

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 1015 of 2021

Kartik Chandra Das.

Vs.

Dewanbheri Uttarpura Samaby Krishi Unnayan Samiti Ltd. & Ors.

For the Petitioner/Defendant : Mr. Prosenjit Mukherjee, Adv.
Mr. Jahangir Hossain, Adv.
Mr. Arghya Kamal Das, Adv.

For the Opposite Parties : Mr. Pabitra Charan Bhattacharyya, Adv.
Mr. Subhajit Panja, Adv.

Heard On : 31.08.2021.

Judgment : 28.09.2021

Subhasis Dasgupta, J:-

The impugned order dated 24th March, 2021 passed by the learned Arbitrator, Hooghly Range, Officer at Hooghly in connection with a dispute Case No.01 of 2020/2021, under Section 102(1) of the West Bengal Co-operative Societies Act, 2006, holding the dispute case to be maintainable after rejecting the prayer challenging the maintainability of proceeding, is subject matter of challenge in this revisional application.

Adverting to a copy of petition seeking for quashment and/or annulment of the dispute case instituted against the petitioner, in dispute

case No. 01 of 2020/2021, being page 108 of the instant revisional application, Mr. Prosenjit Mukherjee, learned advocate representing the petitioner submitted that initiation of a recovery case by opposite parties upon resorting to Section 102(1) of the West Bengal Co-operative Societies Act, 2006 was bad in law having no sanction of law, on the ground that disciplinary action taken by the management of the Co-operative Societies/opposite parties involved in this case, against a paid employee, though subsequently dismissed from service, could never be regarded as concerning the management, or business, or affairs of a co-operative society.

Mr. Mukherjee, submitted that an erroneous decision had been reached mechanically by the order impugned, holding that the dispute had been arisen between the plaintiff/society and the petitioner, as a member of the society, and thus the provision of Section 102 (1)(a) of the West Bengal Co-operative Society Act 2006 had been illegally invoked. Mr. Mukherjee further contended that petitioner having been removed from the service, as per decision of the disciplinary proceedings initiated against the petitioner, the instant recovery case ought not to have been instituted before the Registrar, as it was not permissible to be instituted against the petitioner, who had already been held convicted in a disciplinary proceedings, and already terminated from service.

Per contra, Mr. Pabitra Charan Bhattacharyya, learned advocate representing opposite parties, supporting the order impugned submitted

that relevant provisions had been appropriately resorted to for the recovery of Rs.36,95,407/- from petitioner, who had allegedly defalcated the said amount during his tenure, while discharging his function as a Manager of Dewanbheri Uttarpara Samaby Krishi Unnayan Samiti Ltd.. The disciplinary proceeding was subsequently initiated against the petitioner, after the petitioner was dismissed from service on 07.07.2020.

Mr. Bhattacharyya taking recourse to the written statement, filed by the petitioner against the recovery proceedings initiated under Section 102 of the West Bengal Co-operative Societies Act, 2006, submitted further that in para 5 of the written statement, defendant/petitioner had admitted that he had been a member of the plaintiff/society/opposite party at the relevant point of time. Mr. Bhattacharyya further argued that the alleged defalcation of huge amount had been made by the petitioner not only being a manager of the Co-operative Society, but was also a member of society, relatable to a dispute concerning the management, or business, or affairs of the Co-operative Society, as appearing in Section 102 of the Act. The opposite parties were duly permitted or authorised to take out recovery proceeding against the petitioner, who admittedly not only was the manager of the concerned Co-operative Society, but was also a member of the Society at the relevant point of time, though he might have been lawfully terminated from service upon initiation of a due disciplinary proceedings, for the defalcation of huge monetary amount touching the management, or business, or affairs of the Co-operative Society, Mr.

Bhattacharyya contended. The recovery proceeding, according to Mr. Bhattachayya was very much maintainable, and there left nothing requiring any interference by this Court.

The solitary point raised by both the parties to this case, requiring address by this court, is whether the challenge against the maintainability petition praying for recovery under Section 102 of the West Bengal Co-operative Societies Act, 2006 has been rightly decided or not.

At the threshold of this case, it may be mentioned over here, that there is a prohibition Clause appended to Sub-Section 4 of Section 102 of the West Bengal Co-operative Societies Act, 2006 (hereinafter referred to as the Act), whereby jurisdiction of the Civil Court as well as any Consumers Dispute Redressal Forum had been completely ousted.

For the perfect understanding of the word ‘dispute’ appearing in Section 102 of the Act, a travel to Section 4(25) of the Act, defining the ‘dispute’, may be of useful assistance. The dispute has been defined giving an inclusionary meaning disclosing therein that any matter capable of being the subject of civil litigation, and including a claim in respect of a “sum payable to or by a Co-operative Society”, would amount to be ‘dispute. Therefore, dispute mentioned in the Act to come under the purview of Act has to be a subject of civil litigation’, and it includes a sum payable to or by a Co-operative Society, which is directly and proximately relatable to the management or business or affairs of Co-operative Society.

The argument raised by the petitioner is directed towards a particular point that the referred recovery proceeding is not amenable to Section 102 of the Act, for being not covered within the meaning of parties to a dispute, as specified in Clauses (a) to (d) of Section 102(1) of the Act, on the simple score that disciplinary action taken by the management of the concerned Co-operative Society against the petitioner, a paid employee, though might have been dismissed ultimately, is not concerning the management, or business, or affairs of Co-operative Society.

Reliance was placed by the learned advocate for the petitioner on a decision reported in **1958 SCC OnLine Cal 158** delivered in the case of **Co-operative Milk Societies Union Ltd. Vs. State of West Bengal and Ors.**, wherein it was held that a dispute regarding disciplinary action taken by society, or its managing committee against a paid servant of a society would be expressly excluded from the purview of the Registrars jurisdiction. Referring such decision, it was submitted that a dispute between the Co-operative Society and the petitioner, who was a manager of the society, though may ultimately touch or affect the business of the co-operative society, but the same would not be concerning the business or affairs of the society.

Reliance was also placed on a decision reported in **1980 (Supp) SCC 437** delivered in the case of **U.P. Cooperative Cane Union Federation Ltd. and Anr. Vs. Liladhar and Ors.** that a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of the society

cannot be said to be dispute touching the business of the society, and as such it was not within the purview of the compulsory arbitration.

Further reliance was placed on a decision reported in **AIR 1959 PH 34** delivered in the case of **The Jullundur Transport Vs. The Punjab State Through The.....**, to establish that legislature did not intend that dispute regarding disciplinary action by the society against its paid servant should be settled by the Registrar. The present dispute, according to petitioner is not referable to Registrar of Society, as there is limitation regarding kind of dispute, which may be referred to the Registrar, as mentioned in Section 102 of the Act, found in Chapter 11 of the Act, with caption “settlement of dispute”.

By referring an unreported judgment of Supreme Court delivered in the case of **Gujarat State Co-operative Land Development Bank Ltd. Vs. P.R. Mankad and Ors.**, learned advocate for the petitioner attempted to establish that the dispute, as has surfaced in this case, would not fall within the purview of the phrase “any dispute touching the management of the society”.

Similarly by referring a further unreported decision delivered in the case of **South Eastern Railway Employees Co-Operative Urban Bank Vs. Presiding Officer 1st Industrial Tribunal (High Court of Judicature at Calcutta)**, learned advocate for the petitioner submitted that any dispute touching the business of a society, other than a dispute regarding disciplinary action taken by the society against the petitioner,

who was a manager of the society at the relevant point of time, would come within the purview of Section 102 of the Act.

Referring such decisions, the entire effort exercised by the learned advocate for the petitioner is to establish that the Industrial Tribunal alone has jurisdiction to decide the dispute surfaced between the parties and not by the authority, mentioned in Section 102 of the Act, and more so the petitioner is not within the meaning of party, as specified in Section 102(a) to (d) of the Act.

On the other hand, learned advocate for the opposite parties endeavoured to counter the decisions cited by the petitioner relying upon a decision reported in **1997 (II) CHN 200** delivered in the case of **Sumumar Ghosh Vs. Krishnanagar City Co-operative Bank Ltd.**, that the dispute involved in this case, being directly concerning the business, and relatable to the affairs of the co-operative society, necessarily has to be referred to the Registrar, and the Civil Court has no jurisdiction to entertain this case.

Reliance was further placed by the learned advocate for the opposite parties on a decision reported in **AIR 1990 Cal 380 Special Bench** delivered in the case of **Anjan Choudhury Vs. Anandaneer Co-operative Registered Housing Society and Ors.**, that the dispute in connection with the instant recovery proceedings being of such a magnitude, that it was not just concerning or involving a co-operative society, but concerning the business or relating to the affairs of the society, and such business or

affairs of the society was authorised to be conducted pursuant to its objectives under the Act. When society is legally authorised to, and required by its rules and by-laws to undertake, the society had no option, but to initiate action for recovery, like the instant one, upon resorting to the provisions available in Section 102 of the Act, and it was very much within the coverage of Section 102 of the Act, Mr. Bhattacharyya endeavored to establish upon referring such citation.

The sum and substance of the decisions, cited by the opposite parties, is that dispute surfaced between the parties is required to be decided by the authority, shown in Section 102 of the Act, and the same cannot be relegated to Industrial Disputes Act.

Indisputably petitioner was appointed as manager of the Dewanbheri Uttarpara Samaby Krishi Unnayan Samiti Ltd., and amenable to the authority of opposite parties under the West Bengal Co-operative Societies Act. For the alleged defalcation of huge monetary amount, a disciplinary proceeding was taken out against the petitioner, and ultimately petitioner had to be dismissed from service on and from 07.07.2020. The application under Section 102 of the West Bengal Co-operative Societies Act, 2006 praying for recovery of the amount, shown in the above referred recovery proceeding came to be filed on 27th September, 2020. In the referred recovery proceedings under Section 102 of the Act, the petitioner challenged the maintainability of the said proceedings alleging that the disciplinary action having taken by the management of

the Co-operative Society against the petitioner, a paid employee, was not at all concerning the management or business or affairs of the Co-operative Society. It was thus grossly challenged that the recovery proceedings, being not within the meaning of 'dispute' concerning the business or affairs of the Co-operative Society, would not be referable for decision in application of the provisions under Section 102 of the Act by the Registrar of the Co-operative Society. Further challenge is that the petitioner is not a party to such dispute, as specified in Clause (a) to (d) of Section 102(1) of the West Bengal Co-operative Societies Act, 2006.

Upon perusal of the written statement of petitioner/revisionist filed by the defendant/petitioner in reference to an application under Section 102 of the West Bengal Co-operative Societies Act, 2006, seeking recovery of the amount, it appears that petitioner/defendant admitted himself therein in para 5 of the written statement, that he was a member of the plaintiff/society. Thus it is crystal clear that petitioner was not only a manager of the Co-operative Society under opposite parties, but was also a member of the society.

Anything concerning the business of a Co-operative Society is a matter relating to the affairs of the society. But everything, not relatable to the business of the society, may not be touching and/or concerning the business of the society. The allegations surfaced against the petitioner that huge monetary amount, the petitioner had defalcated without any justified accounts for the purpose during his tenure, and thus the

petitioner had misused his position, causing the instant Co-operative Society to suffer huge loss, would attract the meaning of 'dispute', as available under Section 4(25) of Act. By filing instant proceeding under Section 102 of the West Bengal Co-operative Societies Act, 2006, the opposite parties proceeded to recover defalcated amount from the petitioner with interest accrued thereon. Since petitioner was a member of the society as well as manager of the same society, his status/position is obviously coming within the meaning of the parties, as specified in Clauses (a) to (d) of Section 102 (1) of the Co-operative Society.

In the given context of this case, the main test to be applied over here is whether the dispute to be referred to the Registrar concerns the business of the Co-operative Society. Upon applying such test in the facts and circumstances involved in this case, it appears that the dispute concerned the business of the Co-operative Society, and naturally referable to Registrar of the Co-operative Society in terms of the provisions of law, specifically laid down in Section 102 of the West Bengal Co-operative Societies Act, 2006, which can never be relegated to Industrial Disputes Act. More so, in view of the inclusionary definition of 'dispute', as appearing in Section 4(25) of the West Bengal Co-operative Societies Act, 2006, any matter capable of being the subject of civil litigation, including a claim in respect of any sum payable to or by a Co-operative Society, the money stated to have been defalcated by the petitioner during his tenure, not only as a manager of the society, but also a member

thereof, appears to include a claim in respect of a sum payable to Co-operative Society, which has been rightly launched upon resorting to provisions available under Section 102 of the West Bengal Co-operative Societies Act, 2006 before the authority mentioned therein.

The decisions cited by the petitioner as such would hardly find any scope to be applied over the facts and circumstances of this case, and also distinguishable on facts also covered therein.

The decision of the Special Bench, as referred by the opposite parties rendered in the case of **Anjan Choudhury (supra)** deciding the test of nature of dispute to be referable to Register in the given context of this case, will govern the entire situation. The recovery proceedings initiated under Section 102 of the West Bengal Co-operative Societies Act, 2006 was rightly held to be maintainable.

For the reasons discussed hereinabove, the impugned order would thus go unaltered.

The revisional application fails, and accordingly dismissed, being without any merits.

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J.)