
Kalpana Banerjee Vs State of West Bengal

Writ Petition No. 10177 (W) of 2002

Court: Calcutta High Court

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 & credit 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 Dues as on

30.06.1995 28.02.2002

Rs. P. Rs, p.

1. Principal Loan 22,711.80 46,870.82

2. Interest 39,059.42 45,826.33

3. Penal Interest on (1 & 2) 79,002.37 1,26,387.03

4. Group Insurance Premium 3,919.34 6,974.31

5. Penal Interest on (4) 4,229.99 16,760.91

6. Maintenance & other Charges

along with Penal Interest 81,262.25 4,35,319.94

TOTAL = = 2,30,185.17 7,78,039.34

Less: Payments received and adjustments made as given below 1,87,083.77 4,90,955.57 Balance of Dues as on 01.03.2002

DETAILS OF

ADJUSTMENTS MADE:

i. Payment received on 55,000.00

30.10.2002

ii. Payment received on 50,000.00

24.01.2002

iii. Payment received on 50,000.00

31.01.2002

iv. Adjustment made by the 32,083.77

Society 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 well 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 the 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.