

(1992) 05 CAL CK 0023

Calcutta High Court

Case No: F.M.A.T. No. 2365 of 1991

Contai Co-Operative Bank
Limited and Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: May 15, 1992

Acts Referred:

- West Bengal Co-operative Societies Act, 1983 - Section 2(20), 95

Citation: 97 CWN 386

Hon'ble Judges: Bhagabati Prosad Banerjee, J; A.K. Bhattacharji, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Bhagabati Prosad Banerjee, J

1. This is an appeal against summary dismissal of the writ application by the learned Trial Judge dated 19th of July, 1991. The writ application was filed against the award dated 5.9.90 passed by the Assistant Registrar-III in dispute case No. 11-Dis. 1989-90 and challenging the validity of an award and the order dated 2nd July, 1991 passed by the West Bengal Co-operative Tribunal in Appeal No. 40 of 1990 affirming the said award. The Learned Trial Judge has held that there were no irregularities, illegality and/or infirmity in the Award and judgement in the appeal. It was further observed that the writ court was not sitting in appeal over the decision of the statutory authorities and the writ court can only examine the decision making process as observed in the case reported in [State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others](#). The facts of this case in short was that the appellant considered the loan proposal and the term loan of Rs. 3.50 lakhs was sanctioned for construction of factory building and for purchase of plant and machineries and a cash credit limit of Rs. 50.000/- was also sanctioned on certain

terms and conditions. The terms and conditions of the said loan were that the term loan should be repaid in 84 monthly instalments after allowing gestation period of 6 months from the month of first disbursement and the appellant was to furnish a guarantee bond as also the appellant was to furnish a written undertaking to the effect that the appellant shall not claim and/or pray for enhancement of sanctioned limit and she will bear the balance of amount of project cost beyond sanction limit from her own sources. Accordingly the petitioner was granted loan to the tune of Rs. 50,000/- for construction of a factory shed on 14.5.1985 and for plant and machinery a loan to the tune of Rs. 4.40 lakhs was released in two phases by the appellant Bank. The said amount was paid on 24.8.87 and 27.4.88 respectively. It is the case of the appellant that the appellant was satisfied upon the project sanctioned, the term loan of Rs. 3,50,000/- out of which Rs. 80,000/- for construction of factory building and Rs. 2,70,000/- for purchase of plant and machineries from M/s. H.P. Singh & Co.. Calcutta as also a cash credit limit of Rs. 50,000/- towards working capital imposing certain terms and conditions by the Board. Subsequently to drawal of Rs. 80,000/- in May, 1987 the respondent No. 5 applied for change of quotation of M/s. H.P. Singh & Co., Calcutta substituted by Messrs. Machine Tools Corporation which was allowed by the Management. A few months later it was detected that M/s. Machine Tool Corporation is a fictitious one, money receipts collected therefrom, an advance receipt of Rs. 50,000/- and final bill of M/s. H.P. Singhs were forged. For this state of affairs an enquiry was held and the appellant decided to withdraw the term loan from the defendant and the appellant Bank called back the entire loan amount already disbursed to the respondent No. 5 by the letter dated 30.11.87 and for which the respondent No. 5 prayed for an unqualified appology for the act and conduct of her husband Shri Gautam Das by a letter dated 18th December, 1987. After such an unqualified appology was tendered the respondent No. 5 applied for enhancement of term loan of Rs. 3,50,000/- to Rs. 5,70,000/- which was considered by the appellant and accordingly the sum was enhanced to Rs. 5,70,000/- and the said money was paid in different phases.

2. It was also the case of the appellant that respondent No. 5 failed and/or neglected to pay the loan to the appellant for the terms and conditions of the agreement already accepted and that because of negligence to pay instalment and also on the ground that the appellants conduct in the matter with regard to purchase of the plant and machineries and also acts of the fact that the respondent No. 5 had not shown trade cycle of her factory and due to disclosure of the fact of malafide intention of the plaintiffs husband and their bad performance the respondent No. 5 could not claim any further loan. It was further stated that for the purpose of obtaining subsidy from the Central Government the respondent No. 5 prayed for a non-defaulter certificate from the appellant-Bank when the respondent No. 5 was a defaulter.

3. It is not necessary to go into the facts of this case inasmuch as the respondent No. 5 filed a dispute u/s 95 of the West Bengal Cooperative Societies Act. 1983 for an

order that the appellant should release Rs. 5,11,296/- towards the unit being the amount of deficit financing as per the scheme of District Industries Officer and also for an order restraining the appellant from claiming interest from the respondent No. 5 till the said deficit amount of Rs. 5,11,296/- was released. On the basis of the disputes the Assistant Registrar of Co-operative Societies passed an award on 5.9.90 under which the appellant-bank was directed i.e. to release further sum of Rs. 66,436/- within 20.9.90 towards plant and machinery to the defendant No. 5 i.e. to sanction and release a sum of Rs. 3 lakhs as Cash Credit to the defendant No. 5 within 20.9.90 as per petition of the defendant No. 5 and directing to deal with the cash credit petition in future as per the scheme sanctioned by the District Industries Officer, Midnapore.

4. Against that award the appellant preferred an appeal before the West Bengal Co-operative Societies Tribunal and the said Tribunal by an order dated 2.7.91 dismissed the appeal filed by the appellant. Against the order passed by the West Bengal Co-operative Societies in appeal dated 2.7.91 passed in Appeal No. 40 of 1990 the writ application was filed before this court which was dismissed.

5. In this case the question of law that was raised is before us and the subject matter of the writ application is whether the dispute which was raised capable of being adjudicated by the Arbitrator under the provisions of West Bengal Co-operative Societies Act. The dispute has been defined to mean any matter capable of being the subject of civil litigation and includes a claim in respect of any sum payable to or by a Co-operative Society and whether the Arbitrator can invoke the principle of promissory estoppel in a dispute case. That apart the question that was raised was whether the respondent No. 5 having defaulted in making repayment of the loan already sanctioned was entitled to approach the arbitrator for compelling the Bank to sanction further loan. It is not necessary to express any opinion on any points at this stage in as much as in the appeal this Court is entitled to see whether the appellant-writ petitioner had made out a prima facie case for issue of a Rule so that the appellant can get its grievances determined on affidavits by the trial Court.

6. In our view in the facts and circumstances of the case we are prima facie of the view that the appellant has raised a substantial question of law i.e. whether the disputes which have been referred before the Arbitrator and which has been decided by the Arbitrator and affirmed in appeal was a matter capable of being the subject of civil litigation or in other words whether the civil court could entertain a prayer from any litigant and on the basis of that prayer can the civil court direct any Bank to sanction further loan to any person and whether the principle of promissory estoppel fully invoked in the facts and circumstances of the case is a matter which in our view the question which goes to the route of the jurisdiction of the Arbitrator to adjudicate the dispute.

7. The promissory estoppel is applicable and that whether the approval of a scheme by a third party is binding upon the Bank and on the basis of approval of a scheme

by a third party the Bank is bound to sanction loan. It is not a case of entertaining a writ application to decide whether the award was right or wrong but the question of jurisdiction whether the dispute referred is a dispute within the meaning of a dispute as, defined in Section 2(20) of the West Bengal Co-operative Societies Act is a jurisdictional issue and on the basis of the well settled principal whether of the view that the facts and circumstances of the case the appellant have been able to make out a prima facie case for issue a rule and it was not a case whether the writ application would have been dismissed in limine. Accordingly, we are set aside the order of the Learned Trial Judge dated 19th of July, 1991 and issue a rule nisi in terms of prayers (a), (b) and (c) and interim order in terms of prayer (g) to the petition. There will be no order as to costs.

8. It appears that a sum of Rs. 3,66,436/- has been deposited in terms of the order passed while granting the interim order. We direct that the said money be retained by the Registrar, Appellate Side and be invested in a short term deposit in a nationalised bank untill further orders by the learned Trial Judge. The learned Advocate appearing for the respondent waives service of the Rule. Let the affidavit-in-opposition to the Civil Rule be filed within two weeks after the summer vacation and reply thereto, if any, be filed within one week thereafter. Liberty is given to the parties to mention before the learned Trial Judge. Let Xerox copy of this judgment be given to the learned Advocates for the parties on usual terms and conditions.

A.K. Bhattacharji, J.

I agree.