

BOMBAY HIGH COURT

Shyam Co-operative Housing Society Ltd

Vs.

Ramibai Bhagwansing Advani

O.C.J. Appeal No. 16 of 1952

(Chagla, C.J. and Bhagwati, J.)

03.03.1952

JUDGMENT

Chagla, C.J.

1. One Bhagwansingh Advani was the managing trustee of a public charitable trust known as the Basantsingh Amil Dhramada (Charities) Trust. This trust was a member of the defendant co-operative society. The trust advanced a sum of Rs. 4,00,000 to the defendant society. The plaintiffs are the present trustees of the trust and they have filed the present suit to recover the sum of Rs. 4,00,000 from the defendant-society. A notice of motion was taken out by the defendants to stay the suit on the ground that under Section 54, Bombay Co-operative Societies Act the dispute could only be adjudicated upon by arbitration as provided by that section. The learned Judge below dismissed the notice of motion. It is from that order that this appeal has been preferred.

2. Now, the contention urged by Mr. Banaji is that within the meaning of Section 54 this is a dispute touching the business of the society between the society and its member. The learned Judge below has taken the view that there was no dispute at all inasmuch as the loan was admitted by the defendant society. In our opinion, with respect, that is not the correct view, because although the loan was admitted by the society, the contention of the society was that there was no present liability to return the loan and therefore in that sense there was a dispute between the society and the plaintiffs. It is also perhaps true, as suggested by Mr. Banaji, that the dispute is touching the business of the society. The learned Judge has taken the view that the objects of the society do not include taking of loans, but the objects of the society are various - buying, selling, hiring, letting, developing land in accordance with co-operative principles and also making and guaranteeing advances to members for building and purchasing property, and Rule 3 of the bye-laws of this society provides for raising of funds in various ways, and one of the ways is by raising loans including debentures and loan stock. Therefore, it may be conceded

that in order to carry out its objects the society raised this loan and persuaded one of its members to advance a sum of Rs. 4,00,000 to the society. But the question still remains whether on these facts Section 54 has any application. Now, before a case can fall under Section 54, it is not sufficient that there should be a dispute touching the business of the society. What is further required is that the dispute must be between the society and its member, and proper emphasis has got to be laid upon the expression "member" used in this section. The dispute must be between the society and the member as a member or quae a member. It must be a dispute in which the member must be interested as a member. It must relate to a transaction in which the member must be interested as a member. It is not every dispute between a society and a member which falls within the ambit of Section 54. There may be many disputes between the society and its members in which the members are not concerned as members at all, and they are in the same position as strangers. Take this very case. The loan might have been raised from an outsider or from a stranger. The society in this case chose to take a loan from a member and the member chose to advance the loan to the society. That fact does not make it a dispute between the society and its member. There is no obligation upon the society to raise loans only from its members, nor is there any obligation upon its members to advance loans to the society. There are various matters where there might be a dispute between the society and the member where the member is interested or involved in the dispute as a member. In those cases Section 54 would have application. But where we have a case where a member advances a loan to the society which he is under no obligation to advance, it is merely a coincidence that he happens to be a member of the society. It is not by reason of his capacity or position as a member that the loan was advanced. This transaction has nothing whatever to do with the rights or obligations of the party which advanced the loan as a member of the co-operative society. Mr. Banaji says that he wants an opportunity to establish, by affidavit if necessary, that in this particular case the loan was advanced by the public charitable trust as a member. We fail to understand how it can ever be possible for the plaintiffs on the admitted facts to establish that position. Unless we find in the constitution of the society itself something which would indicate that this Public Charitable Trust was concerned as a member in advancing this loan, no volume of evidence adduced by the defendants can ever establish that fact.

3. We, therefore, agree with the view taken by the learned Judge below. The appeal fails and must be dismissed with costs.

Appeal dismissed.