

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 3243 of 2013

**The Secretary, E & NF Railway Junior Co-operative Credit Society
Limited, Eastern Railway**

-Versus-

Sri Jyotish Chandra Sarkar & Anr.

For the Petitioner : **Mr. Kishore Mukherjee.
Mr. Soumyajit Mukherjee**

For the Opposite Party :

Hearing concluded on : **06.02.2024**

Judgment On : **20.02.2024**

Prasenjit Biswas, J:-

1. Both the Tribunals have decided the case against the present petitioner.
2. Feeling aggrieved and dissatisfied with the impugned order dated 02.08.2013 passed by the State Consumer Disputes Redressal Commission, Kolkata, in connection with S.C. Case No. FA/451/2012 this instant revisional

application is filed. By passing the impugned order the said Consumer Disputes Redressal Commission, Kolkata, affirmed the ex-parte order dated 04.06.2012 passed by the learned District Consumer Disputes Redressal Forum, Jalpaiguri passed in connection with C.C. No. 77 of 2011.

3. Opposite party no. 1 (herein) filed a complaint before the District Consumer Disputes Redressal Forum, Jalpaiguri stating that while he was in service of North Frontier Railway took a loan of Rs. 9,960/- on 14.01.1993 and another loan of Rs. 32400/- on 07.12.2001 although the recovery of loans were completed before the retirement of the complainant from service on 30th September, 2007 but dues payable to him amounting to Rs. 12,608/- had not been disbursed. The reason assigned by the petitioner/society that overdue interest for the first loan from April, 1991 onwards and overdue interest for the second loan from October, 2007 onwards were not paid. Another reason for not releasing the dues payable to complainant is that he stood as a guarantor/surety of Sashodhar Roy (since deceased) who has not cleared the loan amount.

4. It is stated by the opposite party no. 1 (herein) complainant that a clearance certificate has already been issued in respect of late Sashodhar Roy and a result of which wife of late Sashodhar Roy is getting the family pension and their son was got employed under the railway on compassionate ground. As per statement of the opposite party no. 1 he is necessary to hold responsible for clearing the dues shown in the record against the name of late Sashodhar Roy only because he stood as a guarantor to him. As the dues payable to him had not been released/dispensed to him he sent notice to the present petitioner/society with a request to disburse the dues within one month from receiving notice. No response was received by the opposite party and under compelling circumstances

he filed a case with a prayer for getting the dues payable to him before the District Consumer Disputes Redressal Forum. Although the summon from the learned District Forum was received by the present petitioner he did not venture to contest the said case and as such the same was decided by the District Forum ex-parte on 04.06.2012. The learned District forum directed the petitioner/society to pay sum of Rs. 12,608/- along with interest and the same interest is to be calculated on and from 01.10.2007 till the realization of the entire amount. The District Forum further directed upon the petitioner to pay a sum of Rs. 3000/- as compensation for harassment and mental injury of the opposite party no. 1. Thereafter an execution case has been taken out by the complainant/opposite party no. 1 (herein) to execute the ex-parte order passed by the District Consumer Disputes Redressal Forum, Jalpaiguri, in C.C. No. 77 of 2011.

5. Being aggrieved and dissatisfied with the order passed by the District Forum the present petitioner preferred an appeal before the State Consumer Disputes Redressal Commission, West Bengal being S.C. Case No. FA/ 451 of 2012. The said appeal was decided against the present petitioner by affirming the order of District Consumer Forum by passing an order dated 02.08.2013. Against the said impugned order passed by the Appellate Tribunal dated 02.08.2013 this revisional application is filed by the petitioner on the ground that the petitioner/society has been registered under the Multi-State Co-operative Societies Act, 2002 and if any dispute touching the constitution/management or business of Multi-State Co-operative Society arises, such disputes shall be referred to the arbitration as provided in Sub-Section 1(b) of Section 84 of the said Act. If the dispute arises between the member and the past member and persons claiming to be a member, past member or deceased member and the multi-state co-operative

society or liquidator, past or present, the dispute as in the present case shall be referred to arbitration.

6. Learned Counsel appearing on behalf of the petitioner has drawn attention of the Court to Section 84 of the said Multi-State Co-operative Societies Act, 2002 and submitted that the both the District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Commission erred in law in entertaining the application filed by the present opposite party no. 1 when there is a special embargo enshrined in the said Act. As per submission of the learned Counsel that the Consumer Protection Act has no application and both the forums failed to consider the statutory provision and although they have no jurisdiction the complaint filed by the opposite party no. 1 was entertained. It is further submitted by the learned Counsel that the Appellate Commission erred in law in dismissing the appeal without adjudicating the point regarding that the learned District Forum has no jurisdiction to entertain the application because of the fact that the opposite party no. 1 cannot be termed as a consumer under the Consumer Protection Act and as he is a member of the co-operative society. Learned Counsel submitted that orders passed by both the Tribunals are without jurisdiction and as such same may be set aside as per provision of Section 84 of the Multi-State Co-operative Societies Act, 2002.

7. The said Consumer Disputes Redressal Commission reiterated the facts as stated by the complainant in his complaint filed before the District Consumer Redressal Forum. It is undisputed that the opposite party no. 1 (herein) and Sashodhar Roy (since deceased) were the members of the petitioner/society. It is fact that the opposite party no. 1 took loan of Rs. 9,960/- and Rs. 32,400/- and as per statement of the complainant that the recovery of both the loans were

completed before his retirement. The problems has been started when his dues amounting to Rs.12,608/- had not been disbursed on the ground that there is an overdue interest for the first loan from April, 1999 onwards and overdue interest for the second loan from October, 2007 onwards which were not paid and on the ground that he stood as a guarantor/surety of Sashodhar Roy (since deceased) who has not cleared the loan amount before his death. It is also the fact that the petitioner/society received notice from the District Consumer Redressal Forum regarding the case instituted by the complainant but he did not contest the case. The opposite party no. 1 as a petitioner got the ex-parte order from that Court. The Sate Consumer Disputes Redressal Commission did not interfere the finding of the District Consumer Forum holding that the present petitioner failed to contest the case with evidence and there is no evidence or documents opposing the contents of the complainant and as such the complain was remained un rebutted. The Appellate Commission did not consider the submissions advanced on behalf of the appellant on the reason that no documents were filed by the petitioner and the matter was heard ex-parte by the District Consumer Forum. The Appellate Commission did not rely the provision as enshrined in the Section 84 of the Multi-State Co-operative Societies Act, 2002 on the ground that there is no indication that the petitioner/society served any notice upon the opposite party no. 1/complainant asking him to clear any debts or demand due to it so that either of the disputing parties that i.e. the petitioner or the opposite party could have approached before the arbitrator for settlement of the matter and it is totally a deficiency in the service of the petitioner/society.

8. It is profitable to quote Section 84 of the Multi-State Co-operative Society Act, 2002 which entails that-

(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947) touching the constitution, management or business of a multi-State co-operative society arises—

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or

(c) between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or

(d) between the multi-State co-operative society and any other multi-State co-operative society, between a multi-State co-operative society and liquidator of another multi-State co-operative society or between the liquidator of one multi-State co-operative society and the liquidator of another multi-State co-operative society,

such dispute shall be referred to arbitration.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or business of a multi-State co-operative society, namely:—

(a) a claim by the multi-State co-operative society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the multi-State co-operative society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a multi-State co-operative society.

(3) If any question arises whether a dispute referred to arbitration under this section is or is not a dispute touching the constitution, management or business of a multi-State co-operative society, the decision thereon of the arbitrator shall be final and shall not be called in question in any court.

(4) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided by the arbitrator to be appointed by the Central Registrar.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

It is apparent from the aforesaid provision that unless it is shown that a dispute is between a member, past member or the person claiming through a member, past member or deceased member and the Multi-State Co-operative Society, its Board or any officer, agent or employee of the Multi-State Cooperative Society or liquidator, past or present, no dispute can be referred to the arbitrator.

9. In view of the above provision of the Multi-State Co-operative Societies Act that if there is a dispute between the members and the society it should be referred before the arbitrator. Both the forums did not consider the said statutory provisions and the District Consumer Disputes Redressal Forum, Jalpaiguri has no jurisdiction to entertain the application of the opposite party no. 1.

10. The Supreme Court in case of **General Manager, Telecom Vs. M. Krishnan** reported in **2009(8) SCC 481** held that the special law overrides the general law and the consumer forum cannot usurp power and jurisdiction to decide a matter if the same is conferred upon special forum in the following words:-

"Para 8. It is well settled that the special law overrides the general law. Hence, in our opinion the High Court was not correct in its approach.

In Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council (1995) 2 SCC 479 it was held that the National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of motor vehicles accidents. We agree with the view taken in the aforesaid judgment”

11. When there is a specific provision in the special Act it is immaterial whether the society has demanded the dues to the loanee and the loanee or guarantor has an obligation to clear the said loan in favour of the society but the State Forum dismissed the said appeal on the ground that the society has not yet demanded the said dues from the opposite party no. 1. It is not disputed that the opposite party no. 1 stood as a guarantor of the loan issued by the society in favour of late Sashodhar Roy and the said Sashodhar Roy has not cleared the loan in favour of the society. Learned State Forum did not consider the specific provision of Multi State Co- Operative Societies Act and dismissed the appeal. In the said Act there is a provision regarding the disputes between the members and the society it should be referred before the Arbitrator and as such the Consumer Protection Act has no application. Both the Forums did not consider the statutory provision.

12. Perusal of clause (b) of sub-section (1) of section 84 of the Act shows that a dispute between a member, past member and persons claiming through a member, past member or deceased member on the one hand and the multi-state co-operative society, its board or any officer, agent or employee on the other hand touching the management, constitution or business of the society would be referred to arbitration. The petitioner being a multi State society is governed by the provisions of the Multi State Act. The remedy of arbitration provided under section 84 is a statutory and is binding on all parties mentioned therein. There

can therefore be no dispute that the dispute between the petitioner co-operative society on the one hand and the opposite party, who was its member, could be referred to arbitration. In the impugned order passed by the State Consumer Disputes Redressal Commission dated 2nd of August, 2013 the question of jurisdiction of the learned District Consumer Disputes Redressal Forum to entertain the dispute in the teeth of arbitration clause under the Multi-State Co-Operative Societies Act, 2002 has not been answered. The learned Commission dismissed the appeal on the ground that no steps for arbitration were taken by the petitioner (herein) under Section 84 of the said Multi-State Co-Operative Societies Act, 2002 and virtually fails to answer the issue of existence of its jurisdiction in a particular dispute.

13. Thus, in view of the specific embargo created under the Special Act, the District Consumer Forum was not competent to pass any order and as such District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Commission, West Bengal erred in law in entertaining the application filed by the opposite party no. 1.

14. There is illegality and material irregularity in the impugned order passed by the State Consumer Disputes Redressal Commission, Kolkata dated 02.08.2013 passed in S.C. Case No. FA 451/2012 and accordingly the present revisional application is liable to be allowed.

15. Accordingly, C.O. being No. 3243 of 2013 is hereby allowed.

16. The impugned order dated 02.08.2013 passed by the State Consumer Disputes Redressal Commission in S.C. Case No. FA 451/2012 and the ex-parte order dated 04.06.2012 passed by the learned District Consumer Disputes

Redressal Forum, Jalpaiguri passed in connection with C.C. No. 77 of 2011 are hereby set aside.

17. Connected applications if any are hereby disposed of and closed.

18. However, this order shall not be construed to preclude the complainant opposite party for approaching the appropriate forum for ventilation of his grievance.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)

