Registrar of Co-operative Societies, the Corporation was not entitled to sue the Bank. However, before going further, it is pertinent to mention here that the business of the Bank, as stated in the bye-laws, more particularly bye-law No.5(ii), is as under :

“to accept the deposits or money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft order as per Bye-laws No.41 which reads as under :

“(i) Deposits may be received at any time within the limits determined under Co-operative Societies Act and Rules on such rates of interest and subject to such rules regulations as may be fixed by the Board of Directors and also subject to the directives issued by the

*Reserve Bank of India in this behalf
from time to time.*

*(ii) Deposits may be received on current,
savings, fixed, recurring, cumulative
and under any other special
scheme(s).””*

21. It is not in dispute that during the course of business, the Bank had approached the Corporation to invest surplus funds and the same is admitted by the Corporation in the plaint. As such, the trial Court has no jurisdiction to try the suit under the provisions of Section 61(1)(d) of Act, 1964. Accordingly, the claim of the Corporation had to be sent to the Deposit Insurance Credit Guarantee Corporation of the Reserve Bank of India for settlement of claims upto Rs.1,00,000/- and any other claim made to the Liquidator, the Liquidator has to settle such claim on pro-rata basis including that of the Corporation, if any, in view of the liquidation of Bank in respect of the alleged dues of the Corporation. The Corporation in its correspondence, has specifically stated that it had agreed under Ex.A-14 to refer the matter to the Registrar of Co-operative Societies for taking action as per Act, 1964 and also under Ex.A-16, the Corporation intended to take steps for Arbitration as per the provisions of Act, 1964.

22. It is pertinent to mention here that vide communication dated 14th March 1996, the Corporation issued a letter to the Chief Executive Officer of the Bank, whereby stated that if the Bank fails to repay the proceeds of Rs.100 Lakhs along with interest, they will

proceed to recover the same by filing an arbitration case and approach the Court of law for taking criminal action against the Bank. In view of the categorical admission of the Corporation, whereunder, the Corporation has categorically referred to approaching the Registrar of Co-operative Societies for settlement of dues by filing Arbitration case, but in fact, has approached the Court below by filing the suit. The same goes to show that the Corporation and the Bank, both being Co-operative Societies, the provisions of Act, 1964 applies, which provides for settlement of disputes before the Arbitrator under the provisions of Section 61(1)(d) of Act, 1964, which reads as under :

“Disputes which may be referred to the Registrar :-

(i) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society arises—

(a).....

(b).....

(c).....

(d) between the society and any other society, such dispute shall be referred to the Registrar for decision.”.

23. In addition to above, Section 126 of Act, 1964 reads as under :

“126. Notice necessary in suit :- No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management or the business of the society until the expiration of sixty days next after notice in writing has been delivered to the Registrar, or left at his office

stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left.”

In view of above provision, notice is to be issued by the plaintiff before filing the suit and no suit shall be instituted against a Society without a notice in writing has been delivered to the Registrar.

24. It is pertinent to mention here that PW-1/D.Anil Kumar, Junior Accounts Officer of the Corporation, deposed in the cross-examination that he did not know whether the Corporation had issued any Statutory notice under Section 126 of Act, 1964 before filing the suit. More over, he had no idea as the Bank and the Corporation being Co-operative Societies, whether an Arbitration claim has to be made under Section 61(1)(d) of Act, 1964. He admitted that under Ex.A-16, the Corporation intended to take action for Arbitration as per provisions of Act, 1964, however, he had no idea whether the Corporation had taken any action under Act, 1964, under Exs.A-14 and A-16. The said witness admitted that they have received Rs.5,00,000/- vide Cheque No.77519, dated 24.03.2001 from the Bank under the letter, which is Ex.B-1. He further admitted that the total amount paid by the Bank after filing the suit is Rs.2,29,00,000/- and odd. He further admitted that the amount paid by the Bank to the tune of Rs.2,29,00,000/- and odd includes the principal amount of Rs.163 Lakhs and the balance is towards interest. The said witness also admitted that as per bye-law No.5(ii),

the Bank is to accept deposits and pay back on demand. Under bye-law No.41, the Bank is entitled to receive deposits as per Act, 1964. He also admitted that before filing the application to implead the Liquidator, the permission of Registrar of Co-operative Societies was not obtained. He further admitted that before filing the suit and impleading the Liquidator, no prior notice was issued.

25. In view of above facts and statutory provisions, we are of the opinion that the Court below failed to see that the provisions of Section 126 of Act, 1964, which stipulates that no suit shall be instituted against a Society or any of its officers in respect of any act touching the constitution, management or the business of the Society, until the expiry of 60 days next after notice in writing has been delivered to the Registrar. PW-1 in his deposition, has made admission that no notice as contemplated under Act, 1964 has been issued before filing of suit and before impleading the Liquidator/appellant No.2 herein. The said fact has been overlooked by the Court below. However, the Court below has erred in holding that the correspondence made by the Corporation can be treated as notice under Section 126 of Act, 1964. In addition to above, the Court below failed to see that filing of suit without seeking leave of the Registrar of Co-operative Societies is barred under Section 121(2) of Act, 1964. The trial Court has ignored the fact that PW-1 made relevant admissions that before filing the application to implead the Liquidator, permission of Registrar of Co-operative Societies was not obtained. Accordingly, the Court below erred in

holding that sanction under Section 121(2) of Act, 1964 is not applicable to the suit, as the liquidation proceedings had been commenced only after filing of the suit. We are of the opinion that Section 121(2) of Act, 1964 is applicable even in the pending suits.

26. The trial Court further failed to see the relevant admission of PW-1 in cross-examination dated 17.12.2002 that the principal business of the Bank is to accept deposits and to pay back on demand. Thus, the Court below has erred in holding that payment of Fixed Deposits or interest are only monetary transactions but not the business of the Bank. The Court below has also failed to see that the main activity of the Bank is Banking business. Hence, in our opinion, Section 61(1)(d) of Act, 1964 is squarely applicable. It is pertinent to mention that orders in C.R.P.No.860 of 2002 were passed by this Court confirming the orders of this Court in I.A.No.42 of 2002, refusing to frame the issues for want of pleadings in the written statement. However, the said case is not applicable for the facts and circumstances of this case.

27. In the case of **V.J.Dandekar v. Meera Co-operative Housing Society Limited, Hyderabad**¹, a learned Single Judge of this Court held that notice contemplated under Section 126 of Act, 1964 has to be strictly construed and it has to be complied with accordingly. The words “touching the business of a society” in Section 126 of Act, 1964 must be given their full import bearing in

¹ 2000 (1) ALD 499

mind the object of the Legislation. The disputes are not to be restricted to matters arising from and out of the business of the society but are also extended to matters which are in some way concerned or related to the business of the society.

28. In the case in hand, as admitted by PW-1, though the very business of the Bank was to accept deposits and pay back to the depositors along with interest, the procedure contemplated under Section 126 of Act, 1964 has not been complied with before instituting the suit.

29. In case of **Karimnagar District Co-operative Central Bank Ltd. V. Mogili Bakka Veeraiah and another**², a learned Single Judge of this Court held that the suit filed by the plaintiff against the Karimnagar District Co-operative Central Bank Limited without giving the requisite notice under Section 126 of Act, 1964 is not properly instituted. Accordingly, the said Court set aside the order of the trial Court.

30. In the case of **Jas Raj Ganeshmal v. A.P.Dairy Development Co-operative Federation Limited**³, a learned Single Judge of this Court held that filing of any suit is barred unless and until notice thereunder is given to the Registrar in respect of any act touching the constitution, management or the business of the Society. Admittedly, in the present case, no such notice is given to the Bank nor to the Registrar of Co-operative Societies.

² AIR 1981 AP 180

³ 2004 (1) ALD 878

31. In view of above discussion and legal position, we hereby set aside the decree and judgment dated 11.02.2003, passed by the VII-Additional Chief Judge, City Civil Court, Hyderabad in O.S.No.246 of 1998. Consequently, we allow the present appeal by giving liberty to the Corporation to take steps as per law, for recovery of amount, if any. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

N. BALAYOGI, J

21st September 2017

N.B :

L.R. Copy be marked.

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