

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1425 of 2021

With

C.O. 1437 of 2021

Soumen Charbi

Vs.

Registrar Co-operation Directorate & Ors.

For the Petitioner : Mr. Samim Ahammed,
Mr. Gulsanwara Pervin,

..... advocates

For the Opposite Party
No.3 : Mr. D.K. Sengupta,
Ms. Sweta Saha

.....advocates

Heard on : 01.10.2021

Judgment on : 07.10.2021

Hiranmay Bhattacharyya, J.:-

The defendant no. 1 in a dispute case filed under Section 102(1)(b) of the West Bengal Co-operative Societies Act, 2006 (for short “the 2006 Act”) has filed the Civil Order no. 1425 of 2021 challenging an order dated March 26, 2021 passed by the Joint Registrar of Co-operative Societies in dispute case no. 01/RCS of 2021.

The said defendant also challenged a Memo no. 1345 (5) IV-04/21 dated July 27, 2021 issued by the Joint Registrar of Co-

operative Society's Co-operation Directorate and Arbitrator under Section 103 of the 2006 Act by filing the Civil Order no. 1437 of 2001.

By the order dated March 26, 2021 an interim order was passed restraining the operation of the 55 accounts attached with the plaint as Annexure A and the plaintiff bank was directed to make those 55 accounts inoperative till the final disposal of the dispute case.

By the Memo dated July 27, 2021 the learned arbitrator summoned the petitioner herein to appear and answer the claims and the petitioner was directed to file a written statement of his defence on the date fixed.

Being aggrieved against the order dated March 26, 2021 as well as the action of the learned arbitrator in proceeding with the dispute case, the petitioner preferred the instant civil orders.

The plaintiff/Bank filed a dispute Case No. 4/RCS/2021-22 for recovery of Rs. 1,23,68,000/- from the petitioner as well as against the opposite party nos. 4 to 6 herein. Bank also prayed for attachment of 55 accounts of the petitioner and the said opposite parties as security against the defendants till realisation of the said amount. An application was also filed by the Bank praying for an order of injunction restraining the petitioner and the opposite party nos. 4 to 6 from operating the Bank accounts and for allowing the plaintiff Bank to freeze the 55 accounts.

The plaintiff Bank alleged that the petitioner was involved in gross misappropriation of the funds of the Bank. Upon

complaints being received, the Bank appointed an Enquiry Officer who after holding enquiry submitted a report expressing the opinion that the charges against the petitioner stands proved beyond reasonable doubt. An order for dismissal of service from the Bank was passed in the department proceedings initiated against the petitioner. An FIR was also lodged in Sarenga Police Station and a criminal proceeding is pending before the Learned ACJM, Khatra.

Mr. Ahammed learned advocate for the petitioner has contended that the order dated March 26, 2021 is an interim order which could not have been passed as no proceeding claiming final relief was instituted by the plaintiff bank for realization of the alleged defalcated amount. He further, submitted that the dispute case no. 4/RCS of 2021 is barred by limitation as the same was not filed within three months from the date on which the cause of action arose. He questioned the authority of the learned arbitrator for issuance of the memo dated July 27, 2021 without ascertaining as to whether the dispute case was barred by limitation or not. He, further, submitted that the present proceeding instituted by the plaintiff bank is a consequence of the disciplinary action taken by the plaintiff bank and as such the dispute in the instant case cannot be decided by the Registrar in view of the specific bar laid down under Subsection 1 of Section 102 of the said Act. He, further, submitted that adjudication of the dispute raised by the plaintiff bank in the instant case cannot be decided by this arbitrator and the same has to be decided by the Civil Court.

Mr. Ahmmed relied upon the judgment of a co-ordinate Bench of this Court in *Co-operative Milk Societies Union Ltd. vs. State of West Bengal and Ors.* reported at AIR 1958 (cal) 373 and a judgment of the Hon'ble Supreme Court of India in the case of *Bharat Aluminium Company vs. INC* reported at (2012)9 SCC 552 in support of his contention that a right to obtain an interlocutory injunction is not a cause of action and it cannot stand on its own.

Per contra, Mr. Sengupta has raised the point of maintainability of the instant application under Article 227 of the Constitution of India on the ground that the order dated March 26, 2021 is an appealable order in view of the provisions laid down under Section 147 of the 2006 Act. He submitted that an appeal against the said order shall lie before the Co-operative Tribunal. Mr. Sengupta, the learned advocate for the opposite party no. 3/Bank contended that the petitioner was dismissed from service on February 20, 2020 and the dispute case was filed sometimes in the month of March 20, 2021. He submitted that since the instant dispute case was filed to recover a sum including interest thereon due to a co-operative society the limitation for filing a dispute case shall be governed by the provisions of Section 52 of the 2006 Act and not by Section 102(2) of the 2006 Act. He submitted that Subsection 4 of Section 103 of the 2006 Act empowers the Registrar or an arbitrator to pass an interlocutory order for preservation of any property or right which is the subject matter of the dispute. Mr. Sengupta relied upon a judgment of the Special Bench of this Court in the

case of *Anjan Chowdhury vs Anandancer Co-operative Registered Housing Society & Ors.* Reported at AIR 1990 (cal) 380.

In reply, Mr. Ahmmed, learned advocate for the petitioner submitted that the petitioner has challenged the jurisdiction of the learned Registrar to entertain the instant dispute. In view thereof the petitioner can approach under Article 227 of the Constitution of India without resorting to the statutory appellate remedy.

I have gone thorough the plaint of the dispute case. It appears therefrom that there is an allegation that the petitioner herein was involved in misappropriation of public money. The petitioner is alleged to have accepted huge funds by defrauding the bank and the said funds were deposited in fixed deposit. The said amount in the form of fixed deposits is alleged to have been deposited in different branches of the bank. The alleged total sum defalcated by the petitioner herein was Rs. 1,23,68,000. The petitioner was dismissed from service. FIR has also been lodged against the petitioner herein and a criminal proceeding is pending in the Court of the learned ACJM, Khatra. After the petitioner was dismissed from service the dispute case was filed for recovery of money. A writ petition being WPA no. 4888 of 2020 challenging the final order of dismissal dated February 20, 2020 is pending before this Court.

The petitioner was initially appointed as a Grade C staff of the Bank and was thereafter promoted to the post of Branch manager of the Bank. An allegation of misappropriation of the fund of the Bank has been levelled against the petitioner.

The disciplinary proceeding was initiated on charge of grave nature.

The following charges in the disciplinary proceedings were proved.

- (1) Knowingly doing act detrimental to the interest of the bank
- (2) Committing act in a most negligent manner.
- (3) Committing act in clear violation of rules/norms of the bank.

The said disciplinary action related to the terms and conditions of service and the petitioner was accordingly dismissed from service.

However, for the purpose of realisation of alleged defalcated amount, the instant dispute case has been filed. The disciplinary action resulted in the penalty of dismissal from service which had nothing to do with the realisation of the alleged defalcation of public money

After going through the averments in the plaint this Court is of the considered view that the dispute involved in the instant dispute case does not relate to any disciplinary action taken by the co-operative society against its paid employees regarding terms and conditions of the service. The dispute in the instant case relates to recovery of money and such a dispute according to the provisions of Section 102 (1) of the 2006 Act has to be filed before the Registrar. Since, the dispute in the instant case pertains to a dispute mentioned in Subsection 1 of Section 102, the Civil Court's jurisdiction to entertain such dispute is

expressly barred by Sub-section 4 of Section 102 of the 2006 Act. The dispute in the instant case is between the co-operative society and a past employee/ officer. The dispute case is concerning the management, business and affairs of the Bank. Therefore, the instant dispute falls within sub clause (c) of Sub-section 1 of Section 102 of the 2006 Act. Thus, the Registrar and not the Civil Court has jurisdiction to decide the instant case.

The other point with regard to the maintainability of the dispute case was that the dispute case is barred by limitation as the same was not filed within three months from the date on which the cause of action arises.

The limitation provided under Sub-section 2 of Section 102 applies in a case of a dispute other than a dispute relating to recovery of money. In the instant case, the dispute relates to recovery of money. In view thereof the period of limitation shall be computed according to the provisions laid down under Section 52 of the 2006 Act. Section 52 provides that notwithstanding the provisions of the Limitation Act, 1963, the period of limitation for the institution of a suit to recover any sum (including interest thereon) due to a co-operative society by a member thereof or any person having transaction with the co-operative society shall be computed from the date on which such member or person dies or ceases to be a member or, as the case may be closes transaction with the co-operative society. The period of limitation for institution of a suit for recovery of money is three years and the starting point of such limitation in the instant case shall be the date when the petitioner was dismissed from service and thus,

ceased to be a member of the said society. It is not in dispute that the dispute case has been instituted within the period provided under Section 52 of the 2006 Act and in view thereof this Court is unable to accept the contention of the learned advocate for the petitioner that the dispute case was barred by limitation. Since the dispute case is within the period of limitation, the provisions of Section 102(3) of the said Act is not attracted.

For the reasons as aforesaid this Court is of the considered view that the Registrar had jurisdiction to entertain the instant dispute case and the arbitrator upon the same being transferred to him has the jurisdiction to decide the dispute. The arbitrator is vested with the power and jurisdiction to issue notice dated July 27, 2021 which is the subject matter of challenge in CO 1437 of 2021. Thus, this Court is unable to accept the contention of the petitioner that the said notice dated July 27, 2021 is to be set aside and the dispute case is to be quashed.

There is no quarrel to the proposition of law settled in *Bharat Aluminium* (supra) and *Co-operative Milk Societies* (supra) that a right to obtain an interlocutory injunction is not a cause of action and it cannot stand on its own.

The interim order of injunction was passed in the instant case on March 26, 2021. The Civil Order No. 1425 of 2021 was filed sometimes on August 2021. It is not in dispute that the dispute case for realisation of money was filed prior to the filing of the said Civil Order. Since a dispute case for recovery of money is pending, the challenge thrown to the interim order at this stage

on the ground that it cannot stand on its own cannot be accepted.

This Court has already held that the Registrar and the Arbitrator has jurisdiction to decide the dispute case and also that the order dated 26.03.2021 has been passed under Section 103(4) of the 2006 Act which is an appealable order under Section 147 of the said Act. In view thereof the petitioner is left free to challenge the said order before the appropriate forum in accordance with law.

The judgment in the case of *Anjan Chowdhury* (supra) relied upon by Mr. Sengupta, however, has no application to the facts of the instant case.

For the reasons as aforesaid CO No. 1425 of 2021 is disposed of by granting liberty to the petitioner to challenge the order dated March 26, 2021 before the appropriate forum in accordance with law.

CO No. 1437 of 2021 stands dismissed without, however, any order as to costs for the reasons as stated hereinbefore.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)