

1962

March 14.

THE SUGAULI SUGAR WORKS (PRIVATE) LTD.

v.

THE ASSTT. REGISTRAR, CO-OPERATIVE SOCIETIES

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA
 AYYANGAR, J. R. MUDHOLKAR and T. L.
 VENKATARAMA AIYAR, JJ.)

Co-operative Society—Reference—Jurisdiction of Registrar—If can entertain claim by registered society against non-member—Bihar and Orissa Co-operative Societies Act, 1935 (B. & O. 6 of 1935), as amended by Bihar Co-operative Societies (Amendment) Act, 1948 (Bihar 16 of 1948), ss. 48 (1), 16(1) and 2(c).

The point for determination in the appeal was whether the Registrar of Co-operative Societies under the Bihar and Orissa Co-operative Societies Act, 1935, as amended by Act 16 of 1948, had the jurisdiction under s. 48(1) of the Act to hear and decide a reference made by a registered society against a non-member. The appellant company, incorporated under the Indian Companies Act, with its registered office at Calcutta, manufactured sugar in Bihar. The second respondent the Union of Co-operative Societies, registered under the Co-operative Societies Act, made a reference under s. 48 of the Act, against the appellant claiming the sum of Rs. 1,20,809/- odd as commission and interest for supplying sugarcane in 1959-60. The first respondent, the Assistant Registrar of Co-operative Societies registered the reference and issued notice to the appellant. The appellant took the preliminary objection that the Assistant Registrar had no jurisdiction under the Act to entertain the reference. That objection was overruled by the Assistant Registrar relying on a decision of the High Court and the High Court upheld that order by dismissing *in limine* the appellant's petition under Arts. 226 and 227 of the Constitution.

Held, that the High Court had taken a wrong view of the law.

Although under s. 48 of the Act the claim by a financing bank against a non-member to whom it had made an advance either in cash or kind, with the sanction of the Registrar under s. 16(1), could be entertained by the Registrar, that did not mean that a claim not of the kind referred to in s. 16(1), read

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with s. 2(c), made by a registered society against a non-member, who was not an agriculturist, was within the purview of s. 48(1), read with the Explanation I. The addition of the word 'non-member' by the amending Act of 1948 to the Explanation I, did not enlarge the scope of the main section so as to make all kinds of dispute between a registered society and a non-member cognizable by the Registrar.

Since in the present case, the second respondent was not a financing bank nor was the appellant an agriculturist, s. 48(1)(c) and the Explanation I could have no application.

Union of India v. Registrar, Co-operative Societies, Patna, (1961) I.L.R. 40 Pat. 7, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 100 of 1962.

Appeal by special leave from the judgment and order dated October 30, 1961, of the Patna High Court in M.J.C. No. 954 of 1961.

A. N. Sinha, A. K. Nag and P. K. Mukherjee, for appellant.

C. K. Daphlary, Solicitor General of India and S. P. Varma, for respondent No. 2.

L. K. Jha and S. P. Varma, for respondent No. 3.

1962. March 14. The Judgment of the Court was delivered by

SINHA, C. J.—This appeal, by special leave, is directed against the order of a Division Bench of the Patna High Court, dated October 30, 1961, dismissing *in limine* the appellant's petition dated October 24, 1961, under Arts. 226 and 227 of the Constitution, being Miscellaneous Judicial Case No. 954 of 1961, for a writ of Prohibition directing the first respondent not to proceed with the Award Case No. 101 of 1961, and a writ of *Certiorari* for quashing the order of the said respondent, dated September 29, 1961. The appellant is a private limited company, incorporated under the Indian Companies Act, with its registered office at Calcutta. It

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carries on the business of manufacturing sugar in its factory at Sugauli in the district of Champaran, in Bihar. The first respondent is the Assistant Registrar, Co-operative Societies, Motihari Circle, Motihari, in the State of Bihar; the second respondent is the Union of Co-operative Societies, and is registered under the Bihar and Orissa Co-operative Societies Act (B. & O. Act VI of 1935) (to be referred to hereinafter as the Act); the third respondent is the State of Bihar.

On August 14, 1961, respondent No. 2 made a reference under s.48 of the Act, against the appellant, claiming the sum of Rs. 1,20,809/- odd, as commission and interest for supply of sugarcane during the crushing season 1959-60. The said reference was registered by the first respondent as Award Case No. 101 of 1961, on August 17, 1961. Notice of the said reference was issued to the appellant. On September 26, 1961, the appellant took a preliminary objection to the jurisdiction of the first respondent to entertain the reference and to adjudicate upon it, and prayed that the reference be rejected. The first respondent, following a decision of the Patna High Court, reported in *Union of India v. Registrar, Co-operative Societies, Patna* (1), overruled the appellant's preliminary objection by his order dated September 29, 1961. Against that order, the appellant moved its application aforesaid before the High Court of Patna. The High Court, following its previous decision aforesaid, summarily dismissed the application. The appellant moved this Court and obtained special leave to appeal from the order of the High Court, dismissing his application. This Court granted the special leave on December 4, 1961. The appellant moved this Court for stay, which was finally heard on January 11, 1962, and the Court directed that the appeal be heard peremptorily on February 15, this year. That is how the

(1) (1961) I.L.R. 40 Patna 7.

matter comes before us for hearing of the main appeal.

The only question for determination in this appeal is whether under the provisions of the Act, the first respondent had jurisdiction to hear and determine the dispute referred to him at the instance of the second respondent. The answer to the question raised in this appeal must depend upon the interpretation of the provisions of the Act.

Before examining the provisions of the Act, as it stands at present, it is necessary to set out the legislative history of the law on the subject. When the co-operative movement was set up in the beginning of this century, the law governing co-operative societies was enacted as The Co-operative Societies Act (II of 1912), by the Indian Legislature. That Central Act continued in force in Bihar and Orissa until it was repealed by the Bihar and Orissa Legislative Council by the Bihar & Orissa Co-operative Societies Act (B. & O. Act VI of 1935), after obtaining the previous sanction of the Governor-General, under sub-s. 3 of s. 80-A of the Government of India Act. The Act of 1935 was enacted with a view to consolidate and amend the law relating to co-operative societies in the Province of Bihar and Orissa, as it then was. As it displaced the Co-operative Societies Act of 1912, so far as the Province of Bihar and Orissa was concerned, s.5 enacted that all references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in British India, and for the time being in force in the Province, shall be construed as references to the new Act. Under s. 7, a society, which has as its object the promotion of the common interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operation of such a society, may be registered

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under the Act. On such registration, the Society becomes a body corporate with perpetual succession and a common seal, and with power to acquire and hold property, to enter into contracts, to institute and defend suits, etc. Under s. 15, a registered society shall receive deposits and loans from members and non-members only to such extent and under such conditions as may be prescribed. Under s. 16, ordinarily a registered society shall not make a loan to any person other than a member, except with the general or special sanction of the Registrar, and subject to such restrictions as he may impose. Section 17 further provides for such prohibitions and restrictions, in respect of the transactions of a registered society with persons other than members, as the Provincial Government may by rules prescribe. Section 48 makes it obligatory that any dispute touching the business of a registered society, among members, past members, persons claiming through members, past members or deceased members and sureties of members, past members or deceased members, whether such sureties are members, or non-members, or between them and the registered society, shall be referred to the Registrar. By virtue of Explanation (1) to the section, a claim by a registered society for any debt or demand due to it from a member or a past member or his heir or legal representative, or from sureties, whether they are members or non-members, shall be a dispute within the meaning of the main section, even though such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

It will thus be seen that the Act is limited in its operation to registered societies and their members in their dealings with one another. It is only in exceptional cases of borrowing

by a registered society from non-members, in accordance with the rules and bye-laws prescribed by the competent authority, or in case of loan to a non-member under the provisions of s. 16, that there could be dealings between registered societies and non-members, keeping aside the cases of sureties of members, who may be non-members, but who also come within the purview of dealings between a society and its members.

Such were the relevant provisions of the Act when it was amended by the Bihar Co-operative Societies (Amendment) Act, 1942, and the Bihar Co-operative Societies (Amendment) Act, 1944, enacted by the Governor of Bihar in exercise of the powers assumed to himself by the Proclamation dated November 3, 1939, issued by him under s. 93 of the Government of India Act, 1935. For our purposes, it is only necessary to notice some of the amendments made by the amending Act of 1944 (Bihar Act X of 1944). By s. 2, cl. (c) of s. 2 of the Act of 1935 was substituted in these terms :

“(c) ‘financing bank’ means a registered society the main object of which is to make advances in cash or kind to other registered societies or to agriculturists who are not members of registered societies or to both such societies and agriculturists.”

By s. 3, s. 16 of the Act of 1935 was amended by adding sub-s. (3) to s. 16, as under :

“(3) Where the Registrar has accorded sanction to a financing bank under the provisions of sub-section (1), a registered society which is a member of such financing bank may, subject to the terms of the sanction and such other terms and conditions as may be prescribed by the Registrar, act as agent for the financing bank and as such agent carry out, with or without any commission, all or

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any transactions connected with loans or advances made or to be made by the financing bank."

A consequential change was made in s. 23 of the Act of 1935, by inserting s. 23-A, so as to make a debt or an outstanding demand to a registered society from a non-member a first charge on the property of the non-member. The most important amendment was made by s. 6, in s. 48 of the main Act as follows :

"6. In sub-section (1) of section 48 of the said Act—

(a) after clause (d), the word "shall be inserted and thereafter the following clause shall be inserted, namely :—

"(e) between a financing bank authorised under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society;" and

(b) in Explanation (1), after the words "from a member," the word "non-member" shall be inserted and after the words "of a deceased member" the words "or non-member" shall be inserted.

It is not necessary to refer to the other consequential amendments made and the addition of a new chapter 7A, relating to the manner of recovery. The amendments effected by the amending Act of 1944 had been enacted by the Governor of Bihar in exercise of his special powers aforesaid. The provisions of those amendments were re-enacted as Act XVI of 1948. We would, therefore refer hereinafter to the amendments in question as the amendments of 1948.

As already indicated, a Division Bench of the Patna High Court has laid it down, in the case of

Union of India v Registrar, Co-operative Societies, Patna (1) that the Explanation to s. 48(1) of the Act covers a claim by a registered society for any debt or demand from a non-member, and that, therefore, the claim of a registered society against the railway company for compensation for short supply is a dispute within the ambit of s. 48 of the Act, and that, therefore, the Assistant Registrar, Co-operative Societies, had jurisdiction to determine the dispute under s. 48(2) of the Act. Relying upon that decision, the High Court dismissed the appellant's petition under arts. 226 and 227 of the Constitution, *in limine*. The appellant has questioned the correctness of that decision. The question, therefore, is whether the High Court has taken a correct view of the provisions of s. 48, the relevant portions of which are as follows:

"48 (1) If any dispute touching the business of a registered society...arises—

(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member or sureties of members, past members or deceased members, whether such sureties are members or non-members, and the society, its managing committee or any officer, agent or servant of the society; or

(c)

(d)

(e) between a financing bank authorised under the provisions of sub-section (1) of

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section 16 and a person who is not a member of a registered society ;
such disputes shall be referred to the Registrar.

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Explanation 1 —A claim by a registered society for any debt or demand due to it from a member, non-member, past member or the nominee, heir or legal representative of a deceased member or non-member or from sureties of members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

(9) Save as expressly provided in this section, a decision, of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2), shall be final."

From the provisions of the Act, set out above, it is manifest that the act created a special tribunal, namely, the registrar of Co-operative Societies, to deal with certain disputes specified in s. 48(1)(a) to (e). This special tribunal was created with a view to shortening litigation and providing speedy relief to registered societies and their members in their disputes *inter se* in respect of the business of the society. Before the amendments introduced by the Act of 1948, the disputes which could be entertained by the Registrar were disputes amongst

members, past members or their heirs or their sureties, or between a society and other registered societies (without meaning to exhaust all the categories.) But, before the amendments, one who was not a member of a society or was not claiming through a member or a past member or a deceased member, or was not a surety of a member or a deceased member, was not subject to the jurisdiction of the Registrar under s. 48. That is to say, any dispute between a society or its members, past members or deceased members or sureties of such members on the one hand and non-members on the other, was not within the purview of the section so that the appellant company, which is not a registered society, or a member of a registered society, could not have its claim, or a claim against it by a registered society, referred to the Registrar for decision, under this section. Such a dispute by a society or its members against a non-member had to be taken to the ordinary courts for decision.

In our opinion, the contention raised on behalf of the appellant is correct. By the amending Act of 1948, the aforesaid relevant and important amendments were introduced into the Act. The effect of these amendments is that a claim by a financing bank against a non-member to whom the former may have made an advance in cash or kind with the sanction of the Registrar s. 16(1), would be entertainable by the Registrar, on a reference. But that does not mean that a claim which is not of the description referred to in s. 16(1), read with s. 2(c), by a registered society against any non-member, who is not an agriculturist, is within the purview of s. 48(1), read with the Explanation. The Explanation cannot be read as adding a new head to the categories (a) to (e) under s. 48(1), of disputes which may be referred to the Registrar. Originally, the Explanation had been added only to make it clear that even if a debt or

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a demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment, the dispute would come within the purview of the main s. 48(1). The addition of the word 'non-member'; by the amending Act of 1948, to the first Explanation has not enlarged the scope of the main s. 48(1) so as to make all kinds of disputes between a registered society and a non-member cognizable by the Registrar, thus excluding the jurisdiction of the ordinary courts.

In the instant case, it is manifest that the dispute is between a registered society, the second respondent, and the appellant, a non-member, in respect of the claim for commission and interest thereon for supply of sugarcane, and the appellant alleges that it has a counter-claim of a lakh and fifty thousand rupees for short and irregular supply of sugarcane against that respondent. These are matters which, in our view, are wholly beyond the purview of s. 48 of the Act, when it is remembered that the second respondent is not a financing bank and that the appellant is not an agriculturist to whom any advances in cash or kind had been made or could have been made so as to bring the appellant within the purview of s. 48 (1) (e), and consequentially of Explanation 1. The decision of the Patna High Court to the contrary is, therefore, not correct.

In the result, the appeal is allowed with costs, and it is directed that the Registrar should not entertain the reference, and should not adjudicate upon the dispute, and not make an award. The main contesting parties must be left to their remedies in the ordinary courts.

Appeal allowed.