

Shankar Singh  
and others  
v.  
Iqbal Singh  
and others

G. D. Khosla,  
A. C. J.

did not limit these powers subsequently. Therefore, the Deputy Custodian-General was perfectly entitled on the 29th of January, 1954, to make the order which he did.

In this view of the matter the decision of the learned Single Judge must be held to be erroneous. The question of whether the minor petitioners will suffer any hardship in being ousted from the land of which they have been in possession for a number of years is wholly irrelevant once it is held that the order which was made by the Deputy Custodian-General was made lawfully and with jurisdiction. The rules laid down by the Department must be observed and the Deputy Custodian-General in setting aside the order of the Additional Custodian merely followed those rules. The writ issued by the learned Single Judge is liable to be withdrawn. I would, therefore, allow this appeal, set aside the order of Kapur, J., and dismiss the petition for writ, but, in the circumstances, I would make no order as to costs.

DULAT, J.—I agree.

R. S.

APPELLATE CIVIL

*Before G. L. Chopra, J.*

HARNAM SINGH,—*Plaintiff-Appellant.*

*versus*

MAN SINGH AND OTHERS,—*Defendants-Respondents*

**Regular Second Appeal No. 182 of 1954.**

1959  
Jan., 13th

*Co-operative Societies Act (XI of 1912)—Section 43(1)—Rule 18 framed thereunder—Whether bars a suit by a member of the Co-operative Society against the other member or members—Arbitration Act (X of 1940)—Sections 34 and 46—Applicability of—Inter-pretation of Statutes—Presumption in regard to.*

*Held*, that there is no express prohibition to the institution of a suit, except in cases covered by sub-clause (j) of rule 18. Under sub-clause (j) finality is attached only to the award made by the arbitrator. The award cannot be called in question in any civil or revenue Court, except on proof of a corrupt gratification by the arbitrator. No award having so far been given, though the reference is said to have been made as far back as 1950, sub-clause (j) of Rule 18 would not expressly stand in the way of the institution of the suit. The jurisdiction of the Civil Court will be barred if there is a decision of the arbitrator or the Registrar, otherwise neither the Act nor the rules framed thereunder debar the jurisdiction of civil Courts to entertain disputes which otherwise have to be referred to the Registrar or to arbitration. Till a reference has been made to the arbitrator or to the Registrar the rule must be deemed to amount to an agreement between the Society and the members, etc., to refer all disputes of the nature mentioned in the rule to arbitration, and if a party chooses to institute a suit on such matter in a civil or revenue Court, the proper procedure for the other party is to move that Court to stay its proceedings under Section 34 of the Arbitration Act as Section 46 of the Arbitration Act makes the provisions of that Act applicable to statutory arbitrations as well.

*Held*, that one of the ordinary presumptions always is that the legislature does not intend to make any substantial alternation in the ordinary rules of law beyond what it explicitly declares, either in express terms or by clear implication. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature will over-throw fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness.

*Regular Second Appeal from the decree of Shri Raj Inder Singh, Senior Sub-Judge, with Enhanced Appellate Powers, Ludhiana; dated the 8th December, 1953, affirming that of Shri Rampal Singh, Sub-Judge, II class, Samrala, dated the 29th April, 1953; dismissing the plaintiff's suit with costs.*

RAI KUMAR, for Appellant.

D. N. AWASTHY, for Respondents.

## JUDGMENT

Chopra, J.

CHOPRA, J.—Harnam Singh, appellant instituted a suit for injunction to restrain the respondents from interfering with the user of his one-sixth share in the persian wheel of Barianwala well situate in village Manopore, of which the respondents were the other co-owners. The defendants denied the plaintiff's claim and also took the plea that civil Courts had no jurisdiction to entertain the suit. On the issue regarding his share the Courts below found in favour of the plaintiff, but non-suited him on the legal objection. This is an appeal preferred by the plaintiff.

The respondents' case is that the suit was barred by the provisions of Rule 18 of the Rules framed under section 43(1) of the Co-operative Societies Act, No. 11 of 1912, as arbitration proceedings in respect of the matter were going on before the Registrar under the said rule. Proceedings for consolidation of holdings in this village were being carried out under the Co-operative Societies Act through the Village Consolidation Society. The matter in question is said to be included in the reference made to the Registrar by a resolution of the Society, dated 10th December, 1950,, (copy Ex. D1), and the proceedings to be still pending before the Registrar.

On behalf of the appellant, it is contended (i) that the reference merely related to the joint land of the parties and it did not include the dispute regarding their respective shares in the persian wheel, and (ii) that, in any case, since no award has so far been given there is nothing in the rule to bar the present suit. The first point raised by the appellant is a question of fact, the unanimous decision thereon of the Courts below would be final.

Rule 18 on which alone reliance is placed by the respondents reads—

Harnam Singh  
v.

Man Singh  
and others

Chopra, J.

“*Disputes*—(a) Any dispute concerning the business of a co-operative society between members or past members of the society or persons claiming through them, or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar. Reference may be made by the committee or by the society by resolution in general meeting or by any party to the dispute, or if the dispute concerns a sum due from a member of the committee to the society, by any member of the society.

(b) The Registrar may either decide the dispute himself, or appoint an arbitrator, or refer the dispute to three arbitrators, of whom one shall be nominated by each of the parties and the third shall be nominated by the Registrar and shall act as Chairman.

(c) When a dispute is referred to three arbitrators, if any party to the dispute fails to nominate an arbitrator within 15 days, the Registrar may make the nomination instead. If an arbitrator nominated by one of the parties dies, or refuses or neglects to act, or, by absence or otherwise, becomes incapable of acting, the Registrar shall call upon the party concerned to nominate a fresh arbitrator within 15 days, and if no arbitrator is nominated accordingly, he

Harnam Singh

v.

Man Singh  
and others

Chopra, J.

may nominate one himself : and if such arbitrator was nominated by himself he shall nominate a fresh one in his place.

- (d) No legal practitioner may be nominated as arbitrator by any party to a dispute.
- (e) In all arbitration proceedings under this rule the Registrar or arbitrators shall have power to administer oaths, to require the attendance of the parties and witnesses and to require the production of all necessary books and documents by a summons delivered orally or sent by hand or by registered post, or through the nearest civil court having jurisdiction in the area in which the society operates, and shall further have power to order the expenses incurred in determining the dispute to be paid either out of the funds of the society or by such party or parties to the dispute as he or they may think fit. Persons not attending in accordance with such summons or making any other default or refusing to give evidence or guilty of any contempt to an arbitrator during the investigation of the matter referred, shall be subject by order of the Registrar on the representation of the arbitrator or arbitrators, as the case may be, to such disadvantages, penalties and punishments as they would incur for the same offences if committed in suits tried before a civil court.
- (f) The Registrar or arbitrator shall hear the evidence of the parties and witnesses

who attend, and upon that evidence and after consideration of any documentary evidence produced by either side a decision or award shall be given in accordance with justice, equity and good conscience and shall be reduced to writing, announced to the parties and handed over to the successful party. When neither party is entirely successful the award shall be deposited with the Registrar who will issue a copy of it to any party that applied for it.

Harnam Singh  
v.  
Man Singh  
and others  

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Chopra, J.

- (g) In the absence of any party duly summoned to attend the dispute may be decided *ex parte*.
- (h) When three arbitrators are appointed, the opinion of the majority shall prevail.
- (i) Any party aggrieved by an award of an arbitrator may appeal to the Registrar in person or by agent within one month of the date of the award.
- (j) An arbitrator's award, if no appeal has been made within a month, or a decision of the Registrar originally or in appeal, shall not, as between the parties to the dispute, be liable to be called in question in any civil or revenue court, and shall be in all respects final and conclusive, except on proof of the receipt of a corrupt gratification by the arbitrator.
- (k) A decision or award shall on application to any civil court having jurisdiction in the area in which the society operates

Harnam Singh  
 v.  
 Man Singh  
 and others  
 \_\_\_\_\_  
 Chopra, J.

be enforced in the same manner as a decree of such court.

- (1) In proceedings before the Registrar or an arbitrator no party shall be represented by a legal practitioner."

A simple reading of the rule makes it clear that there is no express prohibition to the institution of a suit, except in cases covered by sub-clause (j) of the rule. Under sub-clause (j) finality is attached only to the award made by the arbitrator. The award cannot be called in question in any civil or revenue Court, except on proof of a corrupt gratification by the arbitrator. No award having so far been given, though the reference is said to have been made as far back as 1950, sub-clause (j) of Rule 18 would not expressly stand in the way of the institution of the suit. According to the respondents the common law remedy by an action in a civil Court has been taken away by the rule by necessary implication. Reliance is placed on *The Zamindara Bank, Sherpur Kalan and others v. Suba* (1), where the learned Judges were pleased to observe—

"We think it would be entirely repugnant to the scope and object of the Act if a suit like this is allowed to be decided in a Civil Court, and we accordingly hold that by the substitutional remedy provided under the rules in the shape of a reference to the Registrar the common law remedy by an action in a Civil Court has by necessary implication been taken away."

The argument that appealed to the learned Judges was that the object of the Act is to encourage

(1) A.I.R. 1924 Lah. 418

drift, self-help and co-operation among agriculturists, artisans and persons of limited means, and will be impossible to attain these objects if these people for the settlement of their disputes have necessarily to undergo all the troubles and worries of an expensive and protracted litigation. In *Mohammad Khan v. Co-operative Society, Khawaspur* (1), Jai Lal, J., expressed his disagreement with the conclusion arrived at by the learned Judges in the case referred to above. On a reference to the Co-operative Societies Act and the Rules framed thereunder, particularly Rule 18, the learned Judge expressed his own view in following terms :—

Harnam Singh

v.

Man Singh  
and others

Chopra, J.

“It would thus to observed that the jurisdiction of the civil Courts is barred if there is a decision of the arbitrator or the Registrar, otherwise neither the Act nor the rules framed thereunder debar the jurisdiction of civil Courts to entertain disputes which otherwise have to be referred to the Registrar or to arbitration. In my opinion, till a reference has been made to the arbitrator or to the Registrar the rule must be deemed to amount to an agreement between the Society and the members, etc., to refer all disputes of the nature mentioned in the rule to arbitration, and if a party chooses to institute a suit on such matter in a civil or revenue Court, the proper procedure for the other party is to move that Court to stay its proceedings under clause 18, Schedule 2, Civil P.C. \* \* \* \*

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(1) A.I.R. 1937 Lah. 268



Harnam Singh  
 v.  
 Man Singh  
 and others  
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 Chopra, J.

Sitting in Single Bench the learned Judge felt himself bound by the Division Bench judgment, but since the case could be decided on a different point he did not consider it necessary to refer the case to a larger Bench. I am in respectful agreement with this later view of the same Court.

As recently observed by Supreme Court in *Hanskumar Kishan Chand v. The Union of India* (1), the position in law is the same when the reference to arbitration is made not under agreement of parties but under provisions of a statute. The result of those provisions again is to withdraw the dispute from the jurisdiction of the ordinary Courts and to refer it for the decision of a private Tribunal. That decision is an award, and stands on the same footing as an award made on a reference under agreement of parties. Statutory arbitration thus stands on the same footing and, in the absence of any specific provision, it takes the place and has the effect of a private arbitration agreement. Section 46 of the Arbitration Act, lays down—

“The provisions of this Act, except subsection (1) of section 6 and sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is consistent with that other enactment or with any rules made thereunder.”

There being no express bar to a suit in the Statute or the Rules under consideration, the only effect of the statutory reference, till an award is made,

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(1) A.I.R. 1958 S.C, 947

ould be one provided by section 34 of the Arbitration Act. Section 34 provides—

Harnam Singh

v.

Man Singh  
and others

Chopra, J.

“Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings ; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.”

It follows, the defendants could, at the proper stage, apply to the Courts to stay the proceedings in the suit and the Court then would have passed the order it deemed necessary. It has to be remembered that the right claimed by the plaintiff is not purely a creature of the particular statute, but is a common law right. The statute only entrusts to a special tribunal certain disputes relating to the right. The statute does not expressly oust the jurisdiction of the civil Court and, in my opinion, the intention of the statute that the right must only be exercised or enforced in the manner provided by the statute is not unmistakably clear.

Harnam Singh  
v.  
Man Singh  
and others  
Chopra, J.

One of the ordinary presumptions always is that the legislature does not intend to make any substantial alteration in the ordinary rules of law beyond what it explicitly declares, either in express terms or by clear implication. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would over-throw fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness, (Maxwell, 10th Edition, Page 82). I would, therefore, hold that the jurisdiction of the civil Court to entertain the present suit was not ousted by sub-clause (j) of Rule 18 of the Rules framed under section 43(1) of the Co-operative Societies Act.

The question then arises, is the plaintiff entitled to a decree for injunction? It appears that although the reference was made several years ago and the matter, for one reason or the other was not being seriously taken up by the special tribunal, the Registrar, Co-operative Societies, has recently directed the Assistant Registrar, to dispose of the proceedings expeditiously, and the latter has appointed an arbitrator to go into the matter. The arbitrator is now stated to be amidst the proceedings, collecting materials for final disposal of the reference. Section 56 of the Specific Relief Act provides *inter alia* that an injunction cannot be granted 'when equally efficacious relief can certainly be obtained by other usual mode of proceeding except in case of breach of trust'. The matter can certainly be more appropriately gone into, and the proper relief granted to the plaintiff, by the special tribunal. As laid down by Rule 18, the arbitrator's award is to be regarded as the final and conclusive adjudication of the dispute between the parties. The award is to have

the force of a decree and shall be executable as such. In the circumstances, I do not think it is a fit case where the Court should exercise its discretion in favour of the plaintiff and grant him the relief prayed for. The Registrar, Co-operative Societies, shall, however, see that the matter, which has already been so much delayed, is disposed of at the earliest, in the next couple of months if possible.

Harnam Singh  
v.  
Man Singh  
and others  
Chopra, J.

In the result, the appeal is dismissed but in view of the facts of the case parties are left to bear their own costs throughout. Copy of the judgment to be sent to the Registrar, Co-operative Societies, Jullundur.

*B.R.T.*

FULL BENCH

*Before D. Falshaw, Mehar Singh and I. D. Dua, JJ.*

SHRIMATI SUKHI,—Appellant

*versus*

BARYAM SINGH AND OTHERS,—Respondents

Regular Second Appeal No. 609 of 1949

*Custom—Ambala District—Sister—Whether preferential heir as against collaterals of sixth degree with respect to non-ancestral or acquired property—Rattigan's Digest of Punjab Customary Law—Para 24—Whether states correct rule of custom—Ancestral property—General custom as to the degree of collaterals who are entitled to succeed.*

1959  
Jan., 13th

*Held that—*

- (1) in the Ambala District a siter is a preferential heir as against the collaterals of sixth degree with respect to non-ancestral or acquired property;