(2006) 06 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 411 of 1994

Arun Kumar Singh and Another APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Madhya Pradesh Co-operative Societies Rules, 1962 — Rule 59(5), 59(6)

Citation : (2006) 06 MP CK 0012

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : D.S. Baghel and Devendra Gangrade, for the Appellant; K.K. Trivedi, for the Respondent

Judgement

Abhay M. Naik, J.—This petition under Article 227 of the Constitution of India has been preferred against the orders contained in Annexures P-6 and P-8.

2. Original petitioners were found to have made embezzlement to the tune of Rs. 35,141.93 and recovery was ordered against them with interest @ 18% per annum, vide order (Annexure P-6), dated 16-11-1990, passed by the Assistant Registrar, Co-operative Societies, Sidhi. An appeal was preferred against the said order on 26th December, 1990, which has been dismissed by the Board of Revenue vide Annexure P-8, dated 23-8-1993, on the ground of limitation. The same has been challenged in the present writ petition.

3. Shri Trivedi, learned Counsel for respondent No. 2 raised a preliminary objection that Seva Sahakari Samiti, Gurjed, District Sidhi, though was a party before the Board of Revenue, has not been impleaded before this Court in the present case by the petitioners. It is true that the said Society was a complainant before the Assistant Registrar and was impleaded as a party in the appeal against the order of Assistant Registrar, In the present petition, the President of the said Society has been impleaded as respondent No. 4. This petition has been instituted in the year 1994 arid respondent No. 4 did not choose to raise any

specific objection earlier by moving an appropriate application. In view of the same, I do not find it proper to uphold the objection for dismissing the writ petition. Moreover, the necessary party can be joined at any stage of the petition and petitioners cannot be made to suffer only on this ground.

4. Shri Baghel, learned Counsel for the petitioners contended that the appeal before the Board of Revenue was within the prescribed period of 30 days from the date of receipt of the order. He contended that the learned Board of Revenue has committed obviously an error in observing that -the petitioners have not mentioned the date when they were served with the copy of the order passed by the Assistant Registrar of Co-operative Societies, Sidhi. He referred to the caption of the memo of appeal contained in Annexure P-7, where it has been clearly stated that intimation of the impugned order dated 16-11-1990 was received by the appellants on 4-12-1990. This having been overlooked, the learned Counsel for the petitioner submitted that the impugned order contained in Annexure P-8 is not sustainable in law.

5. Shri Trivedi, learned Counsel for respondent No. 2, on the other hand contended that there is no material on record to establish that the petitioners were served with the order of Assistant Registrar on 4-12-1990. He contended that it was obligatory on the part of the petitioners to establish the date of service of copy of the order dated 16-11-1990. He contended that the petitioners were intimated of the order dated 16-11-1990 contained in Annexure P-6 on 16-11-1990 itself and the appeal has been thus rightly dismissed by the Board of Revenue on the ground of limitation.

6. Considered the submissions and perused the record.

7. Order sheets maintained by the office of Assistant Registrar, Cooperative Societies, Sidhi have been placed on record as Annexure P-5, which reveal that the case was reserved for final order on 20th August, 1990. Thus, obviously the order dated 16-11-1990, contained in Annexure P-6 was not passed in Open Court. Equally, it was not pronounced in the presence of the petitioners. Annexure P-5 further reveals that the Assistant Registrar has directed for supply of the copy to the concerning persons after obtaining acknowledgment, which was directed to be preserved in the record. These order sheets make it clear that the order (Annexure P-6) was not passed in presence of the petitioners, who were not aware of the same until they were served with the copy of the award. Secondly, the Assistant Registrar has directed to deliver the copy of the order after obtaining acknowledgment. The Board of Revenue has nowhere referred about the acknowledgment, which may be stated to have been obtained from the petitioners. The petitioners have clearly mentioned in the caption of the memo of appeal that they received intimation of the order dated 16-11-1990 on 4-12-1990. No contrary evidence is on record to show that the averment made by the petitioners, in this regard is incorrect. In the absence of any such contrary material, the learned Board of Revenue has clearly committed a mistake in dismissing the appeal on the ground of limitation.

8. There is one more reason for not maintaining the impugned order (Annexure P-8). Sub-rule (5) of Rule 59 of the M.P. Co-operative Societies Rules, 1962 requires the Appellate Authority to satisfy itself that the appeal is made within the prescribed time limit. Sub-rule (6) casts an obligation on the Appellate Authority that in case the appeal has not been presented within the prescribed time limit, the Appellate Authority is required to issue a show-cause notice to the appellant, why the appeal could not be dismissed as barred by time. If the appellant satisfies the Appellate Authority, the appeal is liable to be considered on merits by the Appellate Authority. Thus, if the Board of the Revenue was of the opinion that the appeal was not preferred within the prescribed time limit, it could not have dismissed the appeal without making compliance of Rule 59 of the M.P. Co-operative Societies Rules, 1962. Rule 59 of the said Rules stood substituted w.e.f. 1-5-1999. However, the impugned order contained in Annexure P-8 having been passed on 23-8-1993, Rule 59, before its repeal, would govern the case. Sub-rules (5), (6) and (7) of the then existing Rule 59 are relevant for the present writ petition, which are reproduced below:

(5) On receipt of the appeal, the Appellate Authority shall endorse on it the date of its receipt by it. The Appellate Authority shall, as soon as possible, examine it and satisfy itself that?

(i) the person presenting it has the authority to do so;

(ii) that it is made within the prescribed time-limit; and

(iii) that it conforms to all the provisions of the Act and these rules.

(6) If the Appellate Authority finds that the appeal presented does not conform to any of the said provisions, it shall make a notice on the appeal to the effect and may call upon the appellant or his agent to remedy the defect within a period of seven days of the receipt of the notice to do so or in case the appeal has not been presented within the time-limit to show cause within the said period of seven days why it should not be dismissed as time-barred by the Appellate Authority.

(7) If the defect is remedied or the cause shown by the appellant or his agent satisfies the Appellate Authority, the Appellate Authority may proceed to consider the appeal.

Cumulative effect of the aforesaid provisions would be that the Appellate Authority is firstly obliged to examine that the appeal is preferred within the prescribed time limit and secondly, in case of bar of limitation, it shall issue a notice calling upon the appellant to remove the defect. Thus, it is only after giving an opportunity to the appellant to remove the defect about limitation, the Appellate Authority, in case of failure on the part of appellant may dismiss the appeal on the ground of limitation. From the record, no such recourse seems to have been taken by the Board of Revenue.

9. The Board of Revenue has thus, clearly committed an error in dismissing the

appeal on the ground of limitation, without making compliance of the aforesaid rule. It has failed to exercise the jurisdiction vested on it by virtue of Sub-rules (5), (6) and (7) of the M.P. Co-operative Societies Rules, 1962. The impugned order contained in Annexure P-8 is thus, in flagrant violation of the aforesaid rule and cannot be permitted to stand. The same being illegal is liable to be quashed.

10. Accordingly, the petitions succeeds in part. The impugned order contained in Annexure P-8 is hereby quashed. The appeal is found to be within limitation. The Board of Revenue is directed to decide the appeal on merits preferably within a period of 4 months from the date of receipt of this order. No order as to costs.