

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

SUBJECT : CODE OF CIVIL PROCEDURE

ECHO is on.  
CS(OS) 1220/1996

DATE OF DECISION : DECEMBER 04, 2008

HIMACHAL PRADESH STATE  
COOP.BANK LTD. ....

Plaintiff  
Through Mr.K.K.Khurana, Mr.Sudeep Kr.Shrotriya,  
advocates.

versus

MADAN LAL AJAY KUMAR .....

Defendants  
Through Mr.Anshuman Sood, advocate for D.10 a  
nd 13/applicant in IA 2176/05.

I.A. No. 2176/2005

Learned counsel for the applicant states that he is not pressing the present amendment application. Application is accordingly dismissed as withdrawn.

I.A. No.1811/2004

1. This application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 filed by defendant nos. 1 and 2 has been argued on their behalf by learned counsel appearing on behalf of defendant nos. 10 and 13.

2. It is submitted that this Court does not have jurisdiction to decide the present Suit in view of Sections 58, 72(1)(a) and (e), 72(2)(a) and 92 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter referred to as the Act, for short). Reference has also been made to paras 3, 4 and 32 of the plaint and it is submitted that only Registrar appointed under the Act has exclusive jurisdiction and jurisdiction of the Civil Courts is barred. Reliance is placed upon the decision of the Supreme Court in Greater Bombay Coop. Bank Ltd versus United Yarn Tex (P) Ltd and others reported in (2007) 6 SCC 236, Saleem Bhai and others versus State of Maharashtra and others reported in AIR 2003 SC 759 and The Shamrao Vithal Co-operative Bank Ltd versus Kasargode Panduranga Mallaya reported in AIR 1972 SC 1248.

3. Plaintiff is a cooperative society registered under the Act and had granted loan facility to defendant nos. 1 and 5 from a Branch located at New Delhi.

4. Plaintiff had initially invoked Sections 72 and 73 of the Act and the claims by Order dated 19th July, 1994 were referred to the Registrar, Cooperative Society, Himachal Pradesh for adjudication.

5. The defendants herein entered appearance and objected to jurisdiction and authority of the Registrar to decide the disputes. It was pleaded that the Act is not applicable as the defendants were not members of the Cooperative Society, Himachal Pradesh. Another objection raised was that the transaction between the parties had taken place at New Delhi and Multi State Cooperative Societies Act, 1984 was applicable and Sections 72 and 73 of the Act are not applicable. Registrar, Cooperative Society, Himachal Pradesh by his Order dated 12th April, 1996 accepted the objection raised by the defendants-applicant and held that due to lack of jurisdiction he does not have authority to adjudicate the claim petition. In other words, he held that Sections 72 and 73 of the Act were not applicable. Relevant portion of the Order dated 12th April, 1996 reads as under:- ECHO is on. It is submitted fact that Defendants place of residence and business is in New Delhi. The transaction between the members and the Bank took place at New Delhi, hence to my mind the H.P.State Cooperative Bank should have been registered under Multi-Unit Cooperative Societies Act, 1984. The Supreme Court has held (A 1972 S.C.1248 (1973)ISCJ-4593) that where a Cooperative Society is registered in a State having its branch also in other State, the Registrar, Cooperative Societies of former State has no jurisdiction to adjudicate on the dispute arising out of dealings of such society through its branch in another State. In view of the above discussion, I hold that this authority has no jurisdiction to adjudicate this dispute under Section 72/73 of the H.P.Cooperative Societies Act, 1972. Attachment order under Section 74 of the H.P.Cooperative Societies Act, 1968 (Act No.3 of 1996) issued vide order No.PA/Addl.RCS(Dev.)/94-Coop. (Arb)-1 dated 22.9.1994 is hereby withdrawn.

6. Thus there is a clear finding given by the Registrar, Cooperative Society, Himachal Pradesh that the claim of the plaintiff do not fall under Sections 72 and 73 of the Act and cannot be adjudicated by him.

7. After the above Order, plaintiff herein had no option but to file the present civil Suit for recovery in Delhi. The defendants-applicant are all residents of Delhi and the transaction under which loan was granted had taken place at Delhi. The defendants-applicant have now turned around and taken a complete somersault. They seek to rely upon Sections 58, 72, 73 and 92 of the Act and by the present application raised the plea that only Registrar, Cooperative Society has exclusive jurisdiction. On the face of it, the plea now taken is contradictory and contrary to the contention raised before the Registrar, Cooperative Society, Himachal Pradesh when proceedings under the Act were initiated. Order dated 12th April, 1996 passed by the Registrar, Cooperative Society, Himachal Pradesh has become final and binding on the parties. Both the parties are bound by the said Order.

8. Almost identical situation had arisen before this Court in CS(OS) No. 1221/1996 titled The Himachal Pradesh State Co-op Bank Ltd versus M/s.Gulshan Kumar and Brothers and others. This Court dismissed the application filed by the defendants therein and reprimanded them for taking contradictory pleas/stands. Learned Single Judge while passing the said Order referred with approval an earlier Order dated 27th September, 2002 allowing the review application, relevant portion of which Order reads as under:- As is apparent from the aforesaid facts, self contradictory stands taken by the respondents before the Arbitrator as well as this court in the suit filed by the applicant have landed them in catch 22 situation. On the one hand, they have taken a plea that they were not the members of applicant-Bank as such provisions of Section 73 of the H.P.Cooperative Societies Act, 1968 providing for deciding the disputes between the applicant-Bank and their members by way of arbitration, are not invocable and on the other hand they have taken a stand that Section 92 bars civil or revenue court from entertaining any dispute arising between the bank and its members. Both these pleas are self defeating so far as instant application is concerned. The applicant filed the instant suit after accepting the pleas of the respondents that they are not the members of the applicant-Bank and that the jurisdiction where the applicant can seek remedy against him is that of Delhi courts. It appears that it was due to inadvertence and misrepresentation of factual position that issues for determination have already been framed on the pleadings of the parties and contradictory stands taken by the respondents before the Arbitrator at Shimla and this court, the impugned order dated 18.1.2001 was passed. It was for the applicant to decide whether it should ECHO is on. prefer an appeal against the order of the Arbitrator or file the civil suit. The respondents cannot shirk away from their liability by imbroigling in the legal wrangling and by taking circuitous and different pleas at different forums. As on date there is a liability of about Rs.2 crores or odd as set up by the plaintiff against the respondents. The Applicant has been hounding the respondents all these years while respondents are out to escape their liability.

9. Learned counsel for the defendants-applicant has submitted that the plaintiff has misread and misunderstood the Order dated 12th April, 1996 passed by Registrar, Cooperative Society, Himachal Pradesh. He referred to last but one paragraph of the said Order quoted above. It is submitted that Registrar, Cooperative Society, Himachal Pradesh did not have jurisdiction but the Registrar, Cooperative Society, New Delhi has jurisdiction. The contention is incorrect. Registrar, Cooperative Society, Himachal Pradesh has not dismissed the claim petition on the ground of territorial jurisdiction nor has held that Registrar, Cooperative Society, New Delhi has jurisdiction. But only that he does not have jurisdiction. There is no such finding. The last portion of the penultimate paragraph of the Order dated 12th April, 1996 is merely a quote from a judgment of the Supreme Court. The operative portion is the last paragraph in which it has been clearly held that the disputes raised by the plaintiff cannot be adjudicated under the Act.

10. Even otherwise, the plea has no merit in view of Sections 2(12) and 3 of the Act, which read as under:- Section 2(12) : Registrar means Registrar of Co-operative Societies appointed under section 3, and includes any person appointed to assist the Registrar on whom all or any of the powers or duties of the Registrar have been or has been conferred or imposed, under this Act. Section 3. Registrar (1) The State Government may appoint a

person to be Registrar of Co-operative Societies for the State and may appoint any other person to assist him. (2) The State Government may, by general or special order, confer on any person appointed to assist the Registrar all or any of the powers of the Registrar under this Act. (3) Every person appointed to assist the Registrar shall exercise the power conferred on him under sub-section (2) subject to the general guidance, superintendence and control of the Registrar.

11. Conjoint reading of the two provisions makes it clear that the Registrar appointed by the State Government exclusively has jurisdiction. Registrar appointed under the Multi State Cooperative Society Act, 1984 is not a Registrar under Section 3 of the Act. Registrar, Multi State Cooperative Society Act, 1984 cannot exercise power under Sections 72 and 73 of the Act.

12. Decision of the Supreme Court in the case of ShamRao Vithal (supra) relates to Multi State Cooperative Societies Act, 1984. The said decision is of no relevance to the present case. The defendants-applicant have not relied upon the provisions of the Multi State Cooperative Societies Act, 1984. They are relying upon the provisions of the Act.

13. The decision of the Supreme Court in Greater Bombay (supra) is also not applicable. Recovery of Debts due to Banks and Other Financial Institutions Act, 1993 is not applicable to Cooperative Banks constituted under the State Cooperative Societies Act or Multi State Cooperative Societies Act, 2002. We are not concerned in the present case with the jurisdiction of the Debt Recovery Tribunal and the question whether Recovery of Debts due to Banks and Other Financial Institutions Act, 1993 is applicable to the facts of the present case, a question adjudicated and decided in the said case. The Supreme Court in the ECHO is on. said case also noticed the distinction between a Civil Court and a Tribunal. In the present case, the Registrar, Cooperative Society, Himachal Pradesh by Order dated 12th April, 1996 has held that the Act is not applicable and he cannot decide the claims of the plaintiff under Sections 72-73 of the Act. The said decision has become final and binding on the parties.

14. The last decision referred to by the learned counsel for the applicant in the case of Salim Bhai (supra) merely states that the averments made in the plaint have to be looked into for deciding an application under Order VII, Rule 11 of the Code of Civil Procedure, 1908 and at this stage the allegations made in the written statement are wholly irrelevant. The said decision does not support the contentions of the defendants-applicant. Rather the decision supports the plaintiff.

15. I may note here that the plaintiff herein had made a claim for recovery of Rs.1.56 crores before the Registrar, Cooperative Societies, Himachal Pradesh which had come to Rs.2.04 crores when the present Suit was filed in 1996.

16. Application is accordingly dismissed with cost of Rs.10,000/- which will be paid to the plaintiff within four weeks from today failing which the defence of the defendants-applicant will be struck off. Application is accordingly dismissed. I.A. No. 12502/1999

17. This application has been filed by the plaintiff for bringing on record the legal representatives of defendant no.3. No reply has been filed by the defendants and the legal representatives of defendant no. 3 have been served by publication. There is no appearance on their behalf. I.A. No. 12502/1999 is allowed and Mrs.Shivani Anand, mother of Ms. Arati Anand and Ms. Nishi Anand is appointed as their natural guardian. Amended memo of parties will be filed within one week. Application is disposed of. I.A. No. 9791/1996

18. This is an application for modification of the interim order passed by this Court on 21st May, 1996. It is stated in this application that due to bonafide error/mistake, shop/site no.B-837, New Sabzi Mandi, Azad Pur, New Delhi instead of Shop/Site no. B-218, New Sabzi Mandi, Azad Pur, New Delhi has been mentioned in the said ex parte Order. It is stated that the error had occurred because several suits were filed by the plaintiff against the defendants. The details of these suits have also been given. My attention has been drawn to para 27 of the plaint in which specific reference has been made to Shop/Site No. B- 218, New Sabzi Mandi, Azad Pur, New Delhi and it is stated that the defendants have created an equitable mortgage in favour of the plaintiff-Bank.

19. No reply to the application has been filed by any of the defendants. In these circumstances, I am satisfied that there is a mistake/error in the Order dated 21st May, 1996 and the same should be rectified under Section 152 of the Code of Civil Procedure, 1908. It is accordingly clarified that the injunction Order passed on 21st May, 1996 is also in respect of Shop/Site no.B- 218, New Sabzi Mandi, Azad Pur, New Delhi. Application also stand disposed of. I.A.Nos. 4658/1996, 1625/1998, 12100/1999 and 10934/2000

20. These applications are under Order XXXIX Rule 1 and 2, Order XXXVIII, Rule 1 and 5 of the Code of Civil Procedure filed by the plaintiff and applications for vacation of stay under Order XXXIX, Rule 4 and Order XXXVIII, Rule 6 of the Code of Civil Procedure filed by some of the defendants.

21. It is alleged in the plaint by the plaintiff that more than Rupees 2 crores 7 lacs was due and payable in 1996 from defendant Nos. 1 to 5. Defendant No.1 is a partnership firm and defendant Nos. 2 to 5 are the partners. Defendant ECHO is on. No.6 and defendant No.9 are again partnership firms and it is alleged that defendant Nos.7, 8 and 10 to 13 are also partners of defendant No.9. It is also alleged that defendant Nos. 6 and 9 are the guarantors and the said defendants are jointly and severally liable to make payment to the plaintiff.

22. By an ex-parte order dated 21.5.1996, the defendants were restrained from selling, letting, transferring, alienating, encumbering or disposing of the land, possession of the shop/site Number B-218, New Sabzi Mandi, Azad Pur, New Delhi ( as per the corrections carried out today in I.A.No.9791/06), residential property bearing number 36/44, Punjabi Bagh West, New Delhi, D-414, New Sabzi Mandi, Azad Pur, New Delhi, belonging to defendant No.3 and shop/site Number C- 88, New Sabzi Mandi, Azad Pur belonging to defendant No.6. The said order has continued since then. Counsel for the

plaintiff has further pointed out that defendant No.3 has expired and legal representatives of the said defendant have sold property D-414, New Sabzi Mandi, Azad Pur, New Delhi, contrary to the injunction order. It is also pointed out that defendants have not furnished security for the suit amount as was required vide order dated 21.5.1996. 23. In paragraph 27 of the plaint it is stated that shop/site number D- 218, New Sabzi Mandi, Azad Pur, New Delhi stands mortgaged with the plaintiff bank and the original perpetual lease deed has been deposited with the plaintiff.

24. Keeping in view the averments made in the plaint and the fact that matter has remained pending for the last 10 years without any progress and stay continues to be in operation since then and also the fact that in spite of the injunction order shop/site number D-414, New Sabzi Mandi, Azad Pur, New Delhi has been sold, the interim order passed on 21.5.1996 is confirmed. It is clarified that the injunction order will continue to operate in respect of properties bearing number B-218, New Sabzi Mandi, Azad Pur, New Delhi, property no. 89, Haqiqat Nagar, Dhamal, New Delhi and property no. C-89, New Sabzi Mandi, Azad Pur, New Delhi. Attachment orders are passed in respect of property bearing number B-218, New Sabzi Mandi, Azad Pur, New Delhi and 89, Haqiqat Nagar, Dhamal, New Delhi, which belongs to defendant Nos. 1 to 5. Attachment orders are also passed in respect of C-89, New Sabzi Mandi, Azad Pur, New Delhi belonging to defendant No.6.

25. The plaintiff will communicate this order to the office of the Sub-Registrar/registering authority as well as to the Agricultural Produce Marketing Committee to ensure that no third party interest is created in the said properties or the said properties could not be transferred to any third party. Interim order will be strictly complied with. The applications are accordingly disposed of. CS(OS) No.1220/1996 List before the Court for framing of issues on 25th February, 2009. Principal Officer of the plaintiff and defendants will remain present in person on the next date of hearing for recording of statement under Order X Rule 2 of the Code of Civil Procedure, 1908.

Sd./-  
SANJIV KHANNA, J.

DECEMBER 04, 2008