

(2002) 11 CAL CK 0003

Calcutta High Court

Case No: Writ Petition No. 10177 (W) of 2002

Kalpana Banerjee

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 27, 2002**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (2002) 2 ILR (Cal) 567**Hon'ble Judges:** Amitava Lala, J**Bench:** Single Bench

Advocate: Bikash Ranjan Bhattacharjee and Prasanta Kr. Mukherjee, for the Appellant; Krishnendu Banerjee, A. Bhowmick and Priyabrata Thakur for Respondent No. 4, K.D. Mukherjee, Dhiman Dr. Sengupta, Jaya Dutta for Respondent No. 3, Keshab Bhattacharjee and Goutam Mukherjee for Registrar Co-operative Societies, for the Respondent

Judgement

Amitava Lala, J.

The Petitioners are the joint members of a Co-operative Society. In this writ petition the Petitioners challenged the order of the respective Cooperative Tribunal in dismissing the two appeals being appeal No. 78 of 1999 and appeal No. 54 of 2001 consequent to the original order passed in the award case. Although the dispute is commercial in nature but the point for judicial review by the writ Court is whether the imposition of penal interest either by the Arbitrator or by the Co-operative Tribunal is without jurisdiction or not in view of the judgment [Central Bank of India Vs. Ravindra and Others](#). In such judgment the Supreme Court observed" that private money lending business has almost come to an end. The needy borrowers are depending upon the banking institutions for financial facilities. Several unhealthy practices having slowly penetrated into prevalence were pointed out. Banking is an organized institution and most of the banks press into service long running documents wherein the borrowers fill in the blanks at a times without caring to read what has been provided* therein, and bind themselves by the

stipulations articulated by best of legal brains. Borrowers other than those belonging to corporate sector, find themselves having unwittingly: fallen into a trap and rendered themselves liable and obliged to pay interest, the quantum whereof may at the end prove to be ruinous. At times the interest charged and capitalized in manifold then the amount actually advanced. Rule of demodulate does not apply. Penal interest, service charges and other- over-heads are debited in the account of the borrower may not even aware. If the practice of charging interest on quarterly rests is upheld and given a judicial recognition, unscrupulous banks may- resort to charging interest even on the monthly rests and capitalising the same Statements of accounts supplied by banks to borrowers may at time do not contain particulars of details of debit entries and when written in and are worse then the medical prescriptions putting to rest the eyes and wits of the borrowers. Instance of unscrupulous, unfair and unhealthy dealings can be multiplied though they cannot be generalized. Suffice it. To observe that such issue shall have to be left upon to be adjudicated upon in appropriate cases, as and when actually arising for decision. The Supreme Court held that though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid partakes the character of the amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitalised. Further interest, i.e. interest on interest whether simple, compound or penal cannot be claimed on the amount of penal interest. Penal interest cannot be capitalised. It will be opposed to public policy.

2. By placing this judgment, Mr. Bikash Ranjan Bhattacharjee, learned Senior Counsel, appearing for the Petitioners contended that in view of such judgment writ Court can interfere with the matter because the Petitioners challenged the decision making process for judicial review but not the decision.

3. In answer to question whether the Petitioners supposed to pay-penal interest on agreed rate of interest as per bye-laws of the respective Co-operative Society he cited a judgment [Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others](#), and relying upon para 10 therein contended that the bye-laws of the Cooperative Society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. The principle of Rule making power of the Government under any Statute does not apply to bye-laws of the nature that a Co-operative Society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business and administration of a society. They are of the nature of the articles of association of a company incorporated under the Companies Act. They may be binding between the persons attended by them but they do not have the force of the Statute.

4. In reply, to such argument, Mr. K.D. Mukherjee, learned Senior Counsel appearing on behalf of the respective Co-operative Society confessed before this Court that the

Society did-not charge any penal interest but the parent body i.e. Federation of the Societies charged it. The Federation of a Housing Society is making a claim over the Co-operative Societies on account of their members. Therefore, the Co-operative Societies have nothing to do but to claim it.

5. However, in distinguishing the judgment Central Bank of India v. Ravindra and Ors. (Supra) he stated that the ratio of the judgment is applicable only to the extent that penal interest cannot be capitalised. But it cannot be said that penal interest cannot be charged at all.

6. So far as the invocation of the jurisdiction of the writ Court is concerned he contended by citing a judgment of [Khanna Improvement Trust Vs. Land Acquisition Tribunal and Others](#), that the jurisdiction of the High Court under Article 226 of the Constitution of India must be confined to correct any error of jurisdiction committed by the Tribunal but it cannot be assumed suo motu. a jurisdiction of the Appellate Court and correct every mistake assumed to have been committed by the Tribunal.

7. However, there is no conflict of opinion in respect of the last part of the argument made by Mr. Mukherjee that writ Court can interfere with the decision making process but not the decision.

8. So far as the submission of the learned Counsel appearing for the parent body is concerned I find that only submission is made that the penal interest can be separated from the original claim added with interest.

9. According to me, whether the writ Court has power to entertain this writ petition or not is depending upon the factual aspect of the matter. This question gives rise to the issue whether the same is in respect of" decision making process or a decision.

10. Section 135 of the West Bengal Co-operative Societies Act, 1983 gives power of formation of Cooperative Tribunal to Hear out the appeal u/s 136 of the Act. Section 134 of the Act says no suit, prosecution or other legal proceedings shall lie against the Registrar or any other person etc. No Civil Court or Review Court has safety jurisdiction to entertain the matters in respect of the Co-operative Societies unless it is provided therein. All the sections are provided in ch. XV of the Act. Therefore, the order of the Cooperative Tribunal in hearing the appeal can only be amenable under the writ jurisdiction of this Court having power of superintendence over the inferior Courts, Tribunal and/or authorities. But is correct to say that by way of correcting any error of jurisdiction committed by the Tribunal, the writ Court should not interfere and behave like a second appellate Court or Tribunal.

11. Coming back to the situation I find that from the notice the following "claims made by the Co-operative Society from the Petitioners upon giving the detail of the statement. Particulars of the statement is given hereunder:

STATEMENT

Dues as on	28.02.2002
Rs.	
Principal	12,870.80
Loan	19,026.82
Penal interest on	3,260,837.03
Maintenance & other charges along with Penal Interest	8,979.34
Insurance Premium	16,200.91
TOTAL	7,78,039.34
	2,30,183.17

Less: Payments received and adjustments made as given below 1.87.083v77
4,90,955.57 Balance of Dues as on 01.03.2002

DETAILS OF ADJUSTMENTS MADE:	
1. Payment received on 30.10.2002	55,000.00
2. Payment received on 24.01.2002	50,000.00
3. Payment received on 31.01.2002	50,000.00
Adjustment made by the Society	32,083.77
	1,87,083.77

12. Therefore, from the notice it is crystal clear that unless and until the penal interest and the service charges in the name of maintenance etc. are adjusted or capitalized with the principal such amount "cannot arise out of principal sum as given thereunder. The judgment has been delivered by the Tribunal as on January 24, 2002 when the cited judgment in respect of penal interest Central Bank of India v. Ravindra and Ors. was available. Therefore, either such judgment was not placed before the Tribunal or the Tribunal ignored even after having such judgment. From the ratio of the judgment I find that the Apex Society is entitled to ask interest from the Society and the later is entitled to realize the penal interest from the defaulting members. In making payment of loan they are liable to pay outstanding interest including-penal interest. The contractual rate of interest provided in the bye-laws 82 is binding upon the Appellants and the provisions of bye-laws are binding upon the Society as weir as the members. The Tribunal has no reason to reduce the rate of contractual interest. In some other place of such judgment it is observed that when the parties have agreed to abide by the bye-laws the Appellants cannot approbate or reprobate at the, same time saying that contractual rate of interest is unconscionable. Therefore, it is correct to say that although such judgment was not placed but he ratio of such judgment was argued before the Tribunal, when the Tribunal fails to appreciate the position. Therefore, from the ratio of both the judgments Central Bank of India v. Ravindra and Ors. (Supra) read with Co-operative

Central Bank Limited and Ors. etc, v. Additional Industrial Tribunal, Andhra Pradesh Hyderabad and Ors. etc. (Supra) it will be seen that even neither upon the agreement for paying any interest on interest or penal interest the parties are bound by the same on the basis of the ratio of the Supreme Court judgment Central Bank of India v. Ravindra and Ors. (Supra) because the bye-laws of the Co-operative Society has no legal force in view of Co-operative Central Bank Limited and Ors. etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and Ors. etc. (Supra). This shuttling of the legal proposition had been missed by the Tribunal in coming to conclusion. Therefore, order of the Tribunal in coming to conclusion cannot be sustained. Since the major part of the claim is in respect of the penal interest, and in respect of maintenance charges etc. I do not also think that partially their claim will be allowed to be paid without due consideration of the case afresh by the tribunal in the light of the judgment and order passed by this Court.

13. Therefore, the order of the tribunal stands aside. Consequently, the original order under appeal can not be given effect without due consideration of the matter by the Tribunal afresh in the light of the judgment and order passed by this Court, it is the sincere desire of the Court that the hearing of the appeal will be expedited and completed. The Tribunal is hereby requested to complete the hearing and pass the reasoned order within a period of one month from the communication of this order.

14. Thus, the writ petition stands disposed of. However, no order is passed as to costs.

15. Let an urgent Xeroxed certified copy of this judgment, if applied for, be given to the Learned advocates for the parties within two weeks from the date of putting the requisites.