

D/L
Item No. 6
31.03.2022
KOLE

**MAT 770 of 2020
With
IA No. CAN 2 of 2021**

**State of West Bengal & Ors.
-Vs.-
The Bantra Co-operative Bank Ltd. & Ors.**

*Mr. Srijan Nayek,
Mrs. R. Maitra,
Mr. B. Das,*

...for the appellant/State.

*Mr. Ashit Kumar Chakraborty,
Mr. S. Mohan Ghosh*

...for the respondent no. 1.

Mr. D. Ghose,

...for the respondent nos. 4 to 9.

By consent of the parties the appeal and the connected application are taken up for hearing together.

A judgment and order dated December 5, 2019, whereby WP No. 17139 (W) of 2019 (The Bantra Co-operative Bank Ltd.-vs.-The State of West Bengal & Ors.) was disposed of, is the subject matter of challenge in this appeal.

A Cooperative Housing Society by the name of Madhya and Paschim Howrah Cooperative Housing Society Ltd. was divided into two societies by an order dated April 1, 2005, passed by the Assistant Registrar of Cooperative Societies, Howrah. One of the societies retained the original name and the other came to be known as Prayas Cooperative Housing Society Limited (in short 'Prayas'). The original society owed money to Bantra Cooperative Bank Limited (in

short 'the Bank'). It appears that part of the debt had been repaid but not the entirety of it.

The Bank was aggrieved by division of the original society into two societies as the entire dues of the Bank had not been paid by the original society. The Bank challenged the order of division by filing WP No. 11201(W) of 2006. By an order dated April 19, 2010, the writ petition was allowed. The order of division of the original society into two societies was set aside and the Assistant Registrar of Cooperative Societies was directed to pass an order afresh in the light of the observations made in the order of the learned Single Judge. Pursuant thereto, the Assistant Registrar passed an order dated June 7, 2012, the material portion whereof reads as follows:-

“Now therefore, in terms of subsection 1 of Section 22 of W.B.C.S. Act, 2006 and in consideration of the foregoing paras, it is hereby ordered that the final order of bifurcation of the said society into two societies namely, 1) Madhya and Paschim Coop. Housing Society Ltd. and 2) Prayas Coop. Housing Society Ltd. shall take effect on and from the date on which all the dues to the creditor bank will be paid by the said society”.

Prayas applied for review of the order dated June 7, 2012 under Section 148(2)(a) of the West Bengal Cooperative Societies Act, 2006. An order dated April 17, 2013 was passed on the said review application by the concerned Authority whereby the order dated June 7, 2012

was modified. The material portion of the order dated April 17, 2013 reads as follows:-

“Therefore, assessing all the pros and cons upon hearing and careful consideration of the whole issue partial amendment of the Order No. 12718 dt. 7-6-12 issued by A.R.C.S. Howrah is done and order shall be as under:

‘Now therefore, in terms of subsection 1 of Section 22 of W.B.C.S. Act, 2006 and in consideration of the foregoing paras, it is hereby ordered that the final order of bifurcation of the said society into two societies namely, 1) Madhya and Paschim Coop. Housing Society Ltd. and 2) Prayas Coop. Housing Society Ltd. shall take immediate effect.

A.R.C.S. Howrah to issue certificate of registration to the newly created societies within 7 days from the date within copies to all concerned.’

Order is passed in compliance of with the Order dt. 21-11-12 of Hon’ble High Court in W.P. No. 23840(W) of 2012 read with Sec.4(56) of W.B.C.S. Act 2006.”

The order dated April 17, 2013 was challenged by the Bank before the West Bengal Cooperative Tribunal. By an order dated July 16, 2019, the Tribunal dismissed the appeal holding that it lacked jurisdiction.

The order passed on the review application by the concerned Authority on April 17, 2013 and the order dated July 16, 2019 passed by the Tribunal dismissing the Bank’s appeal on the ground of lack of jurisdiction, were both

challenged in the writ petition before the learned Single Judge in the present proceedings.

After hearing the parties at length, the learned Single Judge came to the conclusion that Prayas could not have applied for review of the Assistant Registrar's order dated June 7, 2012 since Prayas is stillborn. The order giving birth to Prayas was set aside by a learned Judge of this court by an order dated April 19, 2010. Hence, at the time when the application was made purportedly on behalf of Prayas for review of the Assistant Registrar's order, Prayas was not in existence at all. The learned Single Judge observed that the original Housing Society could have applied for review, but it did not.

The learned Judge observed that in the fresh order dated June 7, 2012, which the Assistant Registrar passed pursuant to the learned Single Judge's order dated April 19, 2010, passed in WP 11201(W) of 2006, it is stated that bifurcation of the original Housing Society into two housing societies shall take effect on and from the date on which all the dues of the Bank would stand liquidated. As on the date when the review application was filed on behalf of Prayas, the dues of the Bank were outstanding. Hence, Prayas was a non-entity. The learned Judge rightly held that Prayas could not have applied for review assuming that the order dated April 17, 2013 is reviewable under the relevant provisions of law. The learned Judge set aside the order dated April 17, 2013 and observed that the appellate order dated June 16, 2019 is, therefore, rendered irrelevant. Against such order

of the learned Single Judge the State has preferred this appeal.

We have really not understood as to how the State is aggrieved. The original society, which is the debtor, has not come up in appeal. The State, however, says that it is its duty to find out under what circumstances huge sums of public money were advanced by the Bank to the Cooperative Society. It says that to the best of its knowledge, the Bank did not take any security for advancing such loan. The Bank is not in a position to produce any agreement or other documents in connection with the loan. The State smells rat. The learned Counsel appearing for the State says that there could have been a big scam in the matter.

If the State wants to unearth any alleged scam, it will be at liberty to take whatever steps it is entitled to take in law against the Bank. We do not put any fetter on the power of the administration to make due investigation into the affairs of the Bank in accordance with law.

However, we do not find any infirmity in the order impugned in this appeal. The learned Judge rightly held that the application for review was not maintainable since the same had been made on behalf of a non-existing applicant. Hence, the order passed on such application is also not sustainable. We see no reason to interfere with the order under appeal.

The appeal and the connected application are disposed of accordingly.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)