

monthly wages. In the present case far from their being any evidence to show that Nikka Singh deceased was employed on monthly wages there is conclusive evidence that he was never so employed and not even at a fixed daily wage. The evidence of Sukhdev Singh A.W. 2 already referred above would show that the deceased along with six others was a joint sub-contractor and his remuneration depended on the quantum of the work done over a fortnight and the amount received therefore was then distributed *inter se* between those seven persons. This being so Nikka Singh would not satisfy the test of employment of monthly wages and in fact being a joint sub-contractor no such issue of employment on monthly wages would arise. Therefore, even with the aid of section 12(1), the deceased cannot possibly be brought within the ambit of the definition of a workman. Consequently he would not be entitled to any compensation from the appellants as a matter of law.

(6) The appeal succeeds and the order of the authority is set aside. There will, however, be no order as to costs.

K.S.K.

APPELLATE CIVIL

Before D. K. Mahajan and Gopal Singh, JJ.

NATHU RAM,—Appellant.

versus

THE FATEHABAD CO-OPERATIVE MARKETING SOCIETY LTD.,

FATEHABAD.

Regular First Appeal No. 375 of 1964.

March 24, 1971.

Punjab Co-operative Societies Act (XXV of 1961)—Section 82—Award by an arbitrator—Suit for declaration that the award is void for want of notice to the plaintiff—Jurisdiction of the civil Courts to hear such a suit—Whether barred under section 82.

Held, that the jurisdiction of the civil Courts to hear a suit for declaration that an award given by an arbitrator is void for want of notice to the plaintiff is barred under section 82 of Punjab Co-operative Society Act.

Nathu Ram v. The Fatehabad Co-operative Marketing Society Ltd.,
Fatehabad (Mahajan, J.)

An *ex parte* award is not void and has to be got set aside. If the allegation is that the award is obtained by fraud, then there is no award and in that event section 82(3) of the Act will not bar the jurisdiction of the civil Courts, but this result does not follow where the allegation in the plaint is only to the effect that the award was obtained without effecting service on the plaintiff. (Para 7).

First Appeal from the decree of the Court of Shri B. C. Gupta, Sub-Judge 1st Class, Hissar, dated the 2nd September, 1964, dismissing the plaintiffs' suit with costs.

Application under Order 13, Rule 10, Civil Procedure Code, praying that the record of arbitration proceedings be summoned.

D. N. AGGARWAL, SENIOR ADVOCATE WITH G. C. GARG, ADVOCATE AND B. N. AGGARWAL, ADVOCATE, for the appellant.

A. L. BAHRI, ADVOCATE, for the respondent.

JUDGMENT.

The judgment of this court was delivered by :—

MAHAJAN, J.—This is an appeal against the decision of the Subordinate Judge 1st Class, Hissar, whereby he dismissed the plaintiff's suit on the short ground that the civil Courts had no jurisdiction to try the same.

(2) The plaintiff was appointed as Manager of the Fatehabad Co-operative Marketing Society Limited, Fatehabad. He worked as Manager from 17th August, 1958 to 15th April, 1961. Certain disputes having arisen between the plaintiff and the Society, they were referred to the arbitration of the Registrar. The Registrar appointed the Inspector of Co-operative Societies to act as an arbitrator. The Inspector gave his award. This led to the present suit.

(3) The main grievance of the appellant is to be found in paragraph 16 of the plaint. This paragraph is in the following terms :—

“The person who has been appointed arbitrator, cannot be appointed so legally. Neither he made any enquiry nor did he hear me, the plaintiff, but he is an Inspector Co-operative Societies, Tehsil Sirsa. He dictated his order

at Sirsa in favour of his own department without making any enquiry and hearing me, the plaintiff, and left the order at Sirsa about which I, the plaintiff, was not aware at all."

On its basis it is prayed that a declaration be granted that the arbitration decree in favour of the Society is against law, void and ineffective. A consequential relief was claimed forbidding the Society to recover the decretal amount from the plaintiff.

(4) In the written statement filed by the Society, a preliminary objection was taken that the civil Courts had no jurisdiction under section 82 of the Punjab Co-operative Societies Act, 1961 (Act No. 25 of 1961). The pleas of the plaintiff in paragraph 16 of the plaint were denied in the written statement. It was also pleaded that a registered notice was sent to the plaintiff of the arbitration proceedings.

(5) The learned Judge framed the following issues, but decided to treat the issue of jurisdiction as a preliminary issue :—

- (1) Has this Court no jurisdiction to try this case ?
- (2) Is the suit not correctly valued for the purposes of Court-fee and jurisdiction.
- (3) Is the award in dispute, given against the plaintiff, not binding upon him on the grounds alleged in the plaint ?

(6) After adverting to the provisions of sub-section (3) of section 82 of the Act, the learned Judge dismissed the suit on the ground that the jurisdiction of the civil Courts is barred. Against this decision, the present appeal has been preferred.

(7) The learned counsel for the appellant placed his reliance on *The President, the Commonwealth Cooperative Society Ltd., Eranakulam v. The Joint Registrar (General) of Cooperative Societies, Trivandrum*, (1). His contention is that it was incumbent on the civil Court to determine whether the allegations in paragraph 16 of the plaint were correct or not. It is maintained that no service was effected on the plaintiff and, therefore, the award is void. In our opinion, this result does not follow. It is well-known that an *ex-parte* decree passed without service of notice on the defendant is

(1) A.I.R. 1970 Kerala 34.

Ranjit Singh v. The State of Haryana, etc. (Gurdev Singh, J.)

not void. It has got to be set aside. The only difference is that when no notice is served, the period of limitation will start running for setting aside such *ex-parte* decree from the date the defendant has knowledge of the *ex-parte* decree. It would be another matter if the decree is obtained by fraud. For instance, if the allegation in the plaint was that the present award was obtained by fraud, there would be no award. In that event, section 82(3) of the Act would not bar the jurisdiction of the Civil Courts. But this is not the case here. That being so, we must hold, in agreement with the trial Court, that the jurisdiction of the civil Courts is barred.

(18) So far as the decision of the Kerala High Court is concerned, that was given under Article 226 of the Constitution of India. The jurisdiction of the High Court under Article 226 in such a case would not be barred, and if the appellant is so advised, he can move this Court under Article 226, but so far as the remedy by way of suit is concerned; it is specifically barred by section 82(3) of the Act.

(9) The next contention of the learned counsel for the appellant is that the dispute between him and the Society is not covered by section 55 of the Act. We have examined the provisions of section 55 and we are unable to agree with the learned counsel. The section itself is very clear. The position of the appellant is that of an employee of the Society.

(10) That being so, there is no merit in this appeal. The same fails and is dismissed, but there will be no order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Gurdev Singh, J.

RANJIT SINGH,—Appellant.

versus.

THE STATE OF HARYANA, ETC.—Respondents.

Letters Patent Appeal No. 335 of 1969.

March 24, 1971.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 5, 6, 8 and v5—Member elected to a Panchayat Samiti in Haryana under section 5 (2) (a) (iii) as representing the Market Committee in the