

A DECCAN MERCHANTS CO-OPERATIVE BANK LTD.

v.

M/S. DALICHAND JUGRAJ JAIN AND ORS.

August 29, 1968

B

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Maharashtra Co-operative Societies Act, 1960, s. 91(1)—Expressions "touching the business of the society" and "person claiming through a member"—Scope of,—Conflict with provisions of Rent Act—Provisions of which Act to prevail.

C

S. 154—If provides alternative remedy—Whether High Court has jurisdiction to interfere with interlocutory order of Registrar referring dispute to arbitration.

D

The fourth respondent obtained a loan from the appellant bank, a banking company established as a Co-operative Society under the Co-operative Societies Act, 1912, and mortgaged certain property with the bank as security for the loan. As he defaulted in the re-payment of the loan, the property was transferred to the bank in May, 1963 under s. 100 of the Maharashtra Co-operative Societies Act, 1960 and the physical possession also handed over to the bank. In the meantime, the fourth respondent had executed an agreement on June 29, 1961, which mentioned that the property had been mortgaged to the appellant, and whereby the entire ground-floor of the building was let to the first respondent on a monthly rental of Rs. 250.

E

F

The bank called upon the first respondent to vacate the premises but they refused to do so. On June 11, 1963, the bank applied to the District Deputy Registrar, Co-operative Societies, Bombay, praying that the dispute between the bank and the first respondent be referred to arbitration and stating that as the respondents claimed their rights through the original owner, the fourth respondent, the dispute was capable of being referred under s. 93 of the Act to the Registrar or his nominee for decision. The Assistant Registrar thereafter passed an order on June 19, 1963 to the effect that he was satisfied there was a 'dispute' within the meaning of s. 91 (1) of the Act and referred it for the decision of his nominee, the second respondent.

G

The first respondent challenged the Registrar's order of June 19, 1963 by a writ petition under Art. 226 of the Constitution. on the grounds, *inter alia*, that the alleged dispute did not fall within the scope of s. 91 of the Act; and that furthermore, in view of the provisions of s. 28 of the Bombay Rents, Hotel and Lodging Rates Control Act, 1947, such a dispute could only be determined under the provisions of that Act. The High Court allowed the petition holding that the first respondent could not be said to be claiming through a member of the bank as a member and consequently the dispute could not be the subject matter of reference under s. 91(1)(b). It held, however, that the words "touching the business of the society" in s. 91 were very wide and would include any matter which relates to or concerns or affects the business of the society.

H

On appeal to this Court by a certificate,

HELD : dismissing the appeal :

(i) The word "business" in the expression "touching the business of a society" in s. 91(1) does not mean affairs of the society. It has been used here in a narrower sense and means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws. In the present case the society was a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore the present dispute between a tenant of a member of the bank in a building which had subsequently been acquired by the bank could not be said to be a dispute touching the business of the bank. [896 C, E-F]

Farkhundali v. Potdar, 63 B.L.R. 985; referred to.

(ii) The dispute in the present case was not a dispute between a society and a member or a person claiming through a member. Before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. In the present case when the original owner executed the lease, he was not acting as a member but as a mortgagor in possession, and, therefore the bank's claim did not fall within s. 91(1)(b) of the Act. [898 B, C]

E. C. Mulkern v. James Lord 4 A.C. 182; *Morrison v. Glover*; 154 E.R. 1281; *Prentice v. London*, 10, C.P. 679; *Palliser v. Dale*, [1897] 1 Q.B. 257; *Judson v. Ellesmere Club*, [1948] All E.R. 844; *Shyam Co-operative Society v. Ramibai*, 54 B.L.R. 517; *Krishna Ayyar v. Urban Bank*, I.L.R. [1933] 56 Mad. 970; *Vegetola Ltd. v. Wholesale Co-op. Stores*, (1956) 1 M.L.J. 36; *Mammu Kevi v. Thirurangadi Co-operative Rural Bank Ltd.* I.L.R. [1964] 1 Ker. 83; referred to.

Mishrimal v. District Co-operative Growers Association, A.I.R. 1961 M.P. 40 and *Kisanlal v. Co-operative Central Bank Ltd.*, A.I.R. 1946 Nag. 16; disapproved.

(iii) Section 91 of the Maharashtra Co-operative Societies Act does not affect the provisions of s. 28 of the Bombay Rents, Hotel and Lodging Rates Control Act, 1947. Although both these provisions start by excluding "anything contained in any other law", the two Acts can be harmonized best by holding that in matters covered by the Rent Act, its provisions rather than the provisions of the Maharashtra Co-operative Societies Act, should apply. The latter Act was passed, in the main, to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the disputes relating to the internal management of the societies. But under the Rent Act a different social objective is intended to be achieved and for achieving that social objective it is necessary that a dispute between the landlord and the tenant should be dealt with by the Courts set up under the Rent Act and in accordance with the special provisions of the Rent Act. This social objective does not impinge on the objective underlying the Maharashtra Co-operative Societies Act. [902 F-H]

(iv) There was no force in the contention that the High Court acted in excess of jurisdiction in entering into disputed questions of fact, interfering with an interlocutory order and dealing with the case in spite of an alternative remedy being available to the respondents under s. 154 of the Act. The High Court has jurisdiction to go into disputed questions of fact and to quash an interlocutory order even though some sort of alternative remedy exists under s. 154 of the Act. Section 154 of the Act *inter alia* enables the State Government to call for and examine the

- A** record of any inquiry or the proceedings of any other matter of any subordinate officer. This remedy cannot be treated as an alternative remedy for the purposes of deciding the questions raised by the petitioners. [903 B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 358 of 1967.

- B** Appeal from the judgment and order dated February 26, 1965 and March 1, 1965 of the Bombay High Court in Misc. Application No. 312 of 1963.

B. R. Naik, P. J. Vaidya, K. R. Chaudhuri and K. Rajendra Chaudhuri, for the appellant.

- C** *S. T. Desai, F. Nariman, K. L. Hathi and Atiqur Rehman*, for respondent No. 1.

P. K. Chatterjee and S. P. Nayar, for respondents Nos. 2 and 3.

The Judgment of SIKRI and HEGDE, JJ. was delivered by SIKRI, J. BACHAWAT, J. delivered a separate Opinion.

- D** **Sikri, J.** This appeal by certificate granted by the High Court of Judicature at Bombay is directed against its judgment allowing the writ petition filed by the firm M/s. Dalichand Jugraj Jain, first respondent before us—hereinafter referred to as the petitioners—under Art. 226 of the Constitution, and setting aside the order of the Assistant Registrar (D), Co-operative Societies, Bombay, referring the dispute between the petitioners and the Deccan Merchants Co-operative Bank Ltd., appellants before us—hereinafter referred to as the Bank.

- E** We may mention that in the petition filed before the High Court by the petitioners there were four respondents; the first respondent was the Assistant Registrar (D), Co-operative Societies, Bombay, the second respondent was the Registrar's nominee; the third respondent was the Bank and the fourth respondent was Waman Wasudeo Wagh—hereinafter referred to as the original owner. Before us the Bank is the appellant, while the petitioners and the three other respondents before the High Court are the first, second, third and fourth respondents.

- F** **G** The main point that arises in this appeal is whether the dispute between the petitioners and the Bank can be referred by the Registrar for arbitration under sub-s.(1) of s. 91 of the Maharashtra Co-operative Societies Act, 1960 (Mah. Act XXXII of 1961), hereinafter referred to as the Act.

- H** Before we set out the relevant provisions of the Act it is necessary to state the relevant facts out of which the dispute arose. The original owner on June 29, 1961, executed an agreement by which he leased the entire ground-floor of building No. 195-197 Shaik Memon Street, Bombay, to the petitioners on a monthly

rent of Rs. 250. Clause 6 of this agreement mentions that the property had been mortgaged to the Bank. The appellant was established as a Banking company in the year 1917 as a co-operative society under the Co-operative Societies Act, 1912 (Central Act) and they are deemed to be registered under the Act. The original owner was the Chairman of the Bank, and he had taken a loan from the Bank and as security for the due payment of the loan taken by him he had deposited the title deeds of the said property with the Bank, and thus mortgaged the building to the Bank.

A

B

C

D

E

F

G

H

It appears that certain arbitration proceedings between the Bank and the original owner took place before the Registrar's nominee, Bombay, and Greater Bombay, and a consent award was given between the parties on October 26, 1961, under which the original owner was ordered to pay to the Bank a sum of Rs. 6,00,000 by certain instalments as therein provided. Clause 5 of the said consent award mentioned that the said immovable property at 195-197 Shaik Memon Street, would continue as security for the claims of the Bank till entire satisfaction. It further appears that the original owner committed default in making payment of the amount under the consent award and thereupon, in execution of the said award, an order was made on January 3, 1963, under s. 98 of the Act, for the sale of the said property. As the property could not be sold for want of buyers, the Collector of Bombay made an order and issued a certificate of transfer, dated May 13, 1963, under s. 100 of the Act, directing that the right, title and interest of the original owner in the said property would be transferred to the Bank subject to the terms and conditions laid down in the schedule to the said certificate of transfer. In accordance with the directions given to the Revenue Inspector, the Revenue Inspector of the Collector of Bombay prepared a list of the tenants of the property on May 15, 1963, and furnished the same to the Bank. Physical possession of the property was also handed over to the Bank.

On June 5, 1963, the Bank addressed a letter to the petitioners stating that the Bank had come to know that they were occupying the entire ground-floor of the building (situate at 195-197, Shaik Memon Road, Bombay) transferred to the Bank under s. 100 of the Act, and further stating that their occupation was unauthorised and otherwise illegal and they had neither any right nor title nor interest to continue in occupation of the same. The Bank called upon them to quit, vacate and deliver vacant peaceful possession of the portion of the building in their occupation within 48 hours from the receipt of this notice failing which appropriate legal proceedings would be adopted.

The petitioners replied on June 24, 1963, challenging the transfer of the property to the Bank and also denying that they

- A were in unauthorised or illegal occupation. Before this the Bank, on June 11, 1963 had applied to the District Deputy Registrar, Co-operative Societies, Bombay, under ss. 91-96 of the Act, praying that the dispute between the Bank and the petitioners be referred to arbitration. In this application seven parties were made respondents including the original owner and the petitioners. We are not concerned with the other five respondents.

- B It was stated in the application that the Bank, pursuant to the certificate issued by the Collector under s. 100 of the Act, had been put in possession of the building at No. 195-197 Shaik Memon Street, Bombay, but the original owner, however, retained possession of part of the property in his possession or in the possession of the petitioners and the other five respondents. It was asserted that the seven respondents had no right, title or interest to the suit premises, and, at any rate, they are not tenants or sub-tenants of the suit premises either within the meaning of the Bombay Rents Hotel and Lodging Rates Control Act, 1947, hereinafter referred to as the Rent Act, or the Transfer of Property Act. It was further stated that the other six respondents were claiming through the original owner who was a member of the Bank. It was further alleged that by virtue of the said certificate issued under s. 100 of the Act, the Bank was entitled to vacant and peaceful possession of the suit premises by evicting the seven respondents. It was also alleged that the dispute fell within the ambit of ss. 91-96 of the Act and as such the same was capable of being referred for decision under s. 93 of the Act. It was *inter alia* prayed that the dispute be referred to the Registrar or to his nominee or to his Board of nominees under ss. 91 to 96 of the Act for decision and the respondents be ordered to vacate and deliver possession of the suit premises which was in their possession. Compensation, interest and costs were also claimed. On June 19, 1963, the Assistant Registrar passed the following order :

- G "After going through the plaint mentioned above, I, Shri G. V. Koimattur, Assistant Registrar, C.S.(D) Bombay, am satisfied that a "dispute" within the meaning of section 91(1) of the Maharashtra Co-operative Societies Act, 1960 exists in this case and the same is therefore referred for decision to Shri K. C. Mandivkar, Registrar's Nominee."

- H On July 2, 1963, the nominee passed an order summoning the parties to appear before him on July 23, 1963. On September 6, 1963, the petitioners filed the petition under Art. 226 of the Constitution. After setting out the facts mentioned above and s. 91 of the Act, it was submitted by them in the petition that "the dispute which is alleged in the said application dated 11th June 1963, is not one which falls within the scope and ambit of

the said section 91 of the said Act and/or between the parties therein specified." It was further submitted that the dispute was not one which touches the business of the Bank, and that the petitioners were not the persons claiming through a member of the Bank. It was also submitted that in view of s. 28 of the Rent Act, the dispute which had been referred by the Assistant Registrar to his nominee could only be determined by the Court of Small Causes, Bombay, and that the Assistant Registrar had no jurisdiction to refer the said dispute to his nominee for determination. The petitioners accordingly prayed for issue of a writ of *certiorari* or other appropriate writ against the Assistant Registrar or his nominee and quashing the order dated June 19, 1963. We need not mention the other reliefs claimed in the petition.

The answer to the points raised in the petition depends in the main on the proper interpretation of s. 91 of the Act. The relevant provisions of the Act are as follows :

Section 91 runs :

"91. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office-bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or other of the following :

(a) a Society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of section 45, and any person claiming through such a person;

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under section 45,

A whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society.

B (2) When any question arises whether for the purposes of foregoing sub-section, a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

C (3) Save as otherwise provided under sub-section (3) of section 93, no court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

Explanation 1—A dispute between the Liquidator of a society and the members of the same society shall not be referred to the Registrar under the provisions of sub-section (1).

D *Explanation 2*—For the purposes of this sub-section a dispute shall include—

E (i) a claim for or against a Society for any debt or demand due to it from a member or due from it to a member, past member or the nominee, heir or legal representative of a deceased member or servant or employee, whether such a debt or demand be admitted or not;

F (ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a society and recovered from the surety owing to the default of the principal borrower, whether such a sum or demand be admitted or not;

G (iii) a claim by a society for any loss caused to it by a member, past member or deceased member, by any officer, past officer or deceased officer, by any agent, past agent or deceased agent, or by any servant, past servant or deceased servant, or by its committee, past or present, whether such loss be admitted or not;

(iv) a refusal or failure by a member, past member or a nominee, heir or legal representative of a deceased member, to deliver possession to a society of land or any other asset resumed by it for breach of conditions of the assignment."

H Sub-section (1) of s. 93 provides that if the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of s. 91, the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal

to a nominee, or a board of nominees, appointed by the Registrar. Section 96 provides that when a dispute is referred to arbitration, the Registrar or his nominee or board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute.

A

This case was heard along with two other cases by the Bombay High Court and various questions were debated before it. The High Court held :

B

(1) that the Registrar or the Assistant Registrar is bound to hear the petitioners before making the orders referring the dispute to his nominee;

(2) that the petitioners were not heard by the Assistant Registrar before the order of reference was made but it was not necessary to remand the matter to the Assistant Registrar for deciding the question about the existence of a dispute within the meaning of s. 91 after hearing the parties as the questions raised were general questions which arose in many cases and the parties desired that the position in law might be clarified;

C

D

(3) that the jurisdiction of the Court would be determined at the time of the institution of the suit when the plaint is filed and the plea of the defendant would not determine or change the forum;

(4) that the question whether a dispute within the meaning of s. 91 existed or not will have to be decided by reference to the averments made in the application for reference made under r. 75 of the Rules;

E

(5) that the words "touching the business of the society" in s. 91 were very wide and would include any matter which relates to or concerns or affects the business of the society; in other words, the dispute need not directly arise out of the business of the society but it was enough if it had reference or relation to or concern with its business;

F

(6) that the dispute in regard to the possession of the premises occupied by the petitioners can be said to touch the business of the Bank;

G

(7) that the words "claiming through a member" must be given their ordinary meaning, that is, deriving title or rights through a member. At the same time weight must be attached to the word "member", and the title or right claimed must be those to which a member was entitled or which he could claim by virtue of his being a member. The words "claiming through a member" therefore mean deriving such title or rights

H

A through a member as the member possessed or had acquired by reason of his being a member or in his capacity as a member; and

B (8) that the petitioners cannot be said to be claiming through a member of the Bank as a member; consequently clause (b) will not apply and the dispute between them and the Bank cannot be the subject-matter of a reference under sub-section (1) of s. 91.

The learned counsel for the Bank, Dr. B. Naik, contends that :

C (1) the High Court has acted in excess of jurisdiction and with material irregularity inasmuch as (a) it has entered into disputed questions of fact; (b) it has interfered with an interlocutory order, and (c) it has dealt with the case in spite of an alternative remedy being available to the petitioners under s. 154 of the Act;

D (2) assuming, without admitting, the facts, the petitioners would be persons claiming through a member and accordingly the reference is good; and

(3) while making an order under s. 91(2) of the Act the Registrar is concerned only with the averments in the plaint and not with the pleas of the defendant.

E The learned counsel for the petitioners, Mr. S. T. Desai, on the other hand, contends (1) that there is no dispute touching the business of the society; (2) that the petitioners were not claiming through a member as a member; (3) that the Rent Act (Bombay Rents Hotel & Lodging House Rates Control Act, 1947) gives exclusive jurisdiction to the Court of Small Causes and accordingly the Registrar had no jurisdiction to refer the dispute to his nominee; and (4) that the petitioners should have been heard before the case was referred to the Registrar's nominee and, therefore, the reference is bad.

F The principal questions which arise on the interpretation of s. 91 are two : (1) what is the meaning of the expression "touching the business of the society?" and (2) what is the meaning of the expression "a person claiming through a member" which occurs in s. 91(1)(b)?

G The answer depends on the words used in the Act. Although number of cases have been cited to us on similar expressions contained in various other acts, both Indian and English, in the first instance, it is advisable to restrict the enquiry to the terms of the enactment itself, because the legislatures have been changing the words and expanding the scope of references to arbitrators or to

H

the Registrars step by step. The sentence, namely, "notwithstanding anything contained in any other law for the time being in force" clearly ousts the jurisdiction of Civil Courts if the dispute falls squarely within the ambit of s. 91(1). Five kinds of disputes are mentioned in sub-s. (1); first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society; and, fifthly, disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws.

The question arises whether the dispute touching the assets of a society would be a dispute touching the business of a society. This would depend on the nature of the society and the rules and bye-laws governing it. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said that letting out of those parts is a part of the business of the society. But it may be that it is the business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant of a member of the bank in a building which has subsequently been acquired by the Bank cannot be said to be a dispute touching the business of the Bank, and the appeal should fail on this short ground.

The High Court had followed the observations of the Full Bench of the Bombay High Court in *Farkhundali v. Potdar*⁽¹⁾ wherein it was observed :

"The nature of business, which a society does, is to be ascertained from the objects of the society. But whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. The word "touching" is also very wide and would include any matter which relates to, concerns or affects the business of the society."

(1) 63 B.L.R. 985.

- A The Full Bench was construing s. 54 of the Bombay Co-operative Societies Act, 1925 (Bombay Act VII of 1925), which *inter alia*, provides

B “54(1)(a) If any dispute touching the constitution or business of society arises between members or past members of the society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent or servant of the society past or present or between the society or its committee, and any officer, agent, member or servant of the society past or present, it shall be referred to the Registrar for decision by himself or his nominee.”

C

The question before the Full Bench was whether it was open to an employee of a co-operative society to proceed against the society in respect of a claim for wages either under the Payment of Wages Act, 1936, or under s. 54 of the Bombay Co-operative Societies Act, 1925.

D

E While we agree that the nature of business which a society does can be ascertained from the objects of the society, it is difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We, however, agree that the word “touching” is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word “affects” should also be used in defining the scope of the word “touching”.

F One other limitation on the word “dispute” may also be placed and that is that the word “dispute” covers only those disputes which are capable of being resolved by the Registrar or his nominee. It seems to us very doubtful that the word “dispute” would include a dispute between a landlord society and a tenant when the landlord society has not been set up for the purpose of constructing or buying and letting out houses. In the presence of various rent acts which give special privileges to tenants it would be difficult to say that such disputes were intended to be referred to the Registrar. Of course, this result may also follow from the interpretation of the Rent Act and the Co-operative Societies Act by applying other principles of construction.

G

H This was the line of reasoning adopted by the House of Lords in *E. C. Mulkern v. James Lord*⁽¹⁾ in holding that “proceedings in respect of accounts under a mortgage and sale of the property,

(1) 4 A.C. 182.

which might include title to redemption or a judgment of foreclosure, were not such disputes, between the society and a member, as the statutes [Friendly Societies Act (10 Geo. 4, c. 56) read with s. 4 of 6 & 7 Will. 4, c. 32] had contemplated. A

The appeal must also fail on the ground that even if it is a dispute touching the business of the society within the meaning of s. 91(1) of the Act, it is not a dispute between a society and a member or a person claiming through a member. It seems to us that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then he must be covered, if at all, by the provisions of s. 91(1)(a) or (c). But once it is held that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of s. 91(1)(b). B
C

It has been held in various cases in England that disputes referable under similar acts are only disputes between a society and a member of a society when he enters into a transaction with the society as a member. [See *Morrison v. Glover*⁽¹⁾ *Prentice v. London*⁽²⁾ *Palliser v. Dale*⁽³⁾ *Judson v. Ellesmere Club*⁽⁴⁾] Similar view was expressed by the Bombay High Court in *Shyam Co-operative Society v. Ramibai*⁽⁵⁾ where Chagla C.J., observed : D

"Now, before a case can fall under s. 54 (of the Bombay Co-operative Societies Act VII of 1925), 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 not 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 *qua* 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." E

In *Krishna Ayyar v. Urban Bank*⁽⁶⁾ it was held that a dispute between a legal practitioner, who was a member, a director and the legal adviser of a co-operative bank, and the co-operative bank, arising out of matters relating to the legal practitioner's acts as the Bank's Vakil was not a dispute within the Co-operative Societies Act (II of 1912) or the Madras Co-operative F
G

(1) 154 F.R. 1281.

(3) [1897] 1 Q.B. 257.

(5) 54 B.L.R. 517.

(2) 10 C.P. 679.

(4) [1948] All F.R. 844.

(6) I.L.R. [1933] 56 Mad. 970.

A Societies Act, (VI of 1932). In coming to this conclusion, the learned Chief Justice followed the law as stated in England. He observed :

B “I think it is clear that both under the Building Societies Act and the Friendly Societies Act in England which contain somewhat similar provisions as regards the settlement of disputes within the Society by the Registrar that, in order that such a dispute can be dealt with by the Registrar, it must be a dispute between the Society and a member in his capacity as member.”

C In *Vegetola Ltd. v. Wholesale Co-op. Stores*⁽¹⁾ Rajamannar, C.J., observed :

D “Reading clauses (a), (b), (c) and (d) and sub-section (1) of section 51, we think that by necessary intendment, the dispute should be between the society and member *qua* member... For a claim to fall within section 51, it should be a claim by the society against a member *as a member* touching the business of a society. There may be a liability of a member to the society which is not a liability incurred by the member as member. Such a liability will be outside the scope of section 51”.

E In *Mammu Kevi v. Thirurangadi Co-operative Rural Bank, Ltd.*⁽²⁾ it was held that a dispute between a society and the owner of a godown who happens to be a member of the society was not a dispute between the society and a member *qua* a member within the ambit of s. 51 of the Madras Co-operative Societies Act, 1932. In coming to this conclusion the learned Chief Justice followed *Shyam Co-operative Society v. Ramibai*⁽³⁾ and dissented from *Mishrimal v. District Co-operative Growers Association*⁽⁴⁾. In the latter case the Madhya Pradesh High Court had followed the view taken by the Nagpur High Court in *Kisanlal v. Co-operative Central Bank Ltd*⁽⁵⁾. Srivastava, J. in the Madhya Pradesh case, distinguished the English cases on the ground that there the difficulty was felt on account of the wide sweep of the wording in s. 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. He observed that if the contention was accepted that the word “member” restricted 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” would be rendered wholly superfluous.

(1) (1956) 1 M.L.J. 36.

(2) I.L.R. 1964 1 Ker. 83.

(3) 54 B.L.R. 517.

(4) A.J.R. 1961 M.P. 40.

(5) A.I.R. 1946 Nag. 16.

In the Nagpur case [*Kisanlal v. Co-ops Central Bank*⁽¹⁾] the plaintiff joint Hindu family were members of the co-operative Bank and they were also treasurers of the Bank. It does not appear whether the treasurer had to be a member of the co-operative Bank or not. If he had to be a member then the conclusion of the Nagpur High Court in this case that the dispute between the Co-operative Bank and the plaintiffs relating to their liability which arose out of their capacity as treasurers was referable to the Registrar seems to be correct. But if it was not necessary for the treasurer to be a member then we are doubtful whether the case was correctly decided. The Nagpur High Court was construing r. 26 of the Rules framed by the Provincial Government in exercise of the powers conferred on it by s. 43 of the Co-operative Societies Act, 1912. Rule 26 ran as follows :

"Any dispute touching the business of a co-operative society between members or past members of the society or persons claiming through a member or past member, or between a member or past member or persons so claiming and the committee or any officer, shall be referred to the Registrar."

The reasoning of the Nagpur High Court does not appeal to us. Even if the expression "business of a co-operative society" occurring in the Rule is treated as not restricted to the dealings with the members of the society only but to include business which the co-operative societies under the law are empowered to transact, this does not mean that whenever a member enters into any transaction whatsoever with the society and a dispute arises out of that transaction then that dispute is a dispute between the society and a member of the society within the meaning of r. 26. The High Court did not rest its conclusion on the words "or any officer" occurring in r. 26, although it referred to the meaning of the word "officer". Therefore, we need not consider whether the decision can be sustained on that part of the Rule.

In our opinion, the view expressed by the Madras, Bombay and Kerala High Courts is preferable to the view expressed by the Madhya Pradesh and the Nagpur High Courts.

If this is the correct view, then was the lease or the tenancy rights obtained by the petitioners a right or title derived from a member as a member ? It seems to us that when the original owner executed the lease, he was not acting as a member but as a mortgagor in possession, and, therefore, the Bank's claim does not fall within s. 91(1)(b) of the Act.

This takes us to the point whether the Rent Act applies to the facts of this case and, accordingly, the jurisdiction of the Registrar is ousted and it is only the Court of Small Causes which has jurisdiction to eject the petitioners.

(1) A.I.R. 1946 Nag. 16.

- A The scheme of the various Rent Acts and the public policy underlying them are clear; the policy is to give protection to the tenants. Various powers have been conferred on the authorities under the Rent Acts to grant protection to the tenants against ejectment and other reliefs claimed by the landlords. Section 28 of the Rent Act *inter alia* provides :
- B “28. (1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,
- C (a) in Greater Bombay, the Court of Small Causes, Bombay.....
- D shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions; and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question...”
- E This section, expressly bars the jurisdiction of other courts to entertain any suit, proceeding or application between a landlord and tenant relating to the recovery of possession of any premises, and confers jurisdiction on the Courts mentioned in s. 28 to entertain the matter pending before the nominee of the Registrar. But it is said that the Registrar is not a Court within the meaning of s. 28 of the Act. This Court held in *Thakur Jugul Kishore Sinha v. Sitamarhi Central Co-operative Bank Ltd.*⁽¹⁾ that the
- F Assistant Registrar, Co-operative Societies, acting under s. 48 of the Bihar and Orissa Co-operative Societies Act, 1935, was functioning as a Court subordinate to the High Court for the purpose of s. 3 of the Contempt of Courts Act, 1952. It was urged before us that the Registrar is also a Court for the purposes of s. 28 of the Rent Act. We need not decide this question because it seems to us that the jurisdiction of the Registrar is ousted on broader considerations.
- G Both s. 91 of the Act and s. 28 of the Rent Act start by excluding “anything contained in any other law.” As observed by this Court in *Shri Ram Narain v. The Simla Banking Industrial Co. Ltd.*⁽²⁾, “it is, therefore, desirable to determine the over-riding effect of one or the other of the relevant provisions in these
- H two acts, in a given cases, on much broader considerations of the

(1) [1967] 3 S.C.R. 163.

(2) [1956] S.C.R. 603-615.

purpose and policy underlying the two Acts and the clear intentment conveyed by the language of the relevant provisions therein." We may mention that the two Acts which this Court had to deal with in that case were the Banking Companies Act, 1949 (X of 1949) and the Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951).

The preamble of the Rent Act states :

"Whereas it is expedient to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and evictions."

Section 4 of the Rent Act exempts certain premises from its operation but it does not exempt premises belonging to co-operative societies. It is common ground that the Rent Act applies to the premises in question. Section 11 of the Rent Act deals with the fixing of standard rent, and s. 12 provides that "a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act", and it lays down procedure for the filing of a suit for the recovery of possession by landlord and for other matters. Section 13 provides that a landlord may recover possession of any premises under certain conditions. Section 28 provides for jurisdiction of the Courts to deal with the suits and proceedings. Section 29 provides for appeals.

If the matter is heard by the Registrar, none of these provisions would apply. We can hardly imagine that it was the intention of the legislature to deprive tenants in buildings owned by co-operative societies of the benefits given by the Rent Act. It seems to us that the Act was passed, in the main, to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the disputes relating to the internal management of the societies. But under the Rent Act a different social objective is intended to be achieved and for achieving that social objective it is necessary that a dispute between the landlord and the tenant should be dealt with by the Courts set up under the Rent Act and in accordance with the special provisions of the Rent Act. This social objective does not impinge on the objective underlying the Act. It seems to us that the two acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the provisions of the Act, should apply. In view of these considerations we are of the opinion that s. 91 of the Act does not affect the provisions of s. 28 of the Rent Act.

- A We may now refer to the incidental points raised by the learned counsel for the appellant.

- B In our opinion, the High Court has jurisdiction to go into the disputed questions of fact and to quash an interlocutory order even though some sort of alternative remedy exists under s. 154 of the Act. Section 154 of the Act *inter alia* enables the State Government to call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them. This remedy can hardly be treated as an alternative remedy for the purposes of deciding the questions raised by the petitioners.

- C It is not necessary to deal with the third point raised by the learned counsel for the Bank, namely, that the Registrar when making an order under s. 91(2) of the Act, is concerned only with the averments in the plaint. Even if it is so it does not disable the petitioners from raising the point that on the facts as presented by them the provisions of s. 91 of the Act did not apply to the dispute.

- D In the result the appeal fails and is dismissed with costs to Respondents No. 1 and No. 2.

- E **Bachawat J.** I agree that the dispute concerning the property purchased by the Society from one of its members is not a dispute touching the business of the Society. I also agree that the Court of Small Causes has exclusive jurisdiction under sec. 28 of the Rent Act to entertain a proceeding by a landlord for ejection of a tenant. A dispute concerning the ejection of a tenant by a landlord is outside the purview of sec. 91 of the Maharashtra Co-operative Societies Act. It has also been argued that as the lease under which the contesting respondent is claiming was not executed by the owner in his capacity as a member of the Society, there is no dispute between the Society and a person claiming through a member. On this last question, I express no opinion. Having regard to our findings on the other two points, the appeal must fail. I, therefore, agree to the order proposed by my learned brother.

R.K.P.S.

Appeal dismissed.