

Rup Chand v. State of Haryana and others (I. S. Tiwana, J.)

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interim order refusing to grant temporary injunction against the execution of the ejectment order. Accordingly, I hold that the learned District Judge was clearly in error in going behind the ejectment order and in usurping jurisdiction which did not vest in him in examining the ejectment order on merits.

8. For the reasons recorded above, I hold that the ejectment order was not a nullity as a statutory ground of ejectment was clearly made out in the ejectment order passed by the Rent Controller and thus reverse the decision of the learned District Judge to the contrary.

9. As already noticed above, the appeal before the learned District Judge was against the order of the trial Court refusing to grant temporary injunction against the execution of the ejectment order. From a reading of the judgment of the learned District Judge it is apparent that he was probably under the impression as if he was hearing an appeal against the order of the Executing Court rejecting the objections of the tenant whereas the appeal before him was against that part of the order of the learned trial Court by which he dismissed the application for grant of temporary injunction against the execution of the ejectment order by the same order. Even if there was some merit in appeal before the learned District Judge, he had no jurisdiction to set aside the ejectment order and order restoration of the ejectment application, as has been done in this case. All that he could do was to grant a temporary injunction restraining the landlord from executing the ejectment order till the decision of the suit. As such, I find merit in this contention of the learned counsel for the petitioner also.

10. For the reasons recorded above, I allow this revision petition with costs throughout, set aside the order of the learned District Judge and restore that of the trial Court.

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**N. K. S.**

*Before S. S. Sandhawalia, C.J. and I. S. Tiwana, J.*

RUP CHAND,—*Petitioner.*

*versus*

STATE OF HARYANA and others,—*Respondents.*

*Civil Writ Petition No. 182 of 1978.*

August 2, 1979.

*Punjab Co-operative Societies Act (XXV of 1961) (as applicable in the State of Haryana)—Section 55—Punjab Co-operative Societies*

*Rules, 1963—Rules 51 and 55—Funds belonging to a Co-operative Society misappropriated, by a member—Dispute regarding such misappropriation raised by a co-member—Co-operative Society or any one on its behalf raising no dispute—Registrar—Whether has jurisdiction to refer such a dispute to arbitration.*

Held, that a close reading of section 55 of the Punjab Co-operative Societies Act, 1961 and Rules 51 and 55 of the Punjab Co-operative Societies Rules, 1963, would show that there has to be a dispute before a reference can be made to the Registrar for the settlement of the same. The essential ingredients of a dispute would be a claim by one party and denial thereof by the other party. Once a dispute of the type envisaged by section 55 of the Act has arisen, then obviously a party to the same can make a reference to the Registrar. Reading of Rule 51 also makes the matter more than clear. The necessary implication of the language of this Rule is that it is only a party to the dispute desiring the determination of the same, who can apply to the Registrar in writing stating the substance of the dispute and the names and addresses of the other party or the rival party. The Registrar while exercising his jurisdiction under section 55 of the Act gives a definite finding in respect of the dispute between the two parties. Indeed the very basis of this jurisdiction appears to arise when one party lays a claim against the other. Thus only a party to a dispute can make a reference to the Registrar under section 55 of the Act and it is not any person who can do so. In a case involving misappropriation of funds of a Co-operative Society, the dispute can be said to be between that society and the person who has misappropriated the funds. There can be no doubt that the Co-operative Society is a juristic person and has an independent entity apart from its members. Where the Society does not make a demand against any person nor authorises any person on its behalf to do so, the Registrar does not have the jurisdiction to proceed in the matter. (Paras 3, 4 and 6).

*Civil Writ Petition under Article 226/227 of the Constitution of India praying that the records of the case be called for and after perusal of the same :—*

- (i) *a writ in the nature of certiorari, mandamus, prohibition or any other writ, order or direction be issued to the respondents quashing the impugned order (P/1) and the judgment in appeal (P/4) ;*
- (ii) *operation of the impugned award (P/1) and judgment in appeal (P/4) be stayed till the final disposal of this petition and the respondents be restrained from proceeding further in the matter of recovery and arrest of the petitioner ;*

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- (iii) service of notices upon the respondents may please be dispensed with;
- (iv) filing of certified copies of the annexures be also dispensed with; and
- (v) costs of the petition and the previous proceedings be also awarded to the petitioner.

Prem Singh, Advocate, for the petitioner.

Naubat Singh, Sr. D.A.G. Haryana, for the State; and

K. S. Kundra, Advocate for respondents Nos. 2 and 4.

#### JUDGMENT

I. S. Tiwana, J.

(1) Through this petition under Article 226 of the Constitution of India, the petitioner has assailed the arbitration proceedings launched against him under section 55 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act) as applicable to the State of Haryana, which resulted in an award against him for Rs. 22,000 plus interest and the costs of the proceedings. The initial award was given by the Assistant Registrar, Co-operative Societies, Jind, exercising the powers of the Registrar and his appeal against the said award to the Government also failed with a modification in the amount of costs awarded against him.

(2) The primary contention of some consequence which has been raised by the learned counsel for the petitioner is that in this case there was no proper reference to the Registrar for assuming jurisdiction under section 55 of the Act. He explains that the allegations were levelled against the petitioner by one Ratti Ram, who was a member of the Hoshiarpur Co-operative Agricultural Service Society, to the effect that the petitioner had misappropriated an amount of Rs. 22,000. Actually the complaint against the petitioner was that he had withdrawn Rs. 22,000 on May 16, 1970, from the Jind Central Co-operative Bank for distributing short term loans to the members, but no such loans were in fact disbursed and the amount was misappropriated by the petitioner. It may be mentioned here that the petitioner has since been held guilty of this misappropriation and was sentenced to one year's rigorous imprisonment plus a fine of Rs. 2,000 by the trial Court. His appeal before the Sessions Judge also failed, but on a revision filed by him, the case was

remanded by the High Court on January 6, 1978, only with regard to the affording of a hearing to the petitioner on the question of sentence.

(3) The learned counsel contends that one of the essential prerequisites of section 55 of the Act, is that there should be a dispute touching the constitution, amendment or the business of a Co-operative Society before the Registrar can proceed to assume jurisdiction in the matter. He explains that in this case neither the Co-operative Society nor any other person authorised by it made a move against the petitioner. The Assistant Registrar exercising the powers of the Registrar was not within his jurisdiction to proceed in the matter. In a nut-shell, his argument is that Ratti Ram, though a member of the Co-operative Society, was not a party to the dispute. In order to support his contention, he places reliance on Rules 51 and 55 of the Punjab Co-operative Societies Rules, 1963. On the other hand, Mr. Naubat Singh, Senior Deputy Advocate General, Haryana, on behalf of respondent No. 1 and Mr. K. S. Kundu, on behalf of respondents 2 and 4, maintain that any person interested in the affairs of the Society and more particularly a member thereof can always launch these proceedings or make a reference to the Registrar on the basis of which he, that is, the Registrar can proceed in the matter. In support of their contention they relied on a Division Bench judgment of this Court in *Lakha Singh v. The Registrar, Co-operative Societies, Punjab, Chandigarh and others* (1). To resolve the rival contentions, a reference to the relevant provisions of the Act and the Rules has become necessary. Section 55 reads as under:—

“55. *Disputes which may be referred to arbitration* :—

- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises—
  - (a) among members, past members or persons claiming through members, past members and deceased members, or
  - (b) between a member, past member or persons claiming through a member, past member and deceased

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(1) A.I.R. 1973 Pb. and Haryana 13.

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member and the society, its committee or any officer, agent or employee of the society, or liquidator past or present, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, between a society and liquidator or another society or between the liquidator of one society and the liquidator of another society such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute

(2) ... ..

(3) .. ..

Rules 51 and 55 read as under:—

51. Reference of Disputes: *When a party to the dispute referred to in sub-section (1) of section 55 desires to have dispute determined in accordance with the said section the party shall apply to the Registrar in writing, stating the substance of the dispute and the names and addresses of the other party in such form as the Registrar may lay down from time to time.*

55. Hearing of Disputes.—The Registrar or the arbitrator, as the case may be, shall hear the parties and witnesses, who attend. On the basis of such evidence and after consideration of any documentary evidence that may be produced by the either party, he shall give decision or award, as the case may be, in accordance with justice, equity and good conscience. The decision or award shall be reduced to writing, announced to the parties and filed in the office

of the Registrar. In the absence of any party duly summoned to attend, the dispute may be decided *ex parte*."

A close reading of these provisions would show that there has to be a dispute before a reference can be made to the Registrar for the settlement of the same. The essential ingredients of a dispute would be a claim by one party and denial thereof by the other party. Once a dispute of the type envisaged by section 55 of the Act has arisen, then obviously a party to the same can make a reference to the Registrar. Reading of Rule 51 also makes the matter more than clear. The necessary implication of the language of this Rule is that it is only a party to the dispute desiring the determination of the same, who can apply to the Registrar in writing stating the substance of the dispute and the names and addresses of the other party or the rival party. It is needless to say that the Registrar, while exercising his jurisdiction under section 55 of the Act, gives a definite finding in respect of the dispute between the two parties. Indeed the very basis of this jurisdiction appears to arise when one party lays a claim against the other. In the case in hand, the dispute can be said to be between the Hoshiarpur Co-operative Agricultural Service Society and Rup Chand, petitioner, from whom the amount is said to be due to the Society. It is not in dispute that the Co-operative Society is a juristic person and has an independent or different entity than its member, that is, Ratti Ram, who made the reference to the Registrar.

(4) In the light of the above facts, the contention of the learned counsel for the petitioner is undoubtedly well-founded. The Society never made any demand against the petitioner nor did it make any reference to the Registrar in this regard. The judgment relied upon by the respondents does not in terms lay down that a person, who is not a party to a dispute, can also make a reference to the Registrar under section 55 of the Act. On the other hand, what has been held therein is that the Registrar cannot *suo motu* take action in a dispute of the type mentioned in section 55. He can do so only on a petition filed by an interested party. The words 'interested party' would essentially mean a party having interest in the dispute. This is further clear from the following lines appearing in the judgment:—

"A plain reading of section 55 shows that the Registrar has been invested with the jurisdiction to take cognizance of

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petitions claiming arbitrations in respect of some specific types of disputes which arise between the parties.”

Thus this judgment supports the argument of the petitioner rather than that of the respondent.

(5) In the light of the discussion above, we uphold the submission of the counsel for the petitioner to the effect that only a party to a dispute can make a reference to the Registrar under section 55 of the Act and it is not any person, who can do so.

(6) In spite of holding so in favour of the petitioner, we are not inclined to grant the relief claimed by him, that is, setting aside of the award pronounced against him by the Registrar and the affirmation thereof by the Government in exercise of our discretionary jurisdiction under Article 226 of the Constitution. We find from the record as well as Annexure P-1, that is, the award given by the Assistant Registrar exercising the powers of the Registrar and Annexure P. 4, the order in appeal passed by the Deputy Secretary to the Government, that the petitioner was afforded due opportunity to disprove the claim laid against him, that is, the misappropriation of Rs. 22,000 of the Society. The authorities have given a concrete finding after looking into the records and the evidence before them that the petitioner did withdraw Rs. 22,000 from the Jind Central Co-operative Bank and failed to account for the same. His plea with regard to the passing over of this amount to Mange Ram deceased, cashier of the Society, on the strength of an affidavit, procured from Molu Ram, at one time the President of the Society, has not been accepted by the authorities. To us also this plea of passing over the amount to Mange Ram deceased, as deposed to by Molu Ram, appears to be a plea of compulsion to escape the punishment in the criminal trial in which the petitioner already stands convicted.

(7) Keeping in view all these facts and circumstances, we refuse to exercise our discretion in favour of the petitioner and dismiss this petition.

S. S. Sandhawalia, C.J.—I agree.

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N. K. S.