**MADHYA PRADESH HIGH COURT**

Mishrimal

Vs.

District Cooperative Grower's Association Ltd.

First Appeal No. 50 of 1957, Decided on 21.7.1960. from decree of Addl. Dist. J., Balaghat
(T.C. Shrivastava and S.P. Bhargava, JJ.)

17.4.1957 21.7.1960

**JUDGMENT**

**Shrivastava, J.**

1. This first appeal has been filed by the plaintiff against the decree of the Additional District Judge, Balaghat, dismissing the suit.

2. On 31-07-1950, the Honorary Secretary of the defendant Co-operative Society made a reference to the Registrar that the plaintiff as a Treasurer of the Society had not accounted for the moneys received by him as such. The plaintiff had admittedly a sum of Rs. 3415-10-8 with him on behalf of the Society, but the dispute arose regarding an item of Rs. 7397-8-0 received by him on the encashment of a hundi which was appropriated by him towards dues which he had to recover as commission agent. The Registrar gave an award on 30-6-1951 holding. that the plaintiff (appellant) was liable to pay Rs. 10,462-15-6 to the defendant. The plaintiff challenged the validity of the award.

3. The plaintiff admitted that his family firm Raotmal Mishrimal acted as a Treasurer from 20-2-1948 till 31-7-1950, but he himself was neither the Treasurer nor a member of the society. Accordingly the reference to the Registrar was not competent and the award is without jurisdiction.

4. The defendant pleaded that the plaintiff himself was the Treasurer and was also a member of the society. The reference was thus validly made under Rule 26 framed under Section 43, clause (1) of the Co-operative Societies Act, 1912 (hereinafter

called the Act).

5. The trial Court held that Rule 26 relied upon was wide enough to give jurisdiction to the Registrar in all disputes touching the business of the society, even if one of the contestants was a stranger. Accordingly, it held that the award was binding. It did not decide the other points on which, the parties had joined issues.

6. The decision of the question whether the dispute could be referred to the Registrar depends upon the interpretation of R. 26. That rule is as follows:

> "Rule 26. Any dispute touching the business o - a co-operative seciety.
> (i) between members or past members or persons claiming through a member or past member, 'or'
> (ii) between a member or past member or persons so claiming 'and' the committee or any officer, shall be referred to the Registrar."

We have divided, the different clauses for convenience. The power to frame this rule is derived, from Section 43 of the Act, Sub-Section (2), clause (1), in which identical language is used.

7. Sri R.S. Dabir for the respondent has contended that a dispute between a society and its officers can be referred under this rule. The clause, which we have marked as (ii) above, shows clearly that the parties to the dispute sought to be referred must be those which are joined by the conjunction "and" underlined (here in ' ') by us in that clause. "The Committee or any officer" fall on one side of the conjunction and the plain meaning is that disputes between them inter se cannot be referred to the Registrar. Thus, though a Treasurer may be an officer of the committee, a dispute between him and the committee cannot be referred to the Registrar.

8. Likewise, the view of the trial Court that a dispute between the society and a stranger can be referred to the Registrar is not justified. Under clauses (i) and (ii) above, it is necessary that one of the parties to the dispute must be a member, a past member or a person claiming through them. Rule 26 does not apply to a stranger at all.

9. Reliance was placed by the trial Court on *Kisanlal Kapurchand v. Co-operative Central Bank, Ltd. Seoni,* [1] In that case, the Treasurer had executed security bonds

which were sought to be enforced. In addition to being a Treasurer, he was also a member. While discussing the implications of the expression "the business of a co-operative society" their Lordships observed in the penultimate paragraph of that decision :

> "....the expression 'the business of a co-operative society' occurring in R. 26 is not restricted to the dealings with the members of the society only but that it includes business which the cooperative society is under the law empowered to transact."

These observations have to be read in the light of the context. Obviously it was not intended to widen the scope of R. 26 by including disputes with strangers also. "Member" as used in these observations only means dealing with a member qua member and all that has been held is that R. 26 is wide enough to cover a dispute between the society and a member even though the claim does not arise against the member qua member. In the last paragraph their Lordships observed:

> "The plaintiffs as a joint family and in their corporate capacity were members of the bank and although the liability arose in their capacity as treasurers they cannot exonerate themselves from the liability by discarding their character as members. As members of the society they were bound to fulfill the obligation which they had undertaken as treasurers of the society and in that sense the dispute can well be treated as a domestic dispute between the members on the one side and the society on the other."

The trial Court erroneously considered this observation as an additional argument for supporting the conclusion. In fact, the capacity of one of the parties as a member of the society was the deciding factor. We have no doubt that disputes with strangers cannot be brought within the ambit of R. 26.

10. That brings us to the scope of R. 26 in disputes between the society and its members. Sri A.D. Deoras for the appellant contends that the word "disputes" should be restricted to disputes where the member holds the capacity of a member in the matter leading to the dispute. On the other hand, Sri R.S. Dabir for the respondent contends that the word 'dispute' in that rule covers all disputes between the society and a member irrespective of the fact whether the member has incurred the liability qua

member or in any other capacity.

11. According to the plain meaning of R. 26, it appears to us that the provision is attracted only if the following two conditions are satisfied : (i) the dispute must be touching the business of a cooperative society; and (ii) one of the parties concerned should be a member etc. There are no words in R. 26 or Section 43(2), clause (1) of the Act limiting the meaning of 'dispute' in any sense. This was the view taken in Kisanlal Kapurchand's case, ILR (1945) Nag 677 : AIR 1946 Nagpur 16 (supra). The conclusion arrived at in that case is that once it is established that one of the contestants is a member, it is not necessary to establish further that the capacity in which the transaction, leading to the dispute was entered into was that of a member. Reliance was placed for this view on *Mafizuddin v. Narayanganj Central Co-operative Sale and Supply Society Ltd.,* [2] In that case, it was observed that "The terms of sub-rule (1) of R. 22, do not confine the dispute to such as may be referable to membership only".

12. Shri A.D. Deoras points out that in the Calcutta case the decisions in *Zamindara Bank v. Suba,* [3] and *Dasaratha Row v. Subba Row,* [4] were cited as authority for the view taken. He contends that in these two cases the point has not been considered at all and the Calcutta case, therefore, proceeded upon a wrong assumption. On these arguments, Shri Deoras suggested to us that the view taken in Kisanlal Kapurchand's case, ILR (1945) Nag 677 : AIR 1946 Nagpur 16 (supra) requires re-Consideration. In Zamindara Bank's case, AIR 1924 Lahore 418 (supra) we do not find any discussion on the question whether the dispute should arise between the society and a member qua member. However, the dispute in that case was that certain documents purporting to have been executed by the plaintiff in favor of the society were forged. It was held that such a dispute could be referred to the Registrar. In Dasratha Row's case, AIR 1923 Madras 481 (supra) the dispute was between the co-operative society and one of his members who was appointed as a director on the purchasing committee and the liability arose on account of the purchases made by the committee. The contention that the relevant clause referred only to disputes regarding internal management of the affairs of the society was repelled and it was held that disputes arising out of particular transactions were covered by the words "touching the business of a society". The relevant observations were as follows :

> "For the respondent it was argued that the dealings which the society had with

> the petitioner were with him qua member and not qua director. This argument, so far as it goes, seems to me correct. But I am prepared to go further and hold that on a true construction of the words of the clause, a dispute between a member who happens to be an officer on the one hand and the committee or an officer on the other, does fall within the words of the section."

It is thus correct to say that there is no direct decision in that case whether the liability incurred by members in any other capacity can be referred. to the Registrar. The view taken in Kisanlal Kapurchand's case, ILR (1945) Nag 677 : AIR 1946 Nagpur 16 (supra) finds support in the decision in the Calcutta case and, in. our opinion, the fact that the cases relied upon by the Calcutta High Court did not directly decide the point is not, by itself, a sufficient reason, to reconsider the view taken in that case.

13. Shri Deoras has also referred to analogous provisions, in Section 22 of the Friendly Societies Act, 1875, (38 and 39 Victoria, 1875, Chapter 60), which is as follows :

> "Every dispute between a member or person claiming through, a member, or under, the rules of a registered society, and. the society or an officer thereof, shall be decided in manner directed by the rules of the society..."

He relies upon the interpretation, put upon this section in *Morrison v. Glover,* [6] In the first case, a member, had borrowed money from the society on mortgage of leasehold property agreeing to pay rent reserved by the lease. He failed to pay the rent to the superior, landlord and the society sued for the breach of contract. It was held as follows :

> ".... matters in difference between the Society and its. members, in the character, of members, can alone be referred to arbitration; if we go one step beyond that, then extraneous matters of any kind, which may happen, to be in dispute between the Society and any of its members, ought to be the subject of a reference".

In the second case, a member, had transferred, his share to the plaintiff, who applied for being recognized as a share-holder of the society. After, the sale but before notice of the transfer, was given to the society, the society had forfeited the shares. It therefore refused to recognize the transfer, and to extend the benefit of the

membership to the plaintiff. It was held that such a dispute in which the society denied the status of a member, to the plaintiff was not within the scope of Section 22 of the Friendly Societies Act.

14. In both these cases, the difficulty was felt on account of the wide sweep of the wordings in Section 22 of the Friendly Societies. Act inasmuch as any dispute whether connected, with, the business of the society or not could be brought within its ambit. This was obviously beyond, the scope of the Act and therefore a necessity was felt to restrict the application of that section to transactions; by members qua members. Rule 26, which we have to interpret, does not raise this difficulty, as the words "touching the business of a society" place the necessary restriction on its application. The plain meaning of R. 26 before us does not lead, to an absurd situation as Section 22 of the Friendly Societies Act does. Further, if we accept the contention, that the use of the word "member" in that rule itself restricts the scope of the rule to transactions entered into by a member, in the capacity of a member, then the words "touching the business of a society" are rendered wholly superfluous for every act of a member qua member would touch the business of the society. It is a well settled canon of interpretation that if an enactment is susceptible to two interpretations, that interpretation should be rejected which would render some of the words in the enactment superfluous.

15. We are, therefore, of the opinion that the decision in Kisanlal Kapurchand's case, ILR (1945) Nag 677 : AIR 1946 Nagpur 16 (supra), does not require reconsideration. We hold that the Registrar has jurisdiction under Rule 26 to decide any dispute between a society and its member, even though the transaction leading to the dispute has no relation to the capacity of the member as such, provide that transaction touches the business of the society.

16. It is next contended by the appellant that, the agreement to work as a treasurer of the society (Ex. D-17) was with the joint family consisting of himself, his brother and father, and therefore the society was not entitled to prefer any claim against him as a treasurer. As P.W. 1, he has admitted that the family was joint and he was the manager, of the family. The agreement was executed on 20-2-1948. He admits that there was a partition in the family in. the year 1949 and he alone continued to work as a treasurer of the defendant society till 31-7-1950 (paragraph 21 of his statement). It is thus clear that at the material time he alone was working as treasurer. Several applications made by him to the society further corroborate this fact. The reference

could thus be validly made against him.

17. Next, it has to be seen whether he was a member of the society. In paragraph 12 of his deposition he has admitted that he held three shares of Rs. 5/- each and later purchased twenty shares worth Rs. 5/- each from the society. The respondent has filed a copy of the Register of members (Ex. D-6) in which the appellant is shown as a member, of the society. His name is entered as Seth Raotmal Mishrimal. It is well known that amongst Marwaris, the name of the father comes first. We have no doubt that this entry relates to the appellant himself. Under section 25 of the Act an entry in the Register of Members is prima facie evidence that the person concerned was a member of the society.
Damodhar (P.W. 3), who is the secretary of the society, has stated that the appellant had applied, for being enrolled as a member and was admitted as such. The appellant has laid great stress on the fact that this witness admits the absence of a resolution in the Minute Book of the Executive Committee, for the years 1944 and 1945 admitting him to membership. However, the witness states that in 1947 a resolution is entered in the proceedings according to which the General Committee enrolled all the persons who had till then applied, for membership including the appellant.

18. Shri. Deoras has drawn our attention to the definition of "member" in clause (c) of section 2 of the Act. According to that definition, "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the bye-laws and any rules. The bye-laws of the society are as contained in Ex. D-2. In these bye-laws the qualifications for becoming a member are given in bye-law No. 6 and it is stated in bye-law No. 9 that applications for membership shall be considered by the managing committee. It is contended that as there was no resolution of the managing committee, the appellant could not be considered to have been validly enrolled as a member of the society. In the first place, it may be noticed that the definition of "member" as occurring in Section 2(c) of the Act is an inclusive definition and implies that the categories specified in the definition are not exhaustive. Secondly, it appears to us from the statement of Damodhar (P.W. 3) that the appellant had applied for membership and his name was enrolled, although there was no formal resolution of the managing committee. The matter was taken to the General Committee in 1947 and the enrolment was ratified. Although according to the bye-laws the power of admitting new members is given to the managing committee, we do not think that the general body, which has plenary powers of

management of the affairs of the society, is deprived of that power, which is nothing more than in the nature of delegation.

19. A distinction has to be drawn between cases where a power is derived by an interior local authority of a corporation under an enactment or rules framed there under and cases where certain functions of the corporation are entrusted to it under bye-laws or resolutions of the corporation itself. In the former case, the power is vested in the inferior authority directly and the corporation cannot exercise it. In the latter case, the power of the local authority is merely a delegation and the corporation itself is not rendered incapable of exercising that power by the delegation. The question was considered in *Huth v. Clarke,* Lord Coleridge, C.J. observed :

> "The word 'delegation' implies that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating."

Wills, J. further observed :

> "Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself ..... it is never used by legal writers, so far as I am aware, as implying that the delegating person parts with the power in such a manner as to denude himself of his rights."

In that case, certain powers were delegated by the executive committee of a corporation to a sub-committee but were later exercised by the executive committee itself without depriving the sub-committee of those powers. It was held that such exercise of the powers by the executive committee was legal. Similarly, in the present case, the exercise of the powers to admit members by the general body of the co-operative society is valid, even though under the bye-laws that power has been given to the managing committee. Accordingly, we hold that the ratification by the general body of the admission of the appellant as a member was legal enough to confer on him the status of a member.

20. Shri Dabir submits that the word 'member' has been used in the Act as synonymous with 'shareholders'. There is force in this contention as would appear

from the provisions in several sections of the Act. We would only refer to the following:

> Section 5 : This section refers to the liability of "members". In fact, every share-holder is normally liable to the extent of his share. (It is not intended that a share-holder, who is not a member, is not liable.)
> Section 13 : Here a right of vote is discussed in the context of members and not shareholders.
> Sections 23 and 24 : These sections refer to the liability of a past member and of a deceased member. In fact, this liability extends to shareholders as well.
> Section 22 : This section lays down how the share held by a deceased member shall be dealt with. Such a share cannot vest in the legal representatives or their nominees unless they are "qualified according to the rules and byelaws for membership of the society". Power is given to the society to transfer the shares to a member, if no nomination is made or if the legal representative fails to nominate a qualified person within a month.
> Section 42 : This deals with winding and states the powers of a liquidator to realize moneys from members. No mention is made of realizations being made from shareholders. This can be explained only on the assumption that every shareholder is a member.

These provisions are obviously intended to exclude non-members from acquiring shares.

21. In the byelaws also, members and shareholders are treated as co-extensive. Byelaw No. 12, which provides for the liability of members, and byelaw No. 17, which deals with the right of vote, do not refer to shareholders, hut only to members. As pointed out by Sri Deoras, there is only one case where a non-member may be a shareholder and that is of a member expelled under byelaw No. 10. The byelaws do not provide how the share held by such a member shall be dealt with. This appears to be a lacuna in the byelaws. A provision on the lines of Section 22 of the Act was necessary and the omission does not affect the conclusion.

22. The appellant himself deposes that he did not know the difference between a shareholder and a member till the award was announced. Even then he could not say what the difference between the two is Damodhar (P.W. 3) states that there is no

difference between members and shareholders and notice of general meeting is given to all shareholders. Reading the Act and the byelaws, we agree that both the classes are identical. The fact that the appellant held shares of the society confirms the presumption that he was a member.

23. In view of these findings, the award given by the Registrar was within jurisdiction and binds the appellant. The appeal is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. ILR (1945) Nag 677: AIR 1946 Nag 16
2. AIR 1933 Cal 267
3. AIR 1924 Lah 418
4. AIR 1923 Mad 481
5. (1849) 4 Ex. 430 at p. 444 and Prentice v. London, (1875) 10 CP 679
6. (1890) 25 QBD 391