

**(1975) 02 CAL CK 0018****Calcutta High Court****Case No:** None

Treasury Building Co-op. Society

APPELLANT

Vs

Sukumar Ganguly and Others

RESPONDENT

**Date of Decision:** Feb. 14, 1975**Acts Referred:**

- Limitation Act, 1963 - Section 10, 11, 12, 13, 14

**Citation:** 79 CWN 573**Hon'ble Judges:** M.N. Roy, J**Bench:** Single Bench**Advocate:** Tapan Kumar Sengupta, for the Appellant; Krishna Dulal Mukherjee for the Opposite Party No. 1, for the Respondent**Final Decision:** Allowed

### **Judgement**

M.N. Roy, J.

This Rule is directed against an order made in Appeal Case No. 10/Cal. Of 1972-73 by the learned Assistant Registrar, Co-operative Societies, Calcutta whereby he has dismissed the appeal and has affirmed an order made on 24th August, 1972 in Dispute Case No. 510/Cal. Of 1971-72 u/s 86 of the Bengal Co-operative Societies Act, 1940.

2. The petitioner, Treasury Buildings Co-operative Society Limited was established in 1920 and the same is registered under the Bengal Co-operative Societies Act, 1940. From the Bye laws of the petitioner Society, it appears that the same has been established with the object of (a) primarily to create funds to be lent out or invested for its members; (b) to provide facilities for the exercise of thrift and savings; (c) generally to encourage self-help and mutual aid amongst members; (d) to render such relief to distressed members or to the destitute families of deceased members as may be possible out of funds earmarked for the purpose in accordance with the Bye-laws.

3. In furtherance of the above objective, it has been provided further in the Bye-laws that the Petitioner Society shall be at liberty (a) to receive money by way of loans, deposits or otherwise from members, non-members or any other source and to secure the repayment thereof either by mortgaging, assigning or pledging the properties of the Society or otherwise; (b) to establish "Provident Fund" for the members and to make suitable contributions to such fund out of the profits; (c) to purchase, take on lease or exchange or otherwise acquire lands; buildings, or any movable or immovable property necessary for the business of the society; and (d) generally to do all such other things as are incidental or conducive to the attainment of its objects.

4. Bye laws 6 of the Petitioner Society provided that membership of the Society will be open to individuals above the age of 18 years, of good character and in the permanent employ of the office of the Accountant General, West Bengal and as provided in notes 1&2 below the said Bye-laws 6. It has also been provided that the following persons shall be the members of the Society viz:-

- (a) persons duly qualified who have joined before the adoption of the Bye-laws; or
- (b) persons who may hereafter be elected according to the Bye-law.

It has further been provided in the said Bye-laws 6 that persons so admitted to membership shall;

- (a) pay the admission fee of Re. 1/-,
- (b) hold at least one share.

(c) Sign his name in a register containing a list of names, descriptions and addresses of the members of the Society and such address shall for all purposes be deemed to be his residence.

It has been provided in sub-clause 4 of the said Bye-laws 6 that no person who is already a member of any other Co-operative Society shall be admitted to membership without previously obtaining the consent of the Society of which he is a member and the approval of the Registrar.

5. Bye-laws 10 of the said Bye-laws of the Petitioner Society provides that a member, if he is not in debt to the Society or is not in debt to the Society or is not a surety for any debt to the Society, may withdraw from the Society after giving in writing one month's notice to the Secretary. The procedure for removal of a member has been mentioned in Bye-law 11 which provide that a member who cease to be qualified to be a member may be removed by the Managing Committee and conditions for cessation of membership have been mentioned in Bye-laws 13 which provides that a member shall cease to be a member, if he :-

- (a) transfers all the shares held by him,

(b) loses the qualification for membership, but the membership will not cease on retirement unless the person concerned withdraws his membership, though loans to such members will not be granted.

(c) Resigns his memberships;

(d) Is expelled;

(e) Dies;

(f) Has been adjudged by the competent court to be insolvent or of unsound mind; and

(g) Has been punished for imprisonment for an offence involving moral turpitude.

The said Bye laws, more particularly Bye-law 15 lay down that the liability of the members for the debts of the Society shall be limited to nominal value of the shares held by them.

6. It appears that on diverse dates from 5th March 1963 to 30th November, 1963 the opposite party No. 1 borrowed from the petitioner Society a total sum of Rs. 4020/- on account of several items of loan carrying on interest of 5% and further agreeing to repay the amount involved with interest as scheduled, in monthly installments. He also executed necessary bonds for each loan in favour of the Society and he further undertook to pay additional interest @ 5% in default of each or any installment of loan. The opposite party Nos. 2, 3 and 4 stood sureties of the opposite party No. 1 in respect of the amount of loan of Rs. 3,600/- taken by him on 5th March, 1963 and they also executed bond in favour of the Society, thereby binding themselves to reimburse the dues in case of the failure of the opposite party No. 1 to repay the loan either in full or any part thereof. It has been alleged that even in spite of due demand for payment, the opposite party No. 1 took no steps and as such on or about 24th November, 1971 the Petitioner Society instituted a proceedings u/s 86 of the Bengal Co-operative Societies, Calcutta against the opposite party No. 1 for the recovery of a sum of Rs. 3,169.50 due on account of loans taken by him from the Society and alleging further that as the opposite parties Nos. 2 to 4 stood sureties for the loans, so they were also made parties in the said proceedings which was registered as Dispute Case No. 510/Cal. of 1971-72. The dispute, it appears was referred for determination in terms of Section 87(1)(c) of the Act and on due service of summons, the opposite party No. 1 herein entered appearance and in this written statement dated 7th June, 1972, he apart from denying the material allegations, contended inter alia amongst others that the proceedings in question, in view of the provisions of section 46 of the Act and section 2(1) and 3 of the Limitation Act, 1963, was barred by limitation. It has also been contended by him that his membership having ceased with effect from 2nd September, 1967 on termination of this services from that date, he became disqualified to continue as a member of the Society in terms of its bye laws. At the

time of hearing of the proceedings before the Arbitrator in terms of the provisions of the Act, the Petitioner Society contended that the debts were not barred by limitation as alleged because those provisions would not apply till a member ceases to be a member in terms of Bye-laws 13(a) and he would continue to be a member of the Society till he alienates his share. It was also contended that under Bye-laws 20(1), the member concerned will not be eligible to alienate shares while he is indebted to the Society as principal borrower or surety. It was further contended by the Petitioner was further contended by the Petitioner Society that the debt in the instant case was not barred by time and the same was recoverable by them. They further contended that membership will not cease on retirement even, unless the person concerned withdraws his membership and in terms of the relevant Bye-laws, retirement would also include removal.

7. By the judgment and order dated 24th August, 1972, the "Arbitrator so appointed held inter alia amongst others that under Bye-laws 13(b), the opposite Party No. 1 ceased to be a member with effect from 3rd September, 1967 and as such the proceedings was barred by limitation. Against such determination an appeal being Appeal Case No. 10/Cal. of 1972-73 was taken before the Assistant Registrar of Co-operative Societies, Calcutta and in the said appeal apart from renewing the arguments as mentioned hereinbefore it was also contended that the opposite party No. 1 was still a member of the Petitioner Society and in view of his letter dated 26th November, 1970, wherein he has admitted the liability and also made payments of Rs.200/- on account of the same by cheque, the claim was not certainly barred by limitation. It was further contended that the fact that the opposite party No. 1 claimed dividends from the Petitioner Society long after the termination of his service clearly proved that he claimed to be continuing as a member of the same. It was also contended that the above aspect and the conduct of the opposite party No. 1, which operates as estoppel against his contentions were not duly considered by the Arbitrator concerned and he should have after construing Bye-laws 10 and 11 properly, held that even after his termination, the opposite party No. 1's membership would not terminate automatically. It was again contended in the appeal that several letters, by which the opposite party No. 1 had accepted his liabilities were not taken into consideration by the Arbitrator concerned and he was wrong in not holding that limitation, if at all, would start on and from the last date of such acknowledgment. The Assistant Registrar concerned, however, on consideration of the arguments as noted hereinbefore by his judgment and order dated 7th January, 1974 dismissed the appeal and against such order of dismissal the Petitioner Society on 3rd April, 1974 moved and obtained this Rule.

8. While dismissing the said appeal, the Assistant Registrar held that consequent to the termination of his services the opposite party ceased to be a member of the petitioner Society and as such it was the duty and obligation of the Managing Committee of the said Society to strike off his name from the register of members. It was also found that the terms "retirement" and "dismissal" are two different

concepts with altogether different concepts with altogether different connotation and the term "retirement" in Bye-laws 13(b) will not include "dismissal". It was also held that the provisions of Limitation Act would apply to suits or proceedings coming within the purview of the Bengal Co-operative Societies Act, 1940 only to the extent where they are not specifically barred by the Act. It has also been found that section 46 of the Act specifically requires limitation being computed only from the date on which a member dies or ceases to be a member and not otherwise. The said Assistant Registrar has also found that the acknowledgement and payment has no effect or application u/s 46 of the Act for the purpose of computation of the period of limitation.

9. At the time of the hearing of the Rule, Mr. Sengupta, the learned Advocate appearing for the petitioner contended that by reason of sub-section (2) of section 29 of the Limitation Act, 1963, the period of limitation prescribed by the Co-operative Societies Act should have been deemed by the Assistant Registrar concerned to be the period of limitation prescribed by the Limitation Act and he should have held that the provisions of sections 4 to 24 of the Limitation Act would apply in the instant case. He, further, submitted that the Assistant Registrar concerned has acted illegally and with material irregularity in not holding that the provisions of sections 18, 19 and 20 of the Limitation Act would apply in the instant case. Mr. Sengupta also contended that in making the impugned determination, the Assistant Registrar concerned misconstrued the provisions of section 46 of the West Bengal Co-operative Societies Act and he further erred in law in not holding that in view of the acknowledgement of liability in writing by the opposite party No. 1 as appeared from the records in Annexure B to the petitioner and more particularly in view of the payment by cheque made by him even after 3 years from the date of removal from service, the proceedings as initiated was not barred by time and further more on consideration of such acknowledgment, he should have also found that a fresh period of limitation would run from such acknowledgment. In addition to above, Mr. Sengupta also contended that the Assistant Registrar concerned should have held that section 46 of the West Bengal Co-operative Societies Act enlarges the time of limitation even beyond 3 years from the default and to be specific until a member dies or because to be member or he closes transactions with the Society. Mr. Sengupta further contended that since there has been no specific provision of limitation in the West Bengal Co-operative Societies Act, in case of acknowledgment in writing and payment of dues by cheque, the Assistant Registrar concerned should have held that a fresh period of limitation would run from such date as provided for in the Limitation Act and more particularly in the absence of such provision, the provisions of general law would apply. These apart, Mr. Sengupta also contended also that on a proper construction of Bye Laws 13(b), the Assistant Registrar concerned should have held that there was no cessation of membership of the opposite party No. 1 and he continued to be a member of the petitioner Society in accordance with the mode as prescribed under the said

Bye-law.

10. Mr. Mukherjee appearing for the opposite party No. 1 relied on Bye laws 10, 11 and 13 and contended that those are the three prescribed modes by which the membership of a member of the Society in question could only be terminated, after getting himself enrolled under Bye-laws 6(1). He also submitted that the word "retirement" would not include "dismissal" and as such in the facts and circumstances of the case, the authorities below were justified in holding that there was cessation of membership of the opposite party No. 1 from the Petitioner Society with effect from 3rd September, 1967. Mr. Mukherjee also contended that the arguments as advanced by the learned Advocate for the petitioner on section 29 of the Limitation Act, 1963 and the application of the period of limitation as prescribed thereunder would be of no avail in the instant case inasmuch as the West Bengal Co-operative Societies Act, 1973 came into effect after the Limitation Act of 1963 and makes specific provisions for limitation in specified cases in section 46 of the act, which provides:

Notwithstanding any of the provisions of the Limitation Act, 1963, the period of limitation for the institution of a suit to recover any sum, including interest thereto, due to a Co-operative Society by a member thereof or any other person having transactions with the Society, shall be computed from the date on which such member of the person concerned, dies, or ceases to be a member of, or as the case may be, closes transaction with the Society, shall be computed from the date on which such member of, or as the case may be, closes transaction with, the Society.

He thus submitted that since the said section 46 only makes special provisions regarding limitation, therefore, there was an exclusion of the application of the Limitation Act. He further contended that since sections 18 and 19 of the Limitation Act speak of computation and section 46 mentions nay period of computation, so the determination which was made in the instant case was proper and the contentions as sought to be raised by the petitioner were of no avail.

11. For the purpose of establishing his arguments on the question of limitation and more particularly on the application of the general provisions of the Limitation Act for the purpose of computing the period of limitation from the date of acknowledgment, Mr. Sengupta first relied on the case of *Nandalal Tarafdar v. Chatra Co-operative Limited*, reported in (1949) ILR 2 Cal 152. In that case a decree was passed on the basis of an award made under the provision of the Co-operative Societies Act in favour of the Society on 4th April, 1937. The decree holder society took out execution of the decree, sometime in the year 1938, and some portion of the decretal dues was realised. The execution Case was disposed of on 12th April, 1939 and thereafter a subsequent Execution Case was started on 23rd January, 1947. Thus on the face of the record it appeared that such subsequent Execution Case was commenced more than 3 years after the disposal of the previous one and consequently the same was to be held to be time barred unless the decree holder

succeeded in establishing that limitation was saved under any other provision of the law of limitation. For the purpose of saving limitation, the decree holder relied on two payments made on 7th March, 1942 and 3rd February, 1945 respectively by the judgment debtor towards the decretal dues. As application for execution was made within 3 years from the date of the last payment, it was argued that the execution proceeding was not barred by limitation and it was held that post decreetal payment by judgment debtor, if uncertified by the executing Court, cannot be recognized. But in the absence of a period of limitation, or the necessity of an application for certification of these payments, which can be done or the decree holder mentioning them in execution petition, such payments, if made with 3 years before the application for execution and at the time when the decree was still alive, would be sufficient to save the limitation u/s 20 of the Indian Limitation Act, 1908. It was further observed that such payments; however, must be proved to have been made by expressly authorised agent of the judgment debtor and there is no scope for any presumption as a matter of law in that respect. Mr. Sengupta further relied on the case of [Jiwanlal Achariya Vs. Rameshwarlal Agarwalla,](#). In that case the suit was filed for the recovery of money on the basis of a promissory note for Rs. 10,000/- executed on 4th February, 1954 by the defendant appellant in favour of plaintiff respondent. It was stipulated that interest @12% per annum was to run on the promissory note and the same was payable on demand or to the order of the plaintiff respondent. The suit was filed on 22nd February, 1957 and obviously the same was out of time. The plaintiff respondent for the purpose of establishing that the suit was not barred by time relied on a payment by cheque on 25th February, 1954 and majority view was that where the payment is by cheque and is conditional, the mere delivery of the cheque on the particular date does not mean that the payment was made on that date unless the cheque was accepted as un-conditional payment, it can only be treated as a conditional payment. In such a case the payment for the purpose of section 20, Limitation Act, 1908 would be on the date on which the cheque would be actually payable at the earliest, assuming that it will be honoured. The fact that a cheque is presented later than the date it bears and then paid is immaterial for it is the earliest date on which the payment could be made that would be the date where the conditional acceptance of a post-dated cheque becomes actual payment when honoured. Where a post-dated cheque is accepted conditionally and it is honoured, the payment for the purposes of section 20 of the Limitation Act can only be on the date which the cheque bears and cannot be on the date the cheque is handed over, for the cheque, being post-dated, can never be paid till the date on the cheque arrives. The case of [Shri Sunit Pramanik Vs. Santipur Industries Co-operative Society Ltd. and Another,](#) was cited at the Bar and placing reliance on the same. Mr. Sengupta further wanted to strengthen the arguments advanced by him on the question of applicability of the provisions of the Limitation Act. In that case the Arbitrator appointed under the provisions of Bengal Co-operative Societies Act, 1940 gave his judgment and award on 3rd January, 1971 and it was alleged by the petitioner that the gist of the award which was issued on

10th April, 1971, was received by him on 16th April, 1971. It was further alleged that thereafter on 23rd April, 1971 he applied to the Assistant Registrar of Co-operative Societies, Nadia for the certified copy of the judgment and award and the said Assistant Registrar by letter dated 24th August, 1974 requisitioned stamps for the supply of the certified copy of the judgment and award. It was stated that compliance to the said requisition was made on 25th August, 1971 and thereafter the petitioner received the certified copy on 11th September, 1971. Then on 26th September, 1971 he sent the Memorandum of Appeal to the Assistant Registrar concerned and his Office being closed on account of intervening Puja vacation the same was received by the Assistant Registrar on 5th October, 1971. In that case the point arose as to whether the petitioner could get the credit for time taken for obtaining certified copy in terms of section 29(2) of the Limitation Act and it was observed that sub-section (2) of section 134 of the Co-operative Societies Act provides that only the appeal specified in 4th schedule to the Act would lie and no other appeal would be against any order, decision or award. In the 4th schedule, it is provided that the different kinds of orders are appealable orders. What sub-section (2) of section 134 says is that apart from these 11 types of orders, no other order is appealable. This sub-section has nothing to do with the period of limitation prescribed in the 4th schedule. By reason of sub-section (2) of section 24 of the Limitation Act, 1963, the period of limitation prescribed by the Co-operative Societies Act shall be deemed to be the period of limitation prescribed by the Limitation Act and the provisions of sections 4 to 24 of the same would apply to the said period. In such circumstances it was further held that the time taken in obtaining the certified copy of the award and the period during which the Office of the Appellate Authority was closed for computing the period of limitation for appeal.

12. Thus the whole question for consideration in the instant case would be whether the membership of the opposite party No. 1 had ceased so far as the petitioner Society is concerned and if so, when furthermore what would be the ultimate effect of the admitted position regarding acknowledgments by him through his letters dated 12th March, 1970 and 4th August, 1970 and so also the part payment of Rs. 200/- made by him on 26th November, 1970 read with his demand for dividend, even after 3 years of termination of his service, for the purpose of maintaining the proceedings, on application of the principles of the Limitation Act. That is in addition to the question whether the provisions of Limitation Act are applicable.

13. The provisions of Bengal Co-operative Societies Act, 1940 and more particularly sections 46 and 134 of the same (provisions being the same viz., Sections 46 and 130 of the West Bengal Co-operative Societies Act, 1973), are the only provisions which lay down some specified period for the operation of the period of limitation. Section 46 of the Act makes it clear that notwithstanding any of the provisions of the Indian Limitation Act, the period of limitation for the institution of a suit to recover any sum including interest thereto, due to the Co-operative Society by a member thereof shall be computed from the date on which such member dies or ceases to

be a member of the Society. Thus the said section on the face of it means that notwithstanding the provisions of the Indian Limitation Act the period of limitation in respect of the recovery of the demand or dues of the Co-operative Society from a member will have to be computed from the date on which either the member dies or ceases to be a member of the Society. The first limb of the said section viz., the death of the member is not required to be considered in the present case, as cessation of membership as alleged was not due to the death of the Opposite Party No. 1. So we have to consider later, whether there was cessation of membership of the opposite party No. 1 from the petitioner Society and if so, on what date. Section 134 read with the schedule thereunder makes specific provisions regarding the time limit for preferring appeals in specified cases and to specified authorities. The said section in the facts and circumstances of the present case is not required to be considered. It is an admitted position that apart from the sections as mentioned hereinbefore, there is no other provision which prescribes any period of limitation and the Statute has not also expressly or by implication ousted the operation of the Indian Limitation Act. In that view of the matter, I am of the view that the provisions of section 29 (2) of the Limitation Act, 1963 have application in the instant case and as such the provisions contained in sections 4 to 24 will have application for the purpose of computing the period of limitation in maintaining a suit under the Co-operative Society Act. Thus for the purpose of computing the period of limitation, acknowledgement in any form will have to be taken into consideration before instituting proceedings under the Co-operative Societies Act. So applying the above tests, the suit and/or the proceedings was not barred by time, as the same was brought within the stipulated period of time of limitation after acknowledgment by the opposite party No. 1.

14. The next point for consideration would be whether on merits the suit was maintainable and because of the termination of his service whether there was in fact a cessation of the membership of the opposite party No. 1 from the petitioner Society. Cessation of membership under Bye laws of the petitioner Society may be for Three reasons and more particularly under Bye laws 10, 11 and 13 which deal with withdrawal from membership, removal of a member and cessation of membership for reasons mentioned in Bye laws 13. A member, in terms of Bye laws 10 may withdraw from the Society after giving in writing one month's notice to the Secretary. That Rule will, however, be applicable if such member is not in debt to the Society or is not a surety for any debt due to the Society. The said Rule in the facts of the present case has admittedly no application. Under Bye laws 11 of the Society, a member may be removed if he ceases to be qualified to be a member and such removal must be by the Managing committee. Thus the said Bye laws makes it clear that a member may cease to have his membership with the Society, if he loses the qualifications to be a member and such removal must be by the Managing Committee. The qualifications to be a member of the petitioner Society or to have its membership continued is prescribed in Bye laws 6 and 20(1) and in either of the said

Bye laws it has not been mentioned as to what would be the fate of a member of the petitioner Society on termination of his services. In terms of Bye laws 13 membership of the petitioner Society shall cease if a member (a) transfers all the shares held by him; (b) loses the qualification for membership, but membership will not cease on retirement unless the person concerned withdraws his membership, though loans to such members will not be granted; (c) resigns his membership; (d) is expelled; (e) dies; (f) has been adjudged by a competent Court to be insolvent or of unsound mind; and (g) has been punished with imprisonment for an offence involving moral turpitude. This it appears that termination of services has not been included as a clause for depriving the member from membership of the petitioner Society. Construing the clauses and more particularly Bye laws of the Petitioner Society it is clear that apart from the specific terms, which excludes termination of service, a person can continue to be a member of the petitioner Society so long the Managing Committee does not (?) take any step to terminate his membership. There is of course exception in the cases of death, retirement of the member concerned or transfer of the shares held by him whereby he severs all relationship with the Society and in any event in terms of Bye Laws 20 a member cannot alienate his share in any way, which is incidentally a ground for cessation of membership by a member so long he is indebted to the Society as principal or surety. Thus on the admitted facts of the case as the opposite party No. 1 was indebted to the society to the tune of the sum of money he had borrowed he could not of his own had his membership terminated. Thus his membership not having ceased under the provisions of Bye Laws 10, 11 and 13 by the Managing Committee or by himself under Bye Laws 20, the opposite party No. 1 should be deemed to be continuing as a member of the petitioner Society. The provisions of Bye laws 13(b) will also be of relevant consideration. The said provisions lay down that a person will continue his membership so long he will not lose the qualifications of membership and membership will not cease on retirement and will continue unless the member concerned withdraws his membership. Thus such member will be entitled to, if he so likes, to continue his membership even after retirement with the exception that no loan to him will be granted. So when a member is entitled to continue as a member of the Society even after his retirement with the reservation as mentioned in Bye laws 13(b) and subject to the provisions in Bye Laws 20 there will also be no bar for him to continue as a member of the Society in the absence of any specific provisions or until his name is removed from the membership, either by the Managing Committee or by the operation of the Bye laws. if the construction as has been sought to be put forward by Mr. Mukherjee viz., on termination of the services there was an automatic cessation of relationship between the opposite party No. 1 and the petitioner Society is accepted, then the entire procedure and purpose for the recovery of sums due from a member would be frustrated and that certainly cannot be the intention or should be the construction put to the Bye laws when read and considered together as in that event the amounts duly and admittedly taken or borrowed by a member of the Society would not be recovered in case of premature

termination of the services of a member or if the services of a is dispensed with for reasons other than those mentioned in Bye laws 10, 11 and 13. On termination of services there will be no automatic cessation of membership of the petitioner Society and such cessation can take place only in the manner as stated hereinbefore.

15. In view of the above, this Rule should succeed and the same is thus made absolute. The determination as made by the authorities below are set aside. There will, however, be no order for costs.

16. Let the records be sent down immediately.