

Kamal Devi *v.* Deep Chand, (Dua, J.)

case to the Court of Miss Santosh Mehta, Subordinate Judge 1st Class, Delhi, for disposal of the application under Order 26, Rule 9, Code of Civil Procedure, and for further proceedings in the suit in accordance with law in the light of the observations made above. Parties are directed to appear in the transferee Court on 30th May, 1966, when a very short date would be given for disposing of the application under Order 26, Rule 9. Thereafter the suit should be proceeded with due despatch and promptitude. There would be no order as to costs in this Court.

R.S.

LETTERS PATENT APPEAL

Before Gurdev Singh and S. K. Kapur, JJ.

CHARANJI LAL,—Appellant

versus

LAJJA RAM AND OTHERS,—Respondents

L.P.A. No. 29-D of 1962.

May 26, 1966.

Bombay Co-operative Societies Act (VII of 1925) as applied to Delhi—Ss. 56 and 64-A—Order passed by Tribunal on appeal under section 58—Whether revisable by the State Government under S. 64-A.

Held, that there is no indication in the Bombay Co-operative Societies Act as applicable to Delhi State that the Tribunal constituted under the Act is an "Officer" subordinate to the State Government. On the other hand, the indication is that wherever an order is made revisable by the Tribunal either in appeal or in revision the subject-matter is taken away from the jurisdiction of the State Government under section 64-A. If the Legislature intended to confer a power of revision on the State Government against the orders of the Tribunal, it would have expressly so provided in section 64-A and would not have in that event used the word "officer". The Tribunal constituted under section 63-A may consist of non-official members. The Tribunal so constituted cannot, in the absence of any express provision in the Act, be termed as "officer" subordinate to the State Government. Hence an order passed by the Tribunal on appeal under section 56 of the Act is not revisable by the State Government.

Letters Patent Appeal under clause 10 of the Letters Patent of this Hon'ble Court against the judgment of the Hon'ble Mr. Justice Harbans Singh, dated 22nd February, 1962, in civil Writ No. 91-D of 1958.

S. S. CHADHA, M. L. DONIAL AND PARKASH NARAIN, ADVOCATES, for the Appellant.

DALIP K. KAPUR, ADVOCATE, for the Respondents.

JUDGMENT

KAPUR, J.—Charanji Lal Gupta, the appellant in this appeal, as well as Lajja Ram respondent are members of a co-operative society registered under the Bombay Co-operative Societies Act, 1925, as applicable to the State of Delhi. Lajja Ram claimed a sum of Rs 1,160/9/- against the society *inter alia* on account of house rent of a house let to the society. His claim was referred to the arbitration of a nominee of the Registrar under section 54 of the Act. The said nominee rejected Lajja Ram's claim and the latter preferred an appeal under section 56 of the said Act to the Tribunal. The appeal was allowed in part and a sum of Rs. 712/15/- was awarded by the Tribunal in favour of Lajja Ram against Charanji Lal Gupta, the Secretary of the society. Aggrieved by the decision of the Tribunal, Charanji Lal Gupta preferred a revision petition to the Chief Commissioner under section 64-A of the Act and the Chief Commissioner by his order, dated 18th November, 1957, reversed the decision of the Tribunal on the ground that a reference under section 54 of the Act could be made only for the purposes of settlement of disputes between members in regard to actions taken by them as members of the society, and Lajja Ram not having let his house to the society in his capacity as a member, but as a landlord, the claim under section 54 was not competent. Aggrieved by the decision of the Chief Commissioner, Lajja Ram filed a petition under Article 226 of the Constitution praying for quashing of the order of the Chief Commissioner, dated 18th November, 1957. The petition was heard by Harbans Singh, J, who by his judgment, dated 2nd February, 1962, quashed the order of the Chief Commissioner on the ground that the same was without jurisdiction.

The sole question that arises for consideration in this appeal is whether or not an order passed by the Tribunal on appeal under section 56 is revisable by the State Government under section 64-A of the said Act. Section 64-A is in the following terms:—

“The State Government and Registrar may call for and examine the record of any inquiry or the proceedings of any officer, subordinate to them, except those referred to in subsection (6) of section 63-A, for the purpose of satisfying

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themselves, as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it shall appear to the State Government or the Registrar that any decision or order or proceedings, so called for, should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may pass such order thereon, as to it or him may seem fit."

It has been contended on behalf of the appellant that the Tribunal is an officer subordinate to the State Government within the meaning of section 64. A and, therefore, the State Government is competent to revise an order passed by the Tribunal. Emphasis has been laid on the words "except those referred to in sub-section (6) of section 63-A", the suggestion being that if the Tribunal were not an officer subordinate to the State Government, there was no necessity of excluding the record of any inquiry or proceedings referred to in sub-section (6) of section 63-A. Under section 54 of the Act certain disputes can be either referred to the Registrar or his nominee for decision, or if either of the parties so desires, to arbitration of three arbitrators. So far as the award by the arbitrators is concerned, the Tribunal has been given power to modify, correct or remit the award in the circumstances set out in section 54-A. Against the decision of the Registrar or his nominee the aggrieved party has a right of appeal to the Tribunal under section 56. Section 57 makes the award of the arbitrators or a decision by the Registrar or his nominee immune from attack in any civil or revenue court. Besides the appellate jurisdiction conferred on the Tribunal under section 56, the Tribunal has been given certain revisional jurisdiction under section 63-A(6), which is as under :—

"The Tribunal may call for and examine the record of any proceedings, in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. If in any case, it shall appear to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon, as to it may seem fit."

It appears that the Tribunal enjoys both the powers, namely, the power to hear appeals under section 56 against any decision of the Registrar or his nominee and the power to call for and examine the

record of any proceedings, in which an appeal lies to it, and test the legality or propriety of any decision or order passed. There is no right of appeal or revision proved against an award made by the arbitrators and such an award can be either modified or set aside under section 54-A or when the Registrar or his nominee decides the dispute under section 54-A (3) their decision can be appealed against under section 56. Proceedings before the arbitrators cannot be called for and examined by the Tribunal under section 63-A (6) because no appeal lies to the Tribunal against an award by the arbitrators. It is in the light of these provisions that an interpretation has to be placed on section 64-A. The learned counsel for the appellant would like us to construe the statute in accord with the principle that the provision conferring powers of revision should be liberally construed in favour of the right since they are remedial and such a right should not be restricted or denied unless such a construction is unavoidable. That may be so, but no Court has ever denied that a statute should not be stretched beyond all legitimate limits to somehow confer a right of appeal or revision. There is no indication in the Act that the Tribunal is an "officer" subordinate to the State Government. On the other hand, the indication is that wherever an order is made revisable by the Tribunal either in appeal or in revision the subject-matter is taken away from the jurisdiction of the State Government under section 64-A. The comparison of section 57 and sub-section (7) of section 63-A would lend further support to the above. Whereas under section 57 the award of the arbitrators or a decision by the Registrar or his nominee is only made immune from a challenge in any civil or revenue court, an order passed by the Tribunal is, by virtue of sub-section (7) of section 63-A, clothed with finality and conclusiveness besides being made immune from a challenge in any civil or revenue Court. No doubt, a provision like sub-section (7) of section 63-A may not, in all cases, necessarily mean that the finality or conclusiveness takes away even the right of appeal or revision, if provided in the Act, but in the context of the statute under consideration it does show that an order passed by the Tribunal in appeal or revision is provided with two shields (i) it is final and conclusive and (ii) it is not liable to be called in question in any civil or revenue Court. The word "officer" in section 64-A is not, in my opinion, wide enough to include the Tribunal. It is legitimate to assume that if the Legislature intended to confer a power of revision on the State Government against the orders of the Tribunal it would have expressly so provided in section 64-A and would not have in that

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event used the word "officer". The Tribunal constituted under section 63-A may consist of non-official members. The Tribunal so constituted cannot in the absence of any express provision in the Act be in my opinion, termed as an "officer" subordinate to the State Government. The only argument in support of the plea that the Tribunal is an officer subordinate to the State Government is based on the words "except those referred to in sub-section (6) of section 63-A" in section 64-A. It appears to me that these words rather go against the appellant. The object of the exclusion appears to be that wherever any decision or order made or passed by an officer is revisable under section 63-A(6) it would not be revised under section 64-A by the State Government. For instance when a decision is given by the Registrar under section 54, that order may be modified or reversed by the Tribunal in exercise of its revisional powers under section 63-A(6) though no appeal may have been preferred against that decision. Such a decision or order would be a decision or order by an "officer" subordinate to the State Government but yet the same being revisable under section 63-A(6), it cannot by virtue of the exclusion provided in section 64-A be revised by the State Government. The word "those" in section 64-A means the record of any inquiry or proceedings and therefore, the exclusion in the said provision means that the record of any inquiry or proceedings of any officer subordinate to the State Government cannot be revised by the State Government if such record or proceedings can be called for and examined by the Tribunal under sub-section (6) of section 63-A. In the circumstances, it must be held that the learned Single Judge was right in the view he took.

This order will also dispose of Letters Patent Appeal No. 43-D of 1962, which is an appeal by the Chief Commissioner, Delhi, against the same order of the learned Single Judge.

In the result, these two appeals must be dismissed with no order as to costs.

So far as Letters Patent Appeals Nos. 30-D and 42-D of 1962 are concerned, the point arising in the appeals is the same except that the claim of Sis Ram was of a different nature. He was a servant of the society as a Chowkidar and claimed Rs 612/10/9 towards his salary from 15th September, 1951 to 15th April, 1952 together with interest. His claim was rejected by the nominee of the Registrar and the Tribunal allowed him Rs 235. In the exercise of revisional powers

the Chief Commissioner held that Sis Ram's claim was within time only for two months and remanded the case for adjudication of the amount due to him. Sis Ram filed a writ petition challenging the order of the Chief Commissioner, which was allowed by the learned Single Judge by the same order. Letters Patent Appeal 30-D of 1962 has been preferred by Charnji Lal Gupta and Letters Patent Appeal No. 42-D of 1962 by the Chief Commissioner, Delhi, challenging the order of the learned Single Judge. In view of my decision as to the jurisdiction of the Chief Commissioner these two appeals must also fail and are dismissed with no order as to costs:

GURDEV SINGH, J.—I agree.

K. S. K.

FULL BENCH

Before Mehar Singh, C.J., Harbans Singh and Daya Krishan Mahajan, JJ.

SARDOOL SINGH,—*Appellant.*

versus

HARI SINGH AND OTHERS,—*Respondents.*

F.A.O. 103 of 1962

November 8, 1966.

Registration Act (XVI of 1908)—S. 17—Award affecting immovable property of the value of or above Rs. 100—Whether requires registration before it can be made a rule of the Court.

Held, that an award, after the coming into force of the Indian Arbitration Act, X of 1940, does not require registration before it can be made a rule of the Court for the following reasons :—

- (i) Under section 17 of the Arbitration Act an award has to be made a rule of the Court and the Court will pronounce judgment on the basis of the award and a decree shall follow, that is to say, the award by itself is of no effect. It follows that an award as such does not purport or operate to create any right, title or interest in the property dealt