HIGH COURT OF GUJARAT

DILIPKUMAR PURSHOTTAMDAS VYAS
Versus
KALUPUR COMMERCIAL CO-OPERATIVE BANK LTD

Date of Decision: 25 March 2008

Citation: 2008 LawSuit(Guj) 736

Hon'ble Judges: H B Antani

Case Type: First Appeal

Case No: 5390 of 2007

Subject: Arbitration, Civil

Acts Referred:
Arbitration And Conciliation Act, 1996 Sec 34(2), Sec 34, Sec 21, Sec 2, Sec 34(1), Sec 43, Sec 37(1)(b)
Multi State Co-Operative Societies Act, 2002 Sec 85, Sec 52, Sec 84(5), Sec 9, Sec 84, Sec 10

Final Decision: Appeal dismissed

Advocates: K D Vasavada, Dipak M Siddhpura, Nandish Chudgar, Nanavati Associates

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[1] In the present case, the appellant stood as one of the guarantors along with respondent No. 4 to loan of Rs. 2,50,000/- availed by respondent No. 3 - Shri Kishorebhai Ranchhodbhai Prajapati ("the borrower", for short) sanctioned by respondent No. 1 Kalupur Cooperative Commercial Bank ("the Bank", for short). During the course of period of repayment, the borrower defaulted and, therefore, in pursuance of resolution passed on 30-06-2005, the Bank filed Arbitration Suit No. Arbitrator/ Khambhat/1/2006 on 10-01-2006 before respondent No. 2 the Arbitrator for recovery of the amount of Rs. 5,07,207.57 ps including the interest as per the Bank's terms and conditions of loan from the borrower and the guarantors. The proceedings culminated in the Arbitrator passing the award dated 26-06-2006 in favour of the Bank which prompted the appellant to move Miscellaneous Civil Application No. 255 of 2006 before the learned District Judge, District Anand, Anand for setting aside the Arbitral award under various grounds. However, vide order dated 12th September, 2007, the learned Judge dismissed the appeal / application, and aggrieved, the guarantor is in appeal

before this Court under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act").

[2] Learned Counsel Mr. K. D. Vasavada appearing for the appellant submitted that the learned Judge has committed error in interpreting the provisions of Multi-State Co-operative Societies Act, 2002 ("the Societies Act", for short) in proper perspective while dismissing the application preferred by the appellant. The learned Judge ought to have taken into consideration that the Bank was registered under the Societies Act and the provisions contained in the said Act are required to be followed while deciding the application preferred by the present appellant. The learned Judge has overlooked the provisions contained in Section 10 of the Societies Act, which is a condition precedent for reference of Arbitral proceedings before the Tribunal. The learned Judge, thus, ought to have held that in view of the non-compliance of the provisions contained in Section 10 of the Act, the Bank would not have locus standi to move the application to commence the proceedings before the Tribunal. The learned Judge ought to have considered that as the Tribunal had no jurisdiction to entertain the reference, the order passed by the Arbitrator was required to be quashed and set aside. The learned Judge has not appreciated the provisions contained in Section 34 (1) and (2) of the Arbitration Act while rejecting the application of the appellant. The learned Judge ought to have taken into consideration the provisions of Section 21 of the Arbitration Act while rejecting the application preferred by the appellant. The learned Judge has overlooked the fact that the arbitration agreement arrived at between the parties would not fall within the purview of Section 2 of the Arbitration Act and as the same would not fall within the purview of the Arbitration agreement, the learned Judge ought to have held that the order passed by the Arbitrator is null and void and not sustainable in the eye of law. The learned Judge has seriously erred in not taking into consideration the bar of limitation for the claim preferred before the Arbitrator. As provided under Section 43 of the Arbitration Act, if the reference is beyond the period of limitation as prescribed therein, the same cannot be entertained. Even the arbitral award passed by the learned Arbitrator dated 26-06-2006 is against the public policy. When the award itself is in conflict with the public policy, it requires to be quashed and set aside. The learned Judge, on that ground also, ought to have set aside the award passed by the Arbitrator. Even there was non-compliance of the provisions of Section 18, 19, 21, 23, 24 and 25 of Chapter V of the Arbitration Act and, therefore, the learned Judge ought to have set aside the award passed by the Arbitrator. The learned Advocate further submitted that the learned Judge ought to have set aside the award passed by the Arbitrator on the ground that the Chief Executive ought to have preferred the claim before the Arbitrator and since it was not preferred by the Chief Executive, the Bank cannot prefer the claim before the Arbitrator. Thus, the learned Counsel submitted that the order passed by the learned Judge is erroneous and it

requires to be quashed and set aside. The learned Counsel for the appellant has placed reliance on the judgments rendered in the case of (i) Ramchandra Keshave Adke Vs. Govind Joti Chavare And Others, AIR 1975 SC 915, and (ii) Mr. Kanti Chaudhari And Others Vs. The Indian Olympic Association and Others, AIR 1993 Delhi 96 in support of the submissions canvassed at the Bar.

[3] The learned Counsel representing the respondent-Bank vehemently submitted that the provisions contained in Section 34 of the Arbitration Act is absolutely clear and if the case falls within the purview of Section 34 of the said Act, then this Court can interfere in the order passed by the learned Judge. Considering the reasoning given by the learned Judge, no interference is called for in an appeal preferred by the appellant. The learned Counsel submitted that the bare perusal of the reasoning given by the learned Judge in paragraphs 8, 9 and 10 makes it abundantly clear that the appellant had miserably failed to prove the grounds for setting aside the order passed by the Arbitrator. Even the illegality committed by the Arbitrator was not pointed out by the learned Counsel representing the appellant before the learned Judge and, therefore, the learned Judge has rightly dismissed the application. The Arbitrator had recorded the reasons in the award and carefully considered the claims and counter-claims of both the sides and after considering the same, the award was passed by the Arbitrator. When it was challenged before the learned Judge, the same was re-appreciated by the learned Judge and, therefore, in the present appeal no interference is called for. The learned Counsel submitted that Section 84 of the Societies Act is with regard to disputes which can be referred to arbitration. Sub-section (5) of Section 84 of the Societies Act further states: "Save as otherwise provided under this Act, the provisions of the Arbitration and Concilition Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996." The provisions contained in Section 84 was considered by the learned Judge while dismissing the application. Even Section 9 of the Arbitration Act was considered by the learned Judge while entertaining the application. Section 9 of the Societies Act is with regard to treating the Multi-State Co-operative Society as a body corporate. Under Section 9 of the Societies Act, a multi-State co-operative society, by registration, shall become a body corporate by name under which it is registered. It shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of movable and immovable property, enter into contracts, institute and defend suits and other legal proceedings. It shall by the said name sue or be sued. In view of the clear provisions in Section 9 of the Societies Act, the contention raised by the learned Counsel that the Chief Executive of the Society can file the application is without any substance and the same is liable to be rejected. Even the claim preferred by the Bank was within the period of limitation under the provisions of the Societies Act and,

therefore, the contention raised by the other side that it was not within the period of limitation is not tenable, as the period to be computed is not according to the Limitation Act as stipulated in the Arbitration Act but according to the Societies Act itself wherein the provision for limitation is made under Section 84. Thus, the learned Counsel representing the respondent - Bank submitted that no egregious error has been committed by the learned Judge while rejecting the application and, therefore, the present appeal is liable to be dismissed.

[4] Heard Mr. K. D. Vasavada with Mr. Dipak M. Siddhpura for the appellant and learned Counsel Mr. Nandish Chudgar for M/s Nanavati Associates for respondent No. 1 Bank at length and in great detail. The appellant has stated in the memo of appeal that respondent Nos. 3 and 4 were formal parties in the earlier proceedings and, therefore, they are arrayed in this appeal. Though served, none appears for respondent Nos. 3 and 4. I have also perused the record and proceedings of Miscellaneous Civil Application No. 255 of 2006.

[5] The appellant has challenged the order passed by the learned Judge in Miscellaneous Civil Application No. 255 of 2006 whereby his application was dismissed. I have considered the provisions of Section 34 of the Arbitration Act and as the matter does not fall within the purview of the provisions contained in Section 34, it does not call for any interference. The learned Counsel for the appellant has heavily relied on sub-section (2) (a) (i) (ii) in support of the submission that these provisions were required to be taken into consideration in deciding the application but with regard to arbitration agreement, the learned Judge has dealt with in paragraph 8 of the judgment and order and the reasoning assigned by the Arbitrator. Even the argument with regard to locus standi of filing the proceedings was also discussed by the learned Judge extensively and after considering the same and discussing the provisions contained in Section 34 of the Arbitration Act, 1996, dismissed the application preferred by the appellant. The learned Judge has placed heavy reliance on Section 84 of the Societies Act. It provides for reference of disputes. Considering clauses (a), (b) (c) and (d) of sub-section (1), reference was made to the Arbitrator and, therefore, the argument canvassed by the learned Counsel that the provisions of Section 84 were overlooked by the Arbitrator has no substance.

The learned Counsel has emphatically submitted that the Bank could not have filed the reference without there being Chief Executive or any person on his behalf to sue but considering the provisions of Section 9 of the Act which mentions that the proceedings can be initiated by the Bank, the contention raised by the learned Counsel has no substance and the same is liable to be rejected. The contention that it is the function of the Chief Executive of the Society to prefer the reference and not the Cooperative Society as provided under Section 52 of the Societies Act is not

sustainable. Section 52 gives powers to the Chief Executive to discharge the functions specified therein. Section 9 provides the Cooperative Society to be a body corporate. Under Section 9 of the Societies Act, by registration of a multi-State co-operative society, it shall become a body corporate by name under which it is registered. It shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of movable and immovable property, enter into contracts, institute and defend suits and other legal proceedings. It shall by the said name sue or be sued. Considering this provision, the contention raised by the learned Counsel that only the Chief Executive can prefer the reference has no substance and the same is liable to be rejected.

While perusing resolution dated 30-06-2005 passed by the Board of Directors, it is amply clear that the Board of Directors had not only resolved to refer the dispute with the appellant to the Arbitrator but also authorised a class of officers mentioned therein to sue against the appellant. Therefore, merely because the Chief Executive has not appointed any person specifically who could sue on behalf of the Bank, the reference cannot be termed as illegal and contrary to the provisions of clause (i) of Section 52. What is significant is that the reference was done under an authorization. It seems that the matter regarding the appointment of a person to sue instead of being dealt with at the level of Chief Executive, it was dealt with by the Board itself. Not only that, Section 52 stipulates that the Chief Executive shall under the general superintendence, direction and control of the Board exercise the powers and discharge the functions specified therein and clause (i) is one such function pertaining to appointment of a person to sue or be sued on behalf of the Board that is pressed into service. Therefore, when the appointment is made by the Board, it is on a higher footing than the appointment that could have been made by the Chief Executive. It is also in consonance with the general powers vested in the Board under sub-section (1) of Section 49. Moreover, the fact that the title-clause did not mention the name of the Chief Executive or simply "Chief Executive" or any other person authorized on his behalf to sue should not disentitle the Bank to recover the dues. In these circumstances, the contention that only the Chief Executive should have sued for the Bank is also required to be rejected.

With regard to question of of limitation under Section 43 of the Arbitration Act, it is raised for the first time in an appeal and it was nowhere raised before the Arbitrator or the learned Judge and, therefore, the learned Judge had no occasion to deal with this point. Even otherwise, the question of limitation in the present proceedings would be governed by Section 85 of the Societies Act and not by Section 43 of the Arbitration Act, as is sought to be made out by the learned Counsel for the appellant. Section 85 of the Societies Act prescribes period of

limitation for various disputes being referred to the Arbitrator. Clause (b) of the said section prescribes a period of six years during which dispute covered under clause (b) or clause (c) or clause (d) of sub-section (1) of Section 84 can be referred to the Arbitrator. Further, under clause (a) of sub-section (2) of Section 84, the present claim by the Bank for the debt due to it from the appellant is deemed to be a dispute touching the constitution, management or business of the Bank and, therefore, it is such a dispute that can be referred to Arbitration under clause (b) of Section 84. It is borne out from the record that the amount became due from 30-12-2000 for which a notice dated 12-09-2001 was sent to the appellant. Adding interest to the aforesaid amount from 30-12-2000 to 30-11-2005, the Bank claimed Rs. 5 Lakhs and odd from the appellant. If the period of six years is counted from 01-01-2001, the Bank could have referred the dispute by 31-12-2006. In fact, the Bank vide resolution dated 30-06-2005 referred the dispute to the Arbitrator and filed the same on 10-01-2006, thus, the Bank's suing was within the period of limitation. Therefore, the contention raised by the learned Counsel for the appellant is not sustainable and, therefore, it is rejected.

[6] In view of the aforesaid facts and circumstances, since the entire oral deposition and documentary evidence was considered by the learned Judge, it does not call for any interference in an appeal preferred by the appellant and thus, there is no infirmity in the order passed by the learned Judge which, in my considered view, warrants any interference in the appeal and, therefore, I pass the following order:-

The appeal fails and is dismissed. Decree to be drawn accordingly.