subsisting claim. But however much we may deplore the present development between persons who were once partners in a firm, that cannot affect the decision of the point of law which has been raised before us by Mr. Jhaveri.

After this appeal was argued fully before us, and even while it was being argued, we gave the parties ample opportunity to settle this dispute between themselves amicably. Indeed, after the arguments were over, at the request of both Counsel we did not proceed to deliver judgment in order to give time to the parties to settle if they could. Efforts at settlement, we are told, have failed, and when the matter was called out to-day for judgment Mr. Jhaveri attempted to refer to Ground No. 7 in his memorandum of appeal. We have not allowed Mr. Jhaveri to refer to this ground or to address us on the merits of this ground. When the appeal was adjourned on the last occasion, it was clearly understood that the arguments were over and that Counsel were to tell us on the next day whether the matter had been compromised or not and Counsel were told in clear and unambiguous terms that, if the Court was informed that the matter is compromised, an order in terms of compromise would be passed ; otherwise we would proceed to deliver judgment. That is why we have not heard Mr. Jhaveri on ground No. 7 to which he attempted to invite our attention.

The appeal fails and must be dismissed with cost.

Attorneys for Appellant : *Thakordas Daru Hamani & Co.*

Attorneys for Respondents : *Dabholkar & Co.*

Appeal dismissed,

P. M. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Desai.

THE MAJOOR SAHAKARI BANK LTD. *v.* N. M. MAJMUDAR AND ANOTHER.*

1955 *Aug.* 23

Bombay Co-operative Societies Act (Bom. VII of 1925), ss. 23, 54, 68, 70—Bombay Industrial Relations Act (Bom. XI of 1947), s. 2 (3)—Bombay Industrial Disputes Act (Bom. XXV of 1938) s. 2 (3)—Notification issued by State Government making Act applicable to business of banking companies—Whether co-operative Societies doing banking business governed by Industrial Relations Act, 1947—Disputes between employee and Society regarding reinstatement of employee—Whether Industrial Court can decide the dispute—Indian Companies Act (VII of 1913), s. 4.

The business of banking carried on by a Co-operative Society registered under the Bombay Co-operative Societies Act, 1925, is an industry to

*Special Civil Application No. 1368 of 1955.

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which the Bombay Industrial Relations Act, 1947, applies as a result of the Notification issued by the State Government under s. 2 (3) of the Bombay Industrial Disputes Act, 1938. Hence a dispute between such a Society and its employee as regards his reinstatement would be governed by the Bombay Industrial Relations Act, 1947, and not by the Bombay Co-operative Societies Act, 1925.

The incorporation contemplated by the Notification need not be under the Indian Companies Act, 1913; it may be under any other Indian law. When a Society is registered under s. 23 of the Bombay Co-operative Societies Act, 1925, it becomes a body corporate with a common seal and perpetual succession. The effect of registration is the same as in the case of a Company registered under the Indian Companies Act, 1913

The disputes contemplated by s. 54 of the Bombay Co-operative Societies Act, 1925, are disputes of a civil nature which could have been decided by Civil Courts but for the provisions with regard to compulsory arbitration. When the employee claims certain rights as a result of the principles of social justice it is for the Industrial Court to decide the dispute.

" Application under Arts. 226 and 227 of the Constitution of India.

The facts are sufficiently set out in the Judgment.

M. R. Parpia with *Madhavji & Co.*, for the Petitioners.

M. A. Rane for *V. M. Tarkunde*, for Respondent No. 2.

Chagla C. J.—An interesting and important question under the Co-operative Societies Act arises on this petition, which has been fully argued both by counsel for the petitioners and counsel for respondent No. 2. The petitioners are a Co-operative Society doing banking business and are registered under the Co-operative Societies Act. Respondent No. 2 was an employee of the petitioners and he came to be dismissed under circumstances, which are not relevant, by the petitioners on November 11, 1954. Respondent No. 2 applied to the Respondent No. 1, who is the Judge of the Labour Court at Ahmedabad, for re-instatement by the petitioners and compensation. The petitioners contended that respondent No. 1 had no jurisdiction to entertain that petition. The learned Judge held against the petitioners. The petitioners went in appeal to the Industrial Court. The Industrial Court held that no appeal lay from that decision and the petitioners have now come before us under art. 227.

The question that we have to consider is whether the activity carried on by the petitioners is an activity, which is an industry, to which the Bombay Industrial Relations Act, (Act XI of 1947), applies. Section 2 (3) of that Act provides that in the areas in which the Bombay Industrial Disputes Act, 1938, was in force immediately before the commencement of Act XI of 1947, the latter Act shall apply to the industries to which the said Act of 1938 applied. In s. 2(3) of the earlier Act of 1938 there was a provision that the State Government may, by notification direct that all or any of the provisions of that Act shall

apply to all or any other industries, whether generally or in any local area, as may be specified in the notification. Pursuant to the power conferred in that sub-section a notification was issued by the State Government on February 26, 1947, bearing No. 396/46/1, and the notification was in the following terms :

"In exercise of the powers conferred by sub-s. (3) of s. 2 of the Bombay Industrial Disputes Act (Bombay Act XXV of 1938) and in supersession of Government notification in the Political and Services Department No. 396/46/1, dated 26th February 1946, the Government of Bombay is pleased to direct that all the provisions of the said Act shall apply to the business of banking companies registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's Dominions or elsewhere or incorporated by an Act of Parliament or by an Indian Law or by Royal Charters or by Letters Patent."

The very narrow question that we have to consider is whether the petitioners carry on the business of banking companies and is registered under any of the enactments relating to companies for the time being in force or is incorporated by Indian Law. Now the definition of "industry" in the Act is very wide and it means any business, trade, manufacture or undertaking or calling of employers. But ideas of social justice take time before they are universally accepted and, therefore, the intention was not to apply this Act to all industries but to selected industries in the first instance, giving power to the State Government to extend the application of the Act to other industries in time. But for the notification the Act would not have applied to the business of banking companies at all, because the business of banking companies was not an industry to which the Act had been made applicable. Now what is contended by the petitioners is that inasmuch as the petitioners are a society incorporated under the Co-operative Societies Act they are not a banking company registered as contemplated by the notification and that any dispute between its employee and itself can only be litigated in the manner provided by the Co-operative Societies Act. It is pointed out that only societies which fall within the ambit of the Co-operative Societies Act are the societies which have as their object the promotion of economic interests of their members in accordance with co-operative principles or established with the object of facilitating the operations of such societies. It is further pointed out that under s. 68 the provisions of the Indian Companies Act are not to apply to societies registered under this Act, and s. 54 provides for compulsory arbitration when there is a dispute between a society and its employee, and under s. 70 jurisdiction of Civil Courts is ousted. Now Mr. Rane has very rightly pointed out that the disputes contemplated by s. 54 are disputes of a civil nature which could have been

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decided by civil Court but for the provisions with regard to compulsory arbitration provided in s. 54. Mr. Rane has also rightly pointed out that the present dispute between the respondent No. 2 and the petitioners could not have been the subject-matter of a reference to arbitration under s. 54. Respondent No. 2 is not claiming to assert any civil rights against the petitioners. What he is claiming is certain rights which are now conferred upon workmen and employees as result of principles of social justice which are now almost universally acknowledged all the world over. There is no right of re-instatement under civil law which can be enforced by an employee against his employer. No contract of personal service can be specifically enforced by a civil Court nor does a civil Court determine whether the wages paid to an employee are proper wages or not. Civil Courts are bound down by the law of contract and it is under the law of contract that the civil Courts decide dispute between a master and his servant. Industrial Courts decide the disputes between a master and his servant on principles of social justice and whereas the civil Courts consider what are the actual terms of the contract regulating the rights of master and servant the industrial Courts consider not the terms of contract but what is just and fair and what is proper for the master to pay to his servant. Therefore, if we were to accept Mr. Parpia's contention the result would be that although the petitioners are doing banking business and although other banks in the country and in the State are governed by the Act and the employees of those banks have the rights given to them under the industrial law as far as the employees of the petitioners are concerned they have none of the rights which the industrial law confers upon employees of other banks. We should be most reluctant to come to such a conclusion. If the language of the notification is plain it is our duty to give effect to it because we are not concerned with the question of policy; but if it is possible to construe the notification in favour of respondent No. 2 it is also equally our duty to put that construction upon the notification. Fortunately, in our opinion, the notification is capable of the construction which Mr. Rane asks us to give to it.

Now, we are in agreement with Mr. Parpia that this is not a banking company which is incorporated by Indian Law. Mr. Rane did suggest that although it was not incorporated under the Indian Companies Act it was incorporated under the Co-operative Societies Act. But what, in our opinion, the notification contemplates is not incorporation under the Indian Law but by an Indian Law; which means that a special law should incorporate the particular company or association. For instance, we have a Reserve Bank of India; we had an Imprial Bank of India; we have now State Bank. The Act

itself incorporates the bank, association or society. And the language used is clear. It is not "incorporated under an Indian Law"; it is "incorporated by an Indian Law". But what appears to us to be fairly clear is the first part of the notification, and when we look at that, it applies to the business of banking companies registered under any of the enactment relating to companies for the time being in force. Now the object obviously was to apply this notification not to associations of less than ten persons who were doing business of banking and who could not be incorporated but to confine the operation of this notification to ten persons or more who could be, and would have to be, registered, either under the Indian Companies Act or some other Act relating to companies. Now let us see whether the petitioners satisfy this definition. The petitioners admittedly do the business of banking. But Mr. Parpia says that the petitioners are not a company but a Society as defined in the Co-operative Societies Act. Now, "Company" is defined in Halsbury's Laws of England, vol. 6, 3rd edition, at p. 11 as an association of a number of individuals formed with some common purpose. Therefore, any society, any association, any group which comes together having a common purpose is, in the eye of law, a company. But every company is not a *juristic persona*. It has no legal entity and it is incorporation which gives it a *persona* and legal entity; and the result of incorporation is, as pointed out by Halsbury, that it becomes a body corporate with perpetual succession and a common seal. Therefore, in the wide and proper legal sense the petitioners are a company although they may choose to call themselves a society—or even if the Co-operative Societies Act requires that they should call themselves a society—and in the eye of the law they are a company. The next question is whether they are an unincorporated company or an incorporated company. The answer to that question is very simple, because under s. 23 of the Bombay Co-operative Societies Act, 1925, registration of a society renders it a body corporate by the name under which it is registered with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution. The petitioners are a society registered under that Act. Indeed they have to be registered in order that the Act should apply to them and on the petitioners being registered the result of registration is set out in s. 23. Now the result of registration under s. 23 of the Co-operative Societies Act is identical with the result of registration under the Indian Companies Act and the effect of registration under that Act is set out in s. 23(2) of that Act. Therefore, there is no special charm or magic in a company being registered under

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the Companies Act or under the Co-operative Societies Act, as far as the result of registration is concerned. The effect of registration is identical. The company becomes a body corporate, it gets a common seal and it has a perpetual succession. These are the three important *indiceae* of incorporation and they apply to an association registered under the Co-operative Societies Act as much as to an association registered under the Indian Companies Act. Section 4 of the Companies Act may be looked at as that section prohibits a partnership or association exceeding a certain number doing banking business and it provides that no company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act or is formed in pursuance of an Act of Parliament or some other Indian Law or of Royal Charter or Letters Patent. Therefore, the prohibition against more than ten persons doing banking business is removed only if an association of more than ten persons is incorporated. But the Incorporation need not necessarily be under the Indian Companies Act; it may be under any other Indian Law. Therefore, what is essential and what removes the prohibition against more than ten persons doing banking business is the fact that that association becomes a body corporate.

Now turning to the language of the notification what is urged by Mr. Parpia is that the notification only contemplates the Indian Companies Act and Acts similar to that Act. In our opinion, there is no reason why such a limited interpretation should be put upon the general words used in the notification. If the intention of the State Government was that the notification should only apply to the Companies registered under the Indian Companies Act or Acts corresponding to Indian Companies Act nothing was easier than for the Government to have stated so. If the intention was to exclude the banking companies registered under the Co-operative Societies Act that also could have been set out in the notification itself. Neither counsel has been able to draw our attention to any Indian legislation under which an association doing banking business can be registered other than the Indian Companies Act and the Co-operative Societies Act. Therefore, nothing was simpler or easier than for the State Government to have stated "doing business of banking companies registered under enactments other than the Co-operative Societies Act". When a Court is called upon to interpret a notification which is capable of more than one meaning it is not amiss to consider the reason and principle underlying the notification. There is no reason or principle why a Co-operative Society doing banking business should be put on a different footing with regard to industrial

law from other companies doing identical business. There is no reason why a co-operative banking society should treat its employees otherwise than as laid down under the industrial law. If we were satisfied that there was some reason or principle which would lead us to put upon this notification the interpretation which Mr. Parpia suggests we might have put such an interpretation on the notification, but all the considerations are in favour of the interpretation suggested by Mr. Rane. There is nothing in the notification which prevents us from giving the interpretation which we have ultimately decided to give to this notification. Therefore, we are of the opinion that the petitioners are doing business of banking and are registered under an enactment relating to companies which is the Co-operative Societies Act. The learned Judge was right in taking the view that he had jurisdiction to deal with the matter. The petition fails and is dismissed with costs.

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Application dismissed.

K. B. S.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

MESSRS H. A. SHAH & CO., APPLICANTS *v.* THE COMMISSIONER OF INCOME-TAX AND EXCESS PROFITS TAX, BOMBAY CITY, RESPONDENT.*

1955 *Sept. 13*

Indian Income-Tax Act (XI of 1922), ss. 5, 28 and 37—Whether Income-Tax Appellate Tribunal part of machinery of assessment?—Whether Income-Tax Authorities including Tribunal bound by decision in earlier assessment?—Limitations on powers of such authorities to revise in later assessment their decisions on points decided in earlier assessment—Whether Tribunal stands on same footing as High Courts in respect of application of res judicata *or of principle of estoppel by record?*

The decision of an Income-Tax Authority is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made; the decision given in an earlier assessment has no binding force upon either the assessee or the Income-Tax Authorities. But it does not follow that the Income-tax Authorities may at their sweet will come to a conclusion which is contrary to the one arrived at in their earlier assessment. Even though so far as the Income-tax Authorities are concerned the principles of *res judicata* or estoppel by record do not apply, it is very desirable that there should be finality and certainty even in matters arising out of the Income-Tax Act. Therefore, an earlier decision of an Income-tax Authority cannot be re-opened if (i) that decision is not arbitrary or perverse, (ii) it has been arrived at after due inquiry and (iii) no fresh facts are placed before the Income-

*Income-tax Reference No. 2 of 1955.