

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD**

**FA 62 of 2023
CAN 1 of 2023**

**Vikram Constructions
Vs.
Anustup Co-operative Housing Society Ltd.**

Appearance:

For the Appellant : **Mr. Souradipta Banerjee, Adv.
Ms. Fatima Hassan, Adv.**

For the Respondent : **Mr. Ashim Kumar Roy, Adv.
Mr. Ashok Kumar Roy, Adv.
Mr. Anirban Roy, Adv.**

Judgment On : **21.12.2023**

Harish Tandon, J.:

While assailing the judgment of the High Court, the appellant tried to interpret of provisions of law enunciated in a plethora of judgments rendered by this Court concerning an issue raised in the instant appeal.

Before we proceed to deal with the points urged by the appellant, it would be profitable to narrate the salient facts involved in the instant litigation which are more or less undisputed.

The appellant is a partnership firm and is engaged in the business of construction in the housing sector. The respondent is a housing society registered under the West Bengal Housing Society Cooperative Act and purchased the land from the West Bengal Housing Infrastructure Development Corporation for setting up the housing society with an intent to provide the residential units to each of its members. An agreement was entered into on 25th January, 2017 between the appellant and the respondent for construction of the housing complex to cater the residential need of the members of the housing cooperative society on a consideration as mentioned therein. Upon completion of the construction the dispute arose in relation thereto and certain RA Bills which were submitted by the appellant remained unpaid. The suit was instituted for recovery of the said amount together with an interest and the damages which the appellant allegedly suffered because of the non-payment of the dues.

The respondent appeared and took a plea of demurer in taking out an application under Order 7 Rule 11 (d) of the Code of Civil Procedure seeking rejection of the plaint solely on the ground that the jurisdiction of the Civil Court is expressly ousted in relation to the nature of the dispute raised in the plaint by virtue of the provision contained in Section 102 (1) (d) and Section 102 (4) of the West Bengal Cooperative Society Act. The Trial Court rejected the plaint on the ground that the moment the jurisdiction of the Civil Court is ousted by an expressed provision in the statute, the Civil Court is denuded of its jurisdiction to adjudicate the disputes raised therein.

It would be relevant to refer and understand the provision contained in Section 102 of the said Act which runs thus:

“102. Disputes to be filed before Registrar.- (1) Any dispute concerning the management or business or affairs of a Co-operative society other than the dispute relating to election in a 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) between the Co-operative society or its board and any past board, any officer, agent or employee or any past officer, past agent; or past employee or the nominee, heirs or legal representatives of any deceased officer or deceased employee of the Co-operative society; or

(d) between two Co-operative society or between a Co-operative society and a liquidator of another Co-operative or between liquidator of two different Co-operative or between a Co-operative society and any person having transaction with it or between a Co-operative society and its financing bank.

(2) Any dispute mentioned in sub-section (1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3) Notwithstanding anything contained in this section or in any other law for the time being in force. the Registrar may admit any dispute after the expiry of the period of limitation provided in sub-section (2), if the applicant can show sufficient cause for not filing the dispute within such period of limitation and the dispute so admitted shall not be barred by limitation.

(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) Any dispute to be filed before the Registrar shall be made in writing to be called the plaint and it shall be filed in such manner and form as may be prescribed.

It is axiomatic that Section 102 (4) of the said Act excludes the jurisdiction of the Civil Court or any similar dispute redressal forum from trying and/or adjudicating the disputes referred in sub-Section (1) thereof. Ordinarily, the Civil Court is vested with the jurisdiction to entertain any disputes concerning the status, transactions and/or recovery of money unless such jurisdiction is excluded expressly or by necessary implication. The foremost duty of the Civil Court is to uphold its jurisdiction unless it is expressly or impliedly taken away by enacting a valid legislation. Upon a plain reading of Section 102 (4) of the said Act, we do not find any ambiguity that the jurisdiction of the Civil Court is taken away provided the dispute raised before it comes within the circumference of sub-Section (1) of Section 102 of the said Act.

Before the Court embarked its journey on the peripheral of the ouster jurisdiction as envisaged under Section 102 (4) of the said Act, it is imperative to understand the nature of the dispute for effective application of the said ouster provision. The dispute is defined under Section 4(25) in the said Act under Section 4 (25) in the following:

“4(25) “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 cooperative society.”

From the definition of the dispute it appears that any matter which is capable of being adjudicated and/or determined by a Civil Court as Civil

Litigation and by using the word “includes”, it is expanded its horizon to a claim payable to or by the cooperative society. The definition assigned to the word “dispute” leaves no ambiguity that any matter which can be redressed through a Civil Litigation before the Civil Court shall be regarded as a dispute under the aforesaid Act as well. However, it expanded its horizon by assigning an inclusive definition imbibing within itself a claim in respect of any sum payable to or by the cooperative society. It is no longer *res integra* that once the word has been defined in the statute meaning so assigned shall be given to such word “wherever it appears in the said statute” and Court should avoid the general or grammatical meaning thereof except in case of any ambiguity and/or repugnancy in upholding the very object and purpose for which it is enacted. We do not find any ambiguity in the definition assigned to the word “dispute” that it engulfs within itself the money claim payable to or by the cooperative society.

Section 102 of the Act, included in Chapter XI of the said Act having the broad subject relating to settlement of disputes, has clarified the dispute and give its restrictive meaning in relation to the management or business or affairs of the cooperative society to the exclusion of the disputes concerning the election of the cooperative society and the disciplinary action taken by the cooperative society against its employees. The legislative intent is manifest from Section 102 of the Act that although the dispute is of wide connotation and applicable to all disputes capable of being adjudicated in a Civil Litigation including the sum payable to or by the cooperative society but the disputes as mentioned therein shall be outside the purview thereof.

On The meaningful reading of the provision contained Section 102 (1) of the Act, it is manifest that apart from the disputes as mentioned therein, all disputes concerning the management or business or affairs of the cooperative society shall be adjudicated by the Registrar provided the same arises from the eventualities contemplated in Clauses (a) to (d) thereof.

The argument is sought to be advanced by the appellant Clause (d) has to be given a reasonable meaning and/or interpretation and the emphasis was made on the word “transaction” used therein to be understood in relation to a transaction concerning the business, affairs and management of the cooperative society between its members and cannot expand its periphery in relation to a third party. It is sought to be urged that the management or business or affairs of the cooperative society has to be understood in the perspective of the members and the word “any person” has to be assigned a restrictive meaning so that a person who is neither a member nor an allottee of the cooperative society satisfies the definition of the words “any person” appearing therein.

We are unable to countenance the submission advanced by the appellants in this regard upon meticulous reading of the provisions under Section 102 (1) of the said Act. Though the dispute is qualified with the expression “if it arises” but the meaning of such dispute must be given what is defined under Section 2 (25) of the said Act. The definition of a dispute is explicit that it encompasses a monetary claim against or by the cooperative society and, therefore, the expression “any person having transaction” has to be understood in such perspective and any restrictive meaning to such

expression shall be opposed to the legislative intent and the object and the purpose for which the cooperative society movement was envisaged by the legislators.

The Apex Court in ***Vipulbhai M. Chaudhary vs. Gujarat Cooperative Milk Marketing Federation Ltd. & Ors.***, reported in **(2015) 8 SCC 1** have upheld the legislations enacted by the Parliament relating to the cooperative societies is within the framework of the constitutional provision. The Apex Court held that the moment the legislative bodies have enacted its statute to operate in a specific sphere, within the four corners of the constitutional provisions, it is a duty of the Court to uphold its mandate and the interference therein can only be perceived in the event the legislative body do not carry out the required structural changes in the following:

“24. No doubt, in the cases referred to above, the respective acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the Court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243- ZT has given a period of one year to frame/reframe the statutes in consonance with Part IX-B and thereafter i.e. with effect from 12-1-2013, those provisions which are inconsistent with Part IX-B, cease to operate.

26. Where the Constitution has conceived a particular structure on certain institutions, the legislative bodies are bound to mould the statutes accordingly.

Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. '[T]he job of the Supreme Court is not to expound the meaning of the Constitution but to provide it with meaning.' The reference obviously is to the United States Supreme Court. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so.

'... It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express.'

According to Lord Mersey in Thompson (pauper) v. Goold & Co. (AC p.420)

'...It is a strong thing to read into an Act of Parliament, words which are not there, and in the absence of clear necessity it is a wrong thing to do.'

In the case of cooperative societies, after the Ninety-seventh Amendment, it has become a clear or strong necessity to do the strong thing of reading into the legislation, the constitutional mandate of the cooperative societies to be governed as democratic institutions.

'45. The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity.'

We are not concerned with the *vires* of the Act or to apply the doctrine of legal fiction as we do not find any ambiguity and/or discrepancies in understanding the purport of the aforesaid provisions. The only question in the instant appeal is whether a suit for recovery of money against the

cooperative housing society is maintainable before the Civil Court or the remedy lies by approaching the Registrar of the cooperative society.

The aforesaid point arose though in relation to a different situation in case of **Anjan Choudhury vs. Anandaneer Co-operative Registered Housing Society & Ors.** where a Division Bench of this Court raises a doubt on the provisions by which the jurisdiction of the Civil Court was expressly ousted under the said Act. The Special Bench was entrusted to answer the reference whether the Civil Court is competent to adjudicate the dispute under the said Act which would be evident from the Paragraph 2 of the said Judgement reported in **AIR 1990 Cal 380**:

“2. Under Section 86 (1) of the West Bengal Co-operative Societies Act, 1973 “any dispute relating to the affairs of a Co-operative Society” was required to be referred to the Registrar if the parties thereto were as specified in clauses (a), (b), (c) and (d) to that sub-section and under Section 132 (2) (d) of the said Act, no Civil Court would have any jurisdiction in respect of “any dispute required under Section 86 to be referred to the Registrar”. The important question, according to the order of reference, is what were the disputes that were required to be so referred to the Registrar under Section 86 (1) (d) and were accordingly not justiciable in Civil Court and, the Rule in its entirety having been referred to this Bench for disposal, the further consequential question is whether the dispute involved in the Civil Suit, giving rise to this revisional application, is such a dispute.

The Special Bench was considering the express provision appearing in an unamended act which is more or less similar to Section 102 (1) of the said Act wherein the word “concerning the business or affairs of the cooperative society” was involved. The Special Bench held that any dispute

which concerns the business or relates to the affair of the cooperative society cannot be adjudicated by the Civil Court in the following:

“22. This brings us to the case in hand where the promoters of a Co-operative Housing Society, before its formation and registration as such, entered into a written agreement to purchase some land and having failed to obtain conveyance from the seller, instituted this suit in the Civil Court in the name of the Society after the same was duly formed and registered. As would appear from the plaint and Deed of Agreement, the land was sought to be purchased for the Co-operative Society and for the avowed purpose (vide, Clause 2 (c) of the Deed of Agreement) of constructing houses thereon for allotment of apartments to the members. The dispute in this case therefore directly concerns the business and relates to the affairs of the Society which is patently a Co-operative Housing Society and is therefore clearly a dispute within the meaning of Section 86 (1) of the Old and Section 95 (1) of the new Act. The dispute also is one between a Co-operative Society and ‘any person having transactions’ with the Co-operative Society within the meaning of Clause (d) of Section 86 (1) and of Clause (d) of Section 95 (1) as aforesaid. The fact that the Co-operative Society was not formally formed and registered when the agreement was entered into is immaterial for the society has already come into jural existence when the suit was filed and the question of maintainability would obviously have to be decided on the state of affairs prevalent at the time when the suit was instituted. The suit, therefore, could not be entertained by the Civil Court under the Provisions of Section 132 (2) (d) of the then prevailing Act of 1973, now replaced by Section 134 (2) (d) of the present Act, 1983. The Court below was accordingly wrong in entertaining the suit and in holding that it had jurisdiction and that the plaint was not liable to be rejected under the provisions of Order 7, Rule 11 of the Code of Civil Procedure and that the Court had jurisdiction to proceed with the suit.”

The judgment of the Special Bench was further considered by a Division Bench of this Court in case of *R/C. Bysack vs. Naba Nagari Co-*

operative Housing Society Ltd., reported in ***(2016) SCC Online Cal 4263*** wherein a suit was filed before the Civil Court seeking declaration that the agreement for construction of a building is valid and subsisting in the eye of law and binding upon the parties to it with the further prayer for recovery of money together with an interest. The Division Bench held:

“21. Let us now consider the contentions of the learned counsel of the respective parties in the facts of the instant case for ascertaining as to whether the bar contained in Section 102 of the said Act is attracted in the present case or not. We have read the plaint as a whole. We find that the plaintiff itself described the defendant no. 1 as a Registered Housing Cooperative Society. Since the Rules and bye laws were not annexed to the plaint, it is rightly pointed out by Mr. Roy Chowdhury, that the nature of the business which the Housing Cooperative Society transacts cannot be fully ascertained by the Court at this stage, but still then we cannot be oblivious about the provision contained in Section 4 (36) of the said Act which provides that Housing Cooperative Society means a Cooperative Society, the primary object of which is to provide to its members with dwelling houses or flats or with finance for purchase of land for construction of dwelling houses and maintenance of common services in connection therewith and includes a federation of such Cooperative Societies. When the Act provides as to what is the primary object for which a Housing Cooperative Society can be formed, we have no hesitation to hold that a Housing Cooperative Society cannot be formed de hors the provision of law. In our view the Housing Cooperatives Societies Act can only be formed provided its primary object is in conformity with the primary object as mentioned in Section 4 (36) of the said Act. It is no doubt true that apart from the primary object, the Cooperative Society may have other ancillary and/or incidental businesses as per the Rules and/or bye laws framed by it in conformity with the said Act. Thus, by referring to Section 4(36) of the said Act, we have no hesitation to hold that the primary object for which the Housing Cooperatives Society was formed was to

provide to its members with dwelling houses and/or flats and for fulfilment of the said object the said Cooperative Society entered into an agreement with the plaintiff authorising it to raise constructions of G+4 storied building on the suit property so that after such building is constructed the flats can be allotted to its members. We, thus, can very well ascertain the primary business and/or affairs of the defendant no. 1 being Housing Cooperative Society with reference to the provision contained in Section 4 (36) of the said Act.

22. when a dispute arises between the said Cooperative Society and the plaintiff following termination of the contract and/or the cancellation of the work order relating to construction of the said G+4 building on the suit property, we hold that the dispute certainly concerns the business of the said Cooperative Society and it relates to the affairs of the Cooperative Society. The conclusion, we arrive at, by relying upon the special Bench decision of this Court in the case of Anjan Choudhary vs. Anadaneer Co-operative Registered Housing Society, reported in AIR 1990 Cal 380, wherein it was held that even the dispute between a Cooperative Society and its seller arising out of enforcement of a contract of sale, when the Cooperative Society failed to obtain a conveyance from its seller, is a dispute which is referable to the Registrar of the Cooperative Society for its resolution and not before the Civil Court by virtue of the provision of Section 86 of the old Act and Section 95 of the new Act. As a matter of fact, the provision contained in Section 95 of the West Bengal Cooperative Societies Act, 1973 is pari material with the provision contained in Section 102 of the West Bengal Cooperative Societies Act, 2006. As such we have no hesitation to hold that the dispute between the plaintiff and the Cooperative Society concerns the business of the said Cooperative Society and it relates to the affairs of the said Cooperative Society and such dispute is a dispute within the meaning of the dispute under Section 4 (25) of the West Bengal Cooperative Societies Act, 2006 which is capable of resolution by the Registrar as per the provision of Section 102 of the said Act. In our view, the suit is barred before the Civil Court as per the provision of Section 102 (4) of the said Act.”

The law enunciated in the above reports expounded the principles of law relating to cooperative society that the provision ousting the jurisdiction of the Civil Court has to be construed pragmatically so as to uphold the intention of the law makers and should not be given a restrictive meaning which would frustrate the very object and purpose of it. The dispute covers a situation where a money is either due to the cooperative or due upon a cooperative and therefore, meaning of the expression “any person” should be given a wider meaning to include within a person who is not a member of the cooperative society provided the subject dispute is relatable to the management or business or affairs of the cooperative society.

The main object of the housing cooperative society is to provide a residential accommodation to its member after acquiring the land and for the purpose of the construction of the residential structures any contract entered into with the contractor is within the realm of the management or business or affairs of the cooperative society and, therefore, the provision contained under Section 102 (4) creates an embargo on the jurisdiction of the Civil Court to adjudicate such dispute.

We thus do not find any infirmity and/or illegality in the impugned order.

The appeal is thus dismissed. As a consequence whereof, the connected applications are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)