

(2008) 110 BOMLR 1221 : (2008) 3 MhLj 732

Bombay High Court (Nagpur Bench)

Case No: Criminal Application No. 712 of 2007

Hinganghat Nagri
Sahakari Path Sanstha
Maryadit

APPELLANT

Vs

Ashok Keshavrao Fukat

RESPONDENT

Date of Decision: March 27, 2008

Acts Referred:

- Banking Companies Act, 1949 - Section 5, 5(1)
- Banking Regulation Act, 1949 - Section 5
- Maharashtra Co-operative Societies Rules, 1961 - Rule 10
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2008) 110 BOMLR 1221 : (2008) 3 MhLj 732

Hon'ble Judges: A.B. Chaudhari, J

Bench: Single Bench

Advocate: Apurv De, for the Appellant; Manoj Kariya, for the Respondent

Judgement

A.B. Chaudhari, J.

Rule. By consent, heard forthwith.

2. This is an application seeking leave to appeal against the judgment and order of acquittal dated 5.1.2007 made by the J.M.F.C. Hinganghat in Summary Criminal Case No. 5120 of 2002.

3. In support of the present application as well as appeal against acquittal preferred by the applicant/ appellant, Mr. Apurv De argued that the learned trial Court committed an error in acquitting the respondent/accused for extraneous reasons and that there was a legally enforceable liability against the respondent/accused which was not discharged by him and, on the contrary, the cheque given by him had bounced. Admittedly there was dishonour of cheque which was given to the appellant and that in fact was not disputed.

According to Mr. De, the fact that the loan was disbursed to the respondent/accused by the applicant/credit society is not in dispute so also the agreement regarding interest at rest payable thereon and in the wake of said agreement it was no use to carry adverse impression about the total liability that had ultimately swollen to. He, therefore, submitted that the trial Court was not justified in acquitting the respondent/accused and, therefore, leave to appeal deserves to be granted.

4. Per contra, Mr. Karia, learned Counsel for the respondent/accused, submits that loan amount of Rs.10,680/-only was disbursed to the respondent/accused in or about the month of October 1997 upon sanction of the loan by the managing committee of the applicant/credit society on 21.9.1997. According to him, as on 30.6.2005 the liability of the respondent/accused with interest was shown by the applicant/credit society to the tune of Rs.69,520/-. He then argued that there is a finding recorded by the trial Court that the respondent/accused in fact directly and indirectly paid an amount of Rs.40,800/and that is almost four times the amount of loan disbursed to him during the period of only eight years. He then argued that even then the credit society was claiming additional liability of Rs.69,520/-, meaning thereby that the total liability of Rs.10,680/-was sought to be shown to the tune of Rs.01,08,000/-. He invited my attention to the finding recorded by the trial Court that the loan advanced was agricultural loan. He, therefore, argued that the liability alleged by the applicant was not a legally enforceable liability and hence no interference is called for in the present application/appeal.

5. Heard learned Counsel for the rival parties at length and also gone through the impugned judgment. From perusal of the facts it appears that on 21.7.1997 the managing committee of the applicant/credit society sanctioned a loan of Rs.12,000/-to the respondent/accused. Witness no.1 for the applicant admitted that the loan advanced to the respondent/ accused was agricultural loan (Para 10 of judgment in Marathi). It would be appropriate to reproduce the finding in paragraph 11 of the judgment of the trial Court, which reads thus:

It appears from the evidence of witness Pramod Pohekar that accused was granted loan of Rs.12,000/-. He was given Rs.10,680/-. But as per Ex.36, interest was charged on the amount of Rs.12,000/-. He further deposed that on 10.6.2004 Rs.1000/-, on 16.12.2005 Rs.15,000/-and on 18.7.2006 Rs.20,000/-were deposited by the accused in his loan account. The receipts thereof are placed on record. They are at Exs. 37 and 38. He does not know anything about Rs.1200/-deducted from the amount of Rs.12,000/-. He agreed that Rs.1200/-at 10 can be Rs.4800/-and the accused has deposited Rs.36,000/-hence it can be Rs.40,800/-.

It, therefore, appears that the applicant/credit society had shown liability of Rs.69,520/-as on 30.6.2005, which means from October 1997 till 30.6.2005 the amount of Rs.10,680/-with interest swelled to Rs.69,520/-. In other words, this is more than six times of the original amount disbursed to the respondent/accused within a period of eight years.

6. In the above factual back ground, I propose to examine whether there was a legally enforceable liability or not. I need not reiterate that explanation to Section 138 of Negotiable Instruments Act clearly provides that such offence is made out if there is only legally enforceable liability. Admittedly, the applicant/appellant is a credit society doing banking business of advancing loan to its members and accepting deposits etc. It is further not in dispute that the applicant/appellant society is registered under the provisions of The Maharashtra Co-operative Societies Act, 1960 (for short Societies Act) as resource society vide item 8(a) in Rule 10 of the Maharashtra Cooperative Societies Rules, 1961 (for short the Societies Rules). Section 44-A of the Societies Act reads thus:

Limit on Interest in certain cases : Notwithstanding anything contained in any agreement or any law for the time being in force, a society (including a Co-operative Bank and a Co-operative Agriculture and Rural Multipurpose Development Bank) shall not for any loan (including rehabilitation loan but excluding long term loan for irrigation or agricultural development purposes or loan exceeding rupees three thousand for non agricultural or commercial purposes) given by it to any member including a member-society) for a period not exceeding 15 years, whether the loan was given before or is given after the commencement of the Maharashtra Cooperative Societies (Second Amendment) Act, 1985, recover, in any manner whatsoever, on account of interest, a sum greater than the amount of the principal of the loan}

Provided that, nothing in this section shall apply to a loan exceeding one lakh rupees given by a Co-operative Agriculture and Rural Multipurpose Development Bank to any member.

7. This provision of S.44-A is based on the rule of Damduppat. In [Hukumchand Gulabchand Jain Vs. Fulchand Lakhmichand Jain and Others](#), , in paragraphs 30, 31 & 32 the Apex Court held as under:

The rule of Damdupat applies to cases where a loan is advanced. This is clear from Colebrooke"s Digest on Hindu Law. Part I. Vol. 1 of the Digest deals with Contracts. Book I of this Part deals with Loans and Payment. Section I of Chapter I of Book I deals with Loans in General and describes what may or may not be loaned, by whom, to whom and in what form, with the rules for delivery and receipt. These matters are comprised under the title `loans delivered [rinadana)", which means the complete delivery of a loan or debt, by whom, where and to whom made. Chapter II deals with interest and states at the commencement of Section I:

Such interest, as may be taken without a breach of duty on the part of the creditor, is a rule (dharma) for delivery by the creditor. Or...for it is the nature of a loan, that it should produce to the lender the principal sum advanced, and interest in addition thereto.

The various Articles in this Section use the expressions `creditor", `lender", `loan", `principal", `lent", `borrowers" and thus make it amply clear that it deals with interest on

the amounts advanced by a creditor to a debtor. Section I deals with the rates of interest to be charged. Section II deals with Special Forms of Interest. Paragraph 53 thereof states:

Interest on money, received at once, not year by year, month by month, or day by day, as it ought, must never be more than enough to double the debt, that is, more than the amount of the principal paid at the same time.

This is what is known by the rule of Damdupat and has been rightly construed, as long ago as 1863, by the Bombay High Court in Dhondu Jagannath v. Narayan Ramchandra 1 Bom. HC 47, 49. Section III deals with interest specially Authorized and Specially Prohibited. Article II of this Section deals with Limits of Interest. Paragraph 59 thereof states:

The principal can only be doubled by length of time, after which interest ceases.

The limit of interest is different under other paragraphs for loans advanced in different circumstances. Paragraph 61 repeats what has been stated in paragraph 53 of Section II and adds a special rule to the effect:

On grain, on fruit, on wool or hair, on beasts of burden, lent to be paid in the same kind of equal value, it must not be more than enough to make the debt quintuple.

It is, therefore, clear, as stated earlier, that the rule of Damdupat applies in respect of interest due on amounts lent by a creditor to the borrower, the debtor.

Then in para 37 it held as under:

The principle of Damdupat was evolved both as an inducement to the debtor to pay the entire principal and interest thereon at one and the same time in order to save interest in excess of the principal and as a warning to the creditor to take effective steps for realising the debt from the borrower within reasonable time so that there be not such accumulation of interest as would be in excess of the principal amount due, as in that case he would have to forgo the excess amount. There may be justification for the principle of Damdupat applying in the case of an ordinary creditor and a debtor

Section 44A was inserted in the Statute Book by Act No. III of 1974 which came into force from 1.3.1975. The Statement of Objects and Reasons indicates that Section 44A was inserted with a view to prohibiting certain societies from charging interest exceeding the amount of loan, in accordance with the said well-known principle of 'dam duppat'.

8. Perusal of the above provision shows that the provisions of Section 44-A will apply in its application in inclusive manner to a co-operative society and includes a Co-operative bank. Definition of Co-operative Bank u/s 2(10) of the Societies Act reads thus:

Co-operative bank means a society which is doing the business of banking as defined in Clause (b) of Sub-section (1) of Section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as a Co-operative Agriculture and Rural Multipurpose Development Bank under Chapter XI.

A Co-operative Society thus doing the business of banking as defined in Clause (b) of Section 5 of The Banking Regulation Act, 1949, is covered by this definition. It is clarified at this stage that the previous name of the Banking Companies Act, 1949 was changed as Banking Regulation Act 1949 by the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), Section 11 with effect from 1.3.1966. It further appears that in Section 2(10) of the Societies Act despite the above amendment the mention of "Banking Companies Act, 1949" continues, which is wrong.

9. Section 5(b) of the Banking Regulation Act, 1949 reads thus : "banking means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;"

In the light of the above provision, I have absolutely no doubt that the applicant/credit society falls within the ambit of Section 44-A of the Societies Act. Consequently, Section 44-A has full application against the applicant/ appellant.

10. In the instant case, the loan was admittedly below Rs. One lac. From the admitted finding of facts recorded in para 11 of the impugned judgment, it appears that the respondent/accused had paid Rs.40,800/-on the principal loan amount of Rs.10,680/-covering the period from October 1997 till July 2006, which, in my opinion, is clear cut violation of the provision of Section 44A of the Societies Act. Thus, having taken an amount of Rs.10,680/-by way of loan in October 1997, the respondent/accused had paid Rs.40,800/-by July 2006, i.e. within a period of 8 1/2 years, i.e. almost four times of the principal amount disbursed to him. In my opinion, the applicant/appellant has clearly acted in contravention of the provisions of Section 44-A and, therefore, there was no legally enforceable liability against the accused at the instance of the applicant/appellant.

11. At this stage, I do express shock that the applicant/appellant-credit society, which is a co-operative society, had given loan for agricultural purpose to the respondent/accused and had already recovered four times of the principal amount during the period of about 8 1/2 years and still was after the respondent/accused for recovering the amount of Rs.01,08,000/-.

12. Agriculture is the mainstay of rural economy and empowerment of agriculturists. A balanced view of the development in the national economy requires to be taken into consideration to protect the interests of the farmers and to shield them from the exploitation by money-lenders, bankers and even the co-operative societies doing banking business with the farmers. The co-operative movement in the State of Maharashtra, which always has been described as a progressive State, was formed for

helping the farmers in distress. The movement was never advanced for sucking the blood of the farmers. This is a case where I find that the applicant-society has behaved with the respondent in a most cruel manner by recovering the amount almost four times the principal amount. The Co-operative Societies themselves appear to have forgotten their obligation to help farmers of the Vidarbha region where there has been a spate of suicides. This Court is unable to shut its eyes to such happenings in the co-operative movement. The applicant/appellant has thus clearly violated the provisions of Section 44-A of the Societies Act and in the light of the above discussion there was no legally enforceable liability against the respondent/accused, as required by the provisions of Section 138 of the Negotiable Instruments Act, as amended.

13. In the result, I hold that the trial Court was justified in dismissing the complaint filed by the applicant/credit society under Negotiable Instruments Act. In view of the finding record by me above, I find that sheer harassment has been meted out to the respondent/accused, and unjustifiably four times of the principal amount has been recovered from a farmer. I do not say anything further but leave it open to the respondent to adopt such available legal remedy to recover back excess amount recovered from him. It appears that Section 44A of the Societies Act is followed by Co-operative Societies doing banking business more in breach thereof. The State of Maharashtra ought to implement the said provision in its letter and spirit. The package announced by the Hon"ble Prime Minister of the country for the Vidarbha farmers is a welcome step but the menace created by Co-operative Societies, as in the instant case, ought to be checked by the Government.

14. The present criminal application as well as the appeal preferred against the impugned judgment of acquittal are dismissed.

Registrar (J) to forward the copy of this judgment to the Chief Secretary, Government of Maharashtra, Mumbai, forthwith for information and necessary action.