

APPELLATE CIVIL

*Before Harbans Lal J.*KIRPA SINGH AND ANOTHER.—*Appellants.**versus*MIRPUR JATTAN COOPERATIVE AGRICULTURAL SERVICE
SOCIETY LTD.—*Respondent.*

Execution Second Appeal No. 668 of 73

October 25, 1977.

Punjab Co-operative Societies Act (XIV of 1955)—Section 50—Punjab Co-operative Societies Act (XXV of 1961)—Sections 55, 56 (2) and 86—Arbitration Act (X of 1940)—Sections 19 and 46—Reference of a dispute to three Arbitrators under 1955 Act—Award given by such Arbitrators set aside —1955 Act repealed meanwhile—Registrar withdrawing the dispute from the arbitrators and referring the same to a sole arbitrator under the 1961 Act—Such withdrawal—Whether competent—Section 19 of the Arbitration Act—Whether applicable.

Held, that a close perusal of section 46 of the Arbitration Act 1940 makes it clear that the provisions of Arbitration Act, which will include section 19 also, will be applicable to every arbitration even if the latter was pursuant to an agreement under any other enactment only if the provisions of other Acts are not inconsistent with the provisions of the Arbitration Act. So far as the cases under the Co-operative Societies Act are concerned the power of the Registrar to transfer the disputes from one arbitrator to another or to withdraw the same from the arbitrator already appointed and to decide the case himself or to entrust the same to other newly appointed Arbitrator is inconsistent with the provisions of the Arbitration Act under which only the Civil Court can appoint an arbitrator and substitute new arbitrators. According to sections 55 and 56 of the Punjab Co-operative Societies Act 1961 the power of the Registrar in this regard is to be exercised notwithstanding the provisions of any other Act to the contrary. Thus section 19 of the Arbitration Act regarding the superseding of the reference is not applicable to the reference of disputes under the Co-operative Societies Act.

(Para 5)

Held, that after the repeal of the Punjab Co-operative Societies Act 1954, the provisions of the 1961 Act are applicable under which the Registrar has full and unbridled powers to withdraw any dispute from the arbitrator appointed by him earlier and has the jurisdiction either to decide the case himself or to refer the

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dispute to any other arbitrator. This power was existing even under the 1954 Act., Thus the Registrar was competent to withdraw the present case from the three arbitrators earlier appointed and was competent to refer the dispute to the new arbitrator.

(Para 6).

Execution Second Appeal from the order of the Court of Shri Harbans Singh Additional District Judge, Jullundur, dated 19th November, 1972, affirming with costs that of Shri Dalbara Singh, Sub-Judge, II Class, Nawanshahr, dated 11th April, 1972, rejecting the application of objectors/Judgment Debtors.

H. S. Gujral, Advocate; for the appellants.

H. S. Giani, Advocate; for the respondent.

JUDGMENT

Harbans Lal, J.

(1) This appeal is directed against the judgment of the learned Additional District Judge, Jullundur, dated 19th November, 1972, whereby the appeal filed by the appellants was dismissed and the order of the Subordinate Judge 2nd Class, Nawanshahr, dismissing their objectoin petition was affirmed.

(2) A dispute having arisen between the Mirpur Jattan Multi-purpose Co-operative Society (hereinafter to be called the respondent-society) and the appellants in 1956, because the appellants did not abide by the agreement entered into by them with the respondent-society, a reference was made by the respondent-society to the Registrar of the Co-operative Societies under the provisions of the Punjab Co-operative Societies Act, 1954 (now repealed) and the dispute was referred to three arbitrators, namely, Sardara Singh, Kartar Singh and Gulzar Singh. Out of these arbitrators, Sardara Singh Inspector Co-operative Societies was appointed as nominee of the Registrar, Gulzar Singh was appointed as nominee of the respondent-society, and Kartar Singh as nominee of Gurmel Singh, one of the oppellants. Award was given by them on 4th August, 1959. The

same was challenged and was ultimately set aside by this Court by the order of Harbans Singh, J. (as he then was), dated 19th July, 1963,—*vide* Execution Second Appeal No. 164 of 1962. The operative part of this order is reproduced below:—

“In the result I accept the appeal and set aside the award as against all the three. It would be open to the arbitrators to proceed from the stage at which the proceedings were on 4th August, 1959 and take action in accordance with law.”

(3) On 5th February, 1964, the respondent-society, which was subsequently re-named as Agricultural Service Society, passed a resolution making a reference to the Assistant Registrar, who, in the exercise of the powers of the Registrar, appointed one Shri Yash Pal as the sole arbitrator in the dispute by his order, dated 22nd July, 1964. The latter announced his award on 8th January, 1965 against the three appellants by which an amount of Rs. 7,408.62 Paise was awarded to the respondent-society against the appellants. Subsequently an application was submitted by the respondent-society for execution of the said award as a decree. To that an objection petition was filed on behalf of the appellants which was dismissed by the executing Court and the said order was affirmed by the learned Additional District Judge by his order which is now under appeal.

(4) The learned counsel for the appellants has raised the following contentions:—

- (1) According to the order of the High Court, dated 19th July, 1963, only the award by the three arbitrators had been set aside and the original reference was kept alive. In these circumstances the Registrar was not competent to make a second reference to a new arbitrator, Yash Pal, and, secondly, the award, dated 8th January, 1965, which is being executed is a nullity and without jurisdiction and cannot be executed as a decree.
- (2) On a second reference by the respondent-society, the dispute was referred to the sole arbitrator by the Assistant Registrar, who had no jurisdiction to do so under section 56 of the Punjab Co-operative Societies Act, 1961, and that the dispute could be referred to the arbitrator only by the Registrar and not by the Assistant Registrar.

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- (3) The dispute was referred to the sole arbitrator who gave the award under dispute without any notice to the appellants and thus reference of the dispute to the arbitrator was illegal.

In support of his contentions the learned counsel has placed reliance on *Belahri Cooperative Society, v. Puttu Lal*, (1), *Jaswant Rai v. Jain Coop. Society Pasrur*, (2) *Baranagore J.F. Co. v. M/s. Hulaschand*, (3), and *Firm Gulab Rai v. Bansi Lal*, (4). The ratio of these decisions is that during the continuance of the first reference under the Arbitration Act, second reference cannot be made even if the award is set aside or is held to be void by the appropriate authority, and, secondly, that it is the domain of the Civil Court to supersede the reference under section 19 of the Arbitration Act. There can be no dispute with this principle of law, and the same has not been challenged by the learned counsel for the respondent-society. According to the learned counsel for the respondent-society, on the basis of the first reference, three arbitrators had been appointed by the Registrar in 1956 under section 50 of the Punjab Co-operative Societies Act, 1954 (hereinafter to be called the 1954 Act), when the provisions regarding reference of disputes to arbitrators was quite different from the one provided under the Punjab Co-operative Societies Act, 1961 (hereinafter to be called the 1961 Act). Under the 1954 Act, arbitrator or arbitrators could be appointed by the Registrar only after notice to the parties concerned, and the dispute was to be referred to three arbitrators if so required by the parties. The said three arbitrators were to be a nominee of the Registrar and one each of the two disputing parties. However, under section 56 of the 1961 Act, the dispute could be referred to only one arbitrator by the Registrar or could be decided by the Registrar himself, and the provision regarding reference of the dispute to three arbitrators was omitted. The requirement of previous notice to the parties for the purpose of appointment of arbitrator was also deleted. Regarding the power of the Registrar, subsequent to the appointment of the arbitrator, it was provided under section 50 of the 1954 Act that the Registrar had the jurisdiction to withdraw

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- (1) A.I.R. 1941 Oudh 315.
(2) 1956 P.L.R. Short-notes P. 6.
(3) A.I.R. 1958 Cal. 490.
(4) A.I.R. 1959 Pb. 102.

the dispute from his nominee or the arbitrators, as the case may be, and could decide the dispute himself or refer it again to any other nominee appointed by him. To exercise this power, reasons had to be recorded in writing. In section 56 of the 1961 Act, the power of the Registrar to withdraw any reference from the arbitrator and refer the dispute to another arbitrator was kept intact under sub-section (2) of section 56, and this power was made more absolute inasmuch as the requirement to give reasons for the same, as had been expressly laid down in the 1954 Act, was omitted in the 1961 Act. It was made further clear in section 55 of the 1961 Act that all disputes between a society and its members or any other society had to be referred to the Registrar for decision "notwithstanding anything contained in any law for the time being in force", if any dispute related to the constitution, management or the business of the co-operative society. It was further provided that the jurisdiction of Civil Court to entertain any suit or other proceeding in respect of such dispute was also barred. The position regarding the bar of jurisdiction of the Civil Court was made further clear beyond any doubt under section 82 of the 1961 Act. This position of law is not disputed by the learned counsel for the appellants.

(5) The contention of the learned counsel for the appellants is that the order of the Registrar referring the dispute to three arbitrators in 1956 was passed under the 1954 Act. The award under that reference having been set aside by the High Court in 1963, while keeping the reference alive, only three arbitrators appointed on the first reference had the jurisdiction to make a fresh award and under section 19 of the Arbitration Act, 1940, the first reference could be superseded only by a Civil Court which was not done in this case, and that during the continuance of this reference, no second reference, could be made by the co-operative society, nor was the Registrar competent to appoint a new arbitrator. It was further argued that in view of section 46 of the Arbitration Act, the Provisions of the said Act were applicable not only to the reference under this Act but to all other agreements under any other enactment whatsoever. This contention, however, does not bear scrutiny. A close perusal of section 46 of the Arbitration Act makes it clear that the provisions of the Arbitration Act, which will include section 19 also, will be applicable to every arbitration, even if the latter was pursuant to an arbitration agreement under any other enactment, only if the provisions of the other Acts are not inconsistent with the provisions of the Arbitration Act. So far as the cases under the Co-operative

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Societies Act are concerned, the power of the Registrar to transfer the disputes from one arbitrator to another, or to withdraw the same from the arbitrator already appointed and to decide the case himself or to entrust the same to other newly appointed arbitrator is inconsistent with the provisions of the Arbitration Act under which only the Civil Court can appoint an arbitrator and substitute new arbitrators, and can even after setting aside the award, remit the same to the old arbitrator or the new one. According to sections 55 and 56 of the 1961 Act, the power of the Registrar in this regard is to be exercised notwithstanding the provisions of any other Act to the contrary. Thus in my considered opinion section 19 of the Arbitration Act regarding the superseding of the reference is not applicable to the reference of disputes under the Co-operative Societies Act.

(6) It was then contended by the learned counsel for the appellants that the dispute had been referred to three arbitrators by the Registrar under the 1954 Act, and the same having been repealed at the time when the award given by them was set aside by the High Court, the said reference and the entrustment of the dispute to three arbitrators could not be modified or changed by the Registrar under the subsequent Act of 1961. Reliance in this regard is placed on section 4 of the Punjab General Clauses Act under which, according to the learned counsel, after the repeal of a particular Act, any rights, which accrued under the old Act, remained unaffected. However, section 4 of the General Clauses Act must be read along with section 86 of the 1961 Act, by which the 1954 Act was repealed, and it was provided as under:—

“The Punjab Co-operative Societies Act, 1954 (14 of 1955) is hereby repealed; but notwithstanding such repeal, anything done or any action taken under the repealed Act shall, to the extent of being consistent with this Act, be deemed to have been done or taken under this Act.”

Section 4 of the General Clauses Act specifically provided this provision is to operate “unless a different intention appears.” Thus after the repeal of the 1954 Act, the provisions of the 1961 Act are applicable, under which the Registrar has full and unbridled powers to withdraw any dispute from the arbitrator appointed by him earlier and has the jurisdiction either to decide the case himself or to refer the dispute to any other arbitrator. This power was existing even

under the 1954 Act. This being the position, the Registrar was competent to withdraw the present case from the three arbitrators earlier appointed and was competent to refer the dispute to the new arbitrator as he did by his order, dated 22nd July, 1964. The mere fact that the respondent-society passed a resolution making a new reference to the Registrar for reference of the dispute to the arbitrator did not make any difference so long as the order of the Registrar withdrawing the dispute from the three arbitrators appointed earlier and reference of the same to the new arbitrator was within the ambit of his powers as envisaged under section 56(2) of the 1961 Act.

(7) The other contention of the learned counsel for the appellants that the dispute was referred to the new arbitrator without notice is also without any force as under the 1961 Act such a notice is not necessary, which was essential under the 1954 Act.

(8) The last contention was that reference of the dispute to the new arbitrator was made by the Assistant Registrar and not by the Registrar and, therefore, the same being without jurisdiction, the award on this basis was also illegal and void. There is no doubt that under section 56 of the 1961 Act, the dispute can be referred to arbitration only by the Registrar. However, perusal of the order, dated 22nd July, 1964, makes it clear that the Assistant Registrar passed the order referring the disputes to the new arbitrator in exercise of the powers of the Registrar. The learned counsel for the respondent-society has drawn my attention to the contents of the objection petition filed by the appellants in the executing Court. Its perusal shows that whereas a number of objections were raised, no objection whatsoever was taken challenging the power of the Assistant Registrar to refer the dispute to arbitration, in the exercise of his power as Registrar. Under the circumstances, the appellants are not entitled to traverse beyond their objection petition and raise a new objection at this stage. Even this objection was not raised in the first appellate Court. The learned counsel for the respondent-society has, besides, stressed that all the Assistant Registrars were conferred the powers of the Registrar under the 1961 Act by a notification of the Government. However, it is not necessary to go into this question any further in view of the fact that the appellants did not raise this objection in their objection petition.

(9) For the reasons mentioned above, there is no merit in the appeal and the same is dismissed with costs.

K.T.S.