

Goa Central Cooperative Consumers

Vs

Bhagwant Narayan Tendulkar and Others

Civil Appeal No. 3848 of 1983

(G. N. Ray, G. B. Pattanaik JJ)

17.03.1998

ORDER

1. This appeal is directed against the judgment dated 7-7-1980 passed by the Bombay High Court, Goa Bench at Panaji in Special Civil Application (Writ Petition) No. 107 of 1974. The appellant, the Goa Central Cooperative Consumers Wholesale and Retail Stores Ltd., Panaji made an application under Section 91 of the Maharashtra Cooperative Societies Act, 1960 against the respondents for claim of money flowing from a hire-purchase agreement entered between the said cooperative society and the respondents. Under such agreement the Society had transferred three trucks to the respondents on a hire-purchase basis.
2. The respondents raised the dispute that the proceeding under Section 91 of the Cooperative Societies Act before the Registrar of the Cooperative Societies was not maintainable. Such contention, however, was overruled by the Registrar. Thereafter, the aforesaid writ petition was moved before the Goa Bench of the Bombay High Court by the respondents. By the impugned judgment the High Court has held that such dispute was not maintainable under the provisions of Section 91 of the Maharashtra Cooperative Societies Act, 1960. The High Court has indicated that the hire-purchase agreement entered between the society and the respondents was not made in the course of the usual business of the Society. In any event, the said agreement of hire-purchase did not come under clause (c) of Section 91(1) of the said Act.
3. In our view, the High Court has rightly held in the facts of the case that the hire-purchase agreement between the respondents and the cooperative society was not made in the course of the usual business of the Society. That apart, even if it is assumed that such business transaction by way of hire-purchase had taken place between the Society and a non-member of the Society, in order to bring the dispute under Section 91 of the said Act, the transaction in question must come within the purview of Sections 43, 44 or Section 45 of the said Act. Section 43 deals with restrictions on borrowings of the Society. Section 44 deals with regulation of loan-making policy and the said sections are not at all attracted in the facts of the case. Section 45 deals with restriction on the transaction with non-members. It will be appropriate at this stage to refer to Section 45.

"45. Restrictions on other transactions with non-members. - Save as is provided in this Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed."
4. It appears that the transaction to come under Section 45 must be subject to such restriction as may be prescribed. Admittedly, no rule has been prescribed by which any restriction in respect of such transaction has been imposed. Therefore, Section 45 is also not attracted. Hence, the dispute cannot

be brought under clause (c) of Section 91(1). We do not, therefore, find any reason for interference against the impugned judgment. The appeal is, therefore, dismissed without any order as to costs.