
(1972) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Exe. Second Appeal No. 434 of 1971

Bachan Singh

APPELLANT

Vs

The Agricultural Co-operative Society, Gujjarwal

RESPONDENT

Date of Decision : 10-03-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1972 P&H 476

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Judgement

1. This second execution appeal arises out of the following facts. Bachan Singh appellant was the employee of the Agricultural Co-operative Society, Gujjarwal, tehsil and district Ludhiana-respondent before me. Some dispute regarding the payment of a sum of money arose between the parties which was referred by the Assistant Registrar to an Arbitrator for decision in accordance with law. The Arbitrator found that the appellant was liable to pay a sum of Rs.3255.80 to the society. It is not disputed that under the provisions of the Punjab Co-operative Societies Act the award given by an Arbitrator can be executed as a decree of a Civil Court. When the Society took out execution proceedings, the appellant filed objections u/s 47 of the CPC alleging therein that the award was secured by the decree-holder by fraud and collusion with the Arbitrator and that the latter had no jurisdiction to give the impugned award. It was further alleged that the Assistant Registrar, exercising the powers of the Registrar, should have served a prior notice on the appellant before he decided whether he himself should adjudicate, upon the dispute or should refer it to another Arbitrator, as he did in this case. The learned Trial Court dismissed the objections and the appeal filed by the appellant before the Second Additional District Judge, Ludhiana, also failed.

2. Mr. Y. P. Gandhi, learned Counsel for the appellant, raised an objection that the Assistant Registrar, who had actually referred this dispute for arbitration, had not

been invested with the powers of the Registrar under the said Act. The learned Counsel for the respondent drew my attention to a Punjab Government notification dated September 12, 1963, under which the Assistant Registrars had been invested with powers of the Registrar u/s 56 of the said Act. On seeing the notification, the learned Counsel did not press this objection any further.

3. The more serious objection of the learned Counsel is that it was incumbent upon the Assistant Registrar to give a prior hearing to the appellant before deciding whether he himself should adjudicate upon the dispute or he should refer it to another Arbitrator for decision. The relevant portion of Section 56 of, the Punjab Co-operative Societies Act runs as follows:--

"56. Reference of disputes to arbitration.--

(1) The Registrar may, on receipt of the dispute u/s 55--

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or

(c) refer it for disposal to one arbitrator."

A plain reading of the above sub-section shows that the Registrar or an officer, exercising the powers of the Registrar, is invested with the sole discretion to decide whether he himself should enter upon the adjudication or the matter should be referred to another person, who should act as an Arbitrator. The statute does not give any choice to either of the parties to the dispute in the matter of selection of an Arbitrator. The provisions of Section 56 of the said Act make a distinct departure from the provisions of the Indian Arbitration Act in the matter of adjudication of disputes by arbitration.

4. It is well settled that before a party can level a challenge against an executive decision on the ground that the same had been taken in violation of the principles of natural justice, the party concerned must establish some right vested in it. It is only when the administrative authority passes some order entailing penal consequences against a person having some vested rights that it is called upon to give him a hearing before coming to a final decision. The disputes under the Punjab Co-operative Societies Act arise quite frequently and in order to provide a speedy remedy the legislature has provided that any party, who wants to have the matter decided by arbitration, should approach the Registrar. No one has any right to object that the Registrar himself should or should not decide the dispute. If this were not so, then the very purpose of having this speedy remedy would be frustrated.

Furthermore, the statute does not provide that any of the aggrieved parties should be given a hearing before the Registrar takes a decision u/s 56 of the Act. I am inclined to take the view that the legislature did not intend that the aggrieved party should be given a hearing in a pre-investigation matter of the

type contemplated by Section 56 of the Act. I hold that the award given by the Arbitrator and all the subsequent proceedings cannot be said to be without jurisdiction merely because the Assistant Registrar did not hear the appellant before referring the dispute to an Arbitrator.

5. It was then urged by the learned Counsel that the appellant sent an application to the Arbitrator that he could not appear before him on September 11, 1967, and that another adjournment may be granted to him. It was urged that the Arbitrator should have served a further notice upon the appellant calling upon him to show cause as to why ex parte proceedings should not be taken against him. Rule 55 of the Punjab Co-operative Societies Rules runs as follows:--

"55. Hearing of disputes.--The Registrar of 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 either party, he shall give a 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."

This rule clearly lays down that if a party has been duly summoned but fails to attend in spite of service, the dispute may be decided ex parte. It is within the jurisdiction of the Arbitrator to accede to or decline a request for adjournment. If the adjournment is not granted and the Arbitrator proceeds ex parte on insufficient grounds, then it would be open to the aggrieved person to agitate this matter in appeal before the competent authority. So far as a Civil Court is concerned, an award has the same force as a decree has, and a Civil Court could not declare that the award was a nullity merely because an adjournment sought for by one party was not granted by the Arbitrator.

6. No other point was urged before me.

7. Consequently, this appeal fails and is dismissed with costs.

8. Appeal dismissed.