

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No.766/2016
(arising out of SLP(C) No. 17535/2011)

M.K.INDRAJEET SINHJI COTTON P.LTD.

.....Appellant (s)

VERSUS

NARMADA COTTO COOP.SPG.MILLS LD.& ORS

...Respondent(s)

J U D G M E N T

S A BOBDE, J

Leave granted.

2. This appeal is preferred by a Company which has been refused permission to continue the suit filed by it before the City Civil Court, Ahmedabad by the Registrar of Co-operative Societies on the ground that the suit is not tenable because notice of its institution required by Section 167 of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the Co-operative Societies Act).

3. The appellant, a Private Limited Company entered into a lease agreement dated 1-10-1998. Under the agreement it took on lease the mill of the respondent Cooperative Society for

a period of five years. Disputes having arisen, the appellant filed a suit against the respondent society on 26-4-2000 before the City Civil Court at Ahmedabad. The appellant sought recovery of Rs.2,51,89,606.79/- (Rupees Two Crores, Fifty One Lakhs, Eighty Nine Thousand, Six Hundred Six and Paise Seven Nine only) with interest at the rate of 21% per annum.

4. Within a year of filing the suit, the defendant Society, the respondent herein, was wound up by an Order dated 19-4-2001 passed by the Commissioner, Cottage and Village Industries, Gujarat. Since the suit had been filed prior to the winding up order, the appellant was obliged to apply for leave to continue the suit by virtue of Section 112 of the Co-operative Societies Act. That Section reads as follows:-

"112.Bar of suit in winding up and dissolution matters

"Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act; and when a winding up order has been made no suit or other legal proceedings shall lie **or be proceeded with** against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose:

Provided that where the winding up order is cancelled, the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as liquidator." (emphasis supplied)

5. The controversy is: whether the Registrar, while considering whether leave should be granted can hold that the suit itself is not tenable for want of notice. Initially the Registrar passed a non-speaking order dated 6-6-2003 refusing permission to continue the suit. On 28-11-2005, however, the Registrar passed a speaking order refusing permission to continue the suit. It is this order that has given rise to the present controversy. The main reason why the Registrar refused permission to continue the suit for recovery of money against the respondents is that according to the Registrar, Section 167 of the Co-operative Societies Act requires a plaintiff to give notice to the Registrar stating the cause of action and the relief which the plaintiff claims. Such a notice not having been given by the appellant, the appellant is not entitled for leave to continue the suit against the defendant. In other words, according to the Registrar, the plaintiff's suit is not tenable for want of notice under Section 167 and, therefore, leave to continue such a suit is liable to be refused under Section 112 of the Co-operative Societies Act. Section 167 reads as under:

"167. Notice necessary in suits

Save as otherwise provided in this Act, no suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of

action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”

6. In view of such refusal, the appellant's suit became untenable. The appellant, therefore, challenged the order of the Registrar refusing leave before the learned Single Judge of the Gujarat High Court. The learned Single Judge allowed the writ petition and quashed the Registrar's Order. The learned Single Judge held that the question whether a notice under Section 167 was necessary in a given case could only be decided by a competent civil court since such a decision required an inquiry and a decision whether the suit was in respect of any act touching the business of the society and generally whether Section 167 applied to such a suit. The learned Single Judge also held that Section 112 of the Act casts a duty on the Registrar to grant or refuse leave and only such an administrative decision can be taken by the Registrar. Further, such a limited administrative decision can be taken by the Registrar only on considerations germane to the grant or refusal of the leave and not on considerations which were within the jurisdiction of a competent city civil court.

7. Aggrieved, the respondents preferred an appeal before a Division Bench of the Gujarat High Court. The Division Bench has allowed the appeal and thus upheld the order of the

Registrar refusing leave to continue the suit on the ground that the suit is not tenable by virtue of failure to give notice under Section 167 of the Co-operative Societies Act. The appellant is thus in appeal.

8. We have heard the learned counsel for the parties.

9. A decision regarding the correctness or otherwise of the view of the Division Bench must be taken with regard to the relevant provisions of the Co-operative Societies Act. It is also necessary to ask if the decision that the suit is not tenable if notice is not given is judicial in nature. Section 167 is preceded by Section 166 which bars the jurisdiction of Courts in any matter concerned with the winding up and dissolution of the Society, vide Section 166 (1)(c). The clear intention of the legislature is to bar a civil court from entertaining any matter concerned with the winding up and dissolution of the society. In order to give effect to this provision, the legislature has enacted Section 167 which makes it mandatory for a plaintiff who intends to institute a suit against a society or any of its officers in respect of an act touching the business of the society to give a clear notice of his intention to sue. The Section prohibits a plaintiff from instituting a suit until the expiration of two months after notice in writing has been delivered to the Registrar. There seems little doubt that this Section imposes a mandatory requirement that if the conditions prescribed by it exist, that is

to say if the suit proposed to be filed is against a society or any of its officers and is in respect of any act touching the business of the society then it must be preceded by a notice of two months. It is obvious that the question whether Section 167 is attracted to a particular suit or not depends upon an inquiry into the nature of the suit, in particular whether it affects the business of the society and the parties to the suit. Such a decision is obviously within the jurisdiction and competence of the civil court where the suit is instituted and must therefore be regarded as judicial.

10. The question that thus arises is whether a Registrar who is empowered by Section 112 to decide the limited question whether leave should be granted or refused to institute or to continue a suit against a society in liquidation is competent to take into account whether a suit is tenable for want of notice under Section 167 of the Co-operative Societies Act and on that basis refuse permission to institute or continue a suit, if he finds it untenable.

11. It is therefore necessary to examine the scope of the two provisions. Section 112 bars a Civil Court from taking cognizance of any matter connected with winding up of a society. It further confers the power on the Registrar to grant or refuse leave to institute a suit against such society or the liquidator where a winding up order has been made against the

society. We are concerned here with the nature and scope of the power conferred on the Registrar. Such power is conferred on the Registrar to consider whether a suit should be filed against a society which is under liquidation. The obvious considerations that must be taken into account are whether the suit would have the effect of dissipating the properties or diverting the properties of the society in liquidation towards one creditor i.e. the plaintiff instead of being equitably distributed amongst the whole body of creditors as contemplated by the provisions for winding up of the society. The Registrar is not concerned with the merits or the tenability of the suit which is, in any case not before him, and indeed cannot be because such a suit can only be tried and conclusively decided by a Civil Court. Naturally it is the Civil Court which can alone decide whether the suit is triable and tenable. It would thus be outside the scope of the Registrar's power to take into account the factor whether the suit is tenable in law or not. The question of tenability being judicial is purely within the jurisdiction and competence of the court where the suit is pending. This must be left entirely to the Civil Court as intended by the Legislature. There is no doubt that a question whether a suit is tenable under Section 167 of the Co-operative Societies Act for want of notice under the said provision is a question within the exclusive competence of a Civil Court, as indeed all questions of

tenability are. Thus, the Registrar cannot look into the question whether the suit is tenable for want of notice and decide the question directly or impliedly and thereby decide whether leave to institute or continue a suit could be granted or withheld.

12. In the present case the Registrar having refused leave to continue the suit on the ground that the suit pending before the Court is not preceded by a notice under Section 167 of the Act has acted without jurisdiction; having taken into account a factor which he was not competent to take into account and determine the grant of leave to proceed with the suit. As a matter of law the decision to hold that the suit is not tenable is a decision which conclusively determines the suit and being judicial can be taken by the Civil Court alone. The Registrar cannot hold the suit to be untenable even for the purpose of considering grant of leave. In other words, the Registrar has no jurisdiction to hold that the suit is not tenable.

13. We thus have no doubt that the order of the Registrar dated 28-11-2005 refusing leave to the appellant on the ground that the notice under Section 167 has not been issued therefore the suit is not tenable, is liable to be set aside. It is not possible to agree with the view of the Division Bench that the Registrar must be allowed to consider whether notice has been given or not and, therefore, whether the suit is maintainable or not because if such power is not conceded to the Registrar, it would

result in the civil court taking cognizance of a matter which it would have no power to take cognizance of. This argument is completely untenable where the question is one of leave to continue a suit as distinct from leave to institute a suit. It is only in the latter case that this reasoning would have any relevance. In any case, it is not the business of the Registrar to consider the merits and in particular the tenability of a pending suit and hold it to be untenable and thereupon refuse leave to continue the suit. The Civil Court is perfectly competent to decide whether the suit before it is tenable or not.

14. In the result, the appeal succeeds and is hereby allowed. The Registrar shall decide the question of permission to continue the suit, afresh.

.....J
(S.A. BOBDE)

JUDGMENT

.....J
(AMITAVA ROY)

NEW DELHI,
26th April, 2016