

S/L 02
18.11.2022
Court. No. 12
Suwayan

CO 710 of 2022

**Contai Co-operative Bank Ltd. & Anr.
Vs.
Sk. Saklain Mustak**

*Mr. Riwitendra Banerjee
Mr. Ritwik Pattanayak
Mr. Rupam Mukherjee*

...for the petitioners.

Heard Mr. Riwitendra Banerjee, learned Advocate appearing for the petitioners at length.

Since the opposite party does not turn up even today despite service, this Court has no got other alternative but to proceed with the instant matter *ex parte*.

The present revisional application arises out of Order No. 7 dated 29.11.2021 as passed in O.S. No. 48 of 2021 by the learned Civil Judge (Junior Division), 2nd Court, Paschim Medinipur whereby and whereunder the said Court rejected the defendant's application under Order 7 rule 11 of the Code of Civil Procedure.

The defendant/co-operative bank felt aggrieved and thus preferred the instant revisional application. In support of the instant revisional application, Mr. Banerjee at the very outset draws attention of this Court to the certified copy of the impugned order. Attention of the Court is also drawn to the plaint as filed in Other Suit No. 48 of 2021 before the learned Trial Court as well as the petition under Order 7 Rule 11 of the Code of Civil Procedure as filed by the defendant/petitioner herein

before the learned Trial Court. In course of his submission, Mr. Banerjee, learned Advocate for the petitioners places his reliance upon Section 4 of Sub-section (25) and Section 102 of the West Bengal Co-operative Societies Act, 2006. It is argued that while disposing the petition under Order 7 rule 11 of the Code of Civil Procedure learned Trial Court misconstrued the aforesaid provisions of law as embodied in West Bengal Co-operative Societies Act, 2006 hereinafter referred as the 'said Act'. It is, thus, contended that the present revisional application may be allowed after setting aside the impugned order.

On perusal of the plaint of Other Suit No. 48 of 2021 it reveals to this Court that the plaintiff/opposite party herein filed the said suit for declaration and injunction wherein it has been averred that the said plaintiff took financial assistance from the defendant/bank on condition to repay the same in 72 monthly installments and on account of financial stringency. He had failed to deposit 5 installments and taking advantage of the same, the defendants/petitioners herein is making an attempt to take forcefully possession of his vehicle which has been purchased by him after taking loan from the petitioner bank herein.

In considered view of this Court for effective adjudication of the instant revisional application a look to the provision of Section 4 Sub-section (25) is necessary and the same is reproduced herein verbatim:

“ “dispute” means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a Co-operative society;”

Section 102 Sub-section (4) of the ‘said Act’ is as under:

“102. Disputes to be filed before Registrar.- (1) Any dispute concerning the management or business or affairs of Co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by Co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises-

(a) among members, past members and persons claiming through members and deceased members or then sureties; or

(b) between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the Co-operative

society, its board or any officer, agent or employees of the Co-operative society or liquidator, past or present; or

(c).....

(d).....

(2).....

(3).....

(4) Any Civil Court or any consumers' Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1).

(5).....”

On perusal of Section 4 of Sub-section (25) of the ‘said Act’ it reveals to this Court that any matter capable of being subject of civil litigation including a claim of in respect of sum payable by a co-operative societies comes under purview of the term ‘dispute’ and Section 102 Sub-section (1) of the said Act clearly indicate that such dispute if occurred between the member of the co-operative society shall have to be filed before the Registrar for a settlement and Section 102 Sub-section 4 of the said Act clearly indicates that with regard to such dispute the jurisdiction of Civil Court is specifically barred.

On perusal of the plaint as filed before the learned Trial Court it reveals that admittedly there lies a dispute between the plaintiff and the defendant with regard to the

amount which has been taken of loan by the plaintiff from the defendant and from Page 59 being the Annexure to the instant revisional application it has been shown that the plaintiff took the aforesaid loan from the defendants/petitioners bank as a member of the said co-operative bank vide his member No. MID/22.

In view of the discussion made hereinabove this Court is of considered view that before this Court the defendants/petitioners is successful in establishing that the dispute as involved in O.S. No. 48 of 2021 comes within the purview of Section 102 Sub-section (1) read with Section 4 Sub-section (25) of the said Act. Since under Section 102 of Section 4 of the said Act, Civil Court has got no jurisdiction to try any dispute as stated above, the learned Trial Court ought to have allowed the petitioners/defendants bank's application under Order 7 Rule 11 of the Code of Civil Procedure.

Accordingly, the present revisional application succeeds. The impugned Order No. 7 dated 29.11.2021 as passed in O.S. No. 48 of 2021 by the learned Civil Judge (Junior Division), 2nd Court, Paschim Medinipur is hereby set aside.

Consequently, the petition under Order 7 Rule 11 of the Code of Civil Procedure as filed by the petitioners/defendants bank in O.S. No. 48 of 2021 on 01.04.2021 stands hereby allowed. Consequently, the plaint as filed in O.S. No. 48 of 2021 before the learned Trial Court stands hereby rejected.

With the abovementioned observation, the revisional application being Co 710 of 2022 is disposed of.

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

(Partha Sarathi Sen, J.)