

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1075 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ODHAJI RATANSHIBHAI

Versus

NESDA(KHANPUR) SEVA SAHAKARI MANDALI LTD.

Appearance:

MR MP PRAJAPATI for the Petitioner
MR DM THAKKAR for Respondent No. 1
Respondents Nos. 2-3 served

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/01/2003

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated

31st December, 1993 passed by the learned Gujarat State Cooperative Tribunal (hereinafter referred to as 'the Tribunal') in Appeal No.139/1993, the petitioner has preferred the present petition.

The respondent no.1 is a cooperative society (hereinafter referred to as 'the Society'). The petitioner is a member of the said Society. The petitioner had borrowed a loan of Rs.16,950=00 from the Society. The petitioner, however, failed to repay the said amount. The Society, therefore, instituted Arbitration Suit No.185/1990 against the petitioner and others for recovery of a sum of Rs.31,828=00 in the Court of Board of Nominees, Rajkot.

In answer to the summons issued by the Court, neither of the defendants remained present before the Court. Eventually, relying upon the evidence produced before it, the Court passed a decree in the sum of Rs.31,820=00 with interest @ 10% per annum and the costs. Feeling aggrieved, the defendant no.1, the petitioner herein preferred Appeal No.139/1993 before the Tribunal. The said Appeal was dismissed by the Tribunal under the impugned judgment and order dated 31st December, 1993. Feeling aggrieved, the petitioner has preferred the present petition.

It is the case of the petitioner that the petitioner had appeared before the Board of Nominees. He gave evidence and stated that the petitioner had repaid the entire amount of outstanding dues and nothing was recoverable from the petitioner. The petitioner had also produced the receipts issued by the respondent no.3 for the payment made by the petitioner towards the outstanding dues. However, the suit was not decided on the said date. The petitioner being an agriculturist, was not aware of the procedure to be followed before the Court and, thus, could not put-forth his defence in proper and legal manner. The Tribunal, however, failed to appreciate the contention raised by the petitioner and erred in not accepting the receipts produced by the petitioner. It is further submitted that only during pendency of appeal it was learnt by the petitioner that there were some disputes between the Society and the respondent no.3, who was then serving as the Secretary of the Society. The respondent no.3 had misappropriated certain funds of the Society. However, the petitioner having made payments to the respondent no.3 under bonafide belief that he was authorized to accept the money, the petitioner should be given due credit for the said amounts.

Be it noted that the petitioner did not respond to the summons issued by the Board of Nominees. He did not file written statement nor did he remain present before the Board of Nominees nor did he give evidence. The petitioner did not produce the receipts on which he now relies. In absence of any defence put-forth by the petitioner, the Board of Nominees can not be said to have erred in passing the impugned decree. The receipts in question were produced for the first time in the course of appeal. The Tribunal has not believed the said receipts to be genuine for the reasons recorded by it.

It is indisputable that the petitioner did not put-forth his defence before the Board of Nominees. Besides, the Tribunal has given cogent reasons for not accepting the receipts produced in the course of appeal. Whether to accept a piece of evidence or not, is in the realm of appreciation of evidence. While exercising supervisory jurisdiction under Article 227 of the Constitution of India, this Court is not empowered to reappreciate the evidence and to substitute the findings recorded by the Tribunal below by its own findings. Thus, in the present petition, it is not possible to hold that the receipts produced by the petitioner in the course of appeal were genuine or were validly issued by the respondent no.3 in favour of the petitioner. In view of the findings recorded by the Court below, the decree for outstanding dues passed against the petitioner can not be interfered with.

In above view of the matter, no interference is warranted. Hence, the petition is dismissed. Rule is discharged. The parties shall bear their own costs.

(Ms. R.M. Doshit, J.)

/sakka