
(2001) 03 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7132 of 2000

Darshan Singh

APPELLANT

Vs

Assistant Registrar, Cooperative Societies, Yamuna Nagar

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 4 RCR(Civil) 167

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. S.S. Dalal, for the Appellant; Mr. J.P. Dhull, AAG and Mr. Ranjit Saini, for the Respondent

Final Decision : Allowed

Judgement

Mehtab S. Gill, J.—The petitioner has filed this Civil Writ Petition under Articles 226/227 of the Constitution of India with a prayer that Hem Raj son of Shri Parma Nand, resident of village Chahare, Tehsil Ja-gadhari (Yamuna Nagar) be released.

2. The petitioner has averred that he is the son of Hem Rajson of Shri Parma Nand and that his father was detained on 25.5.2000 by respondent No. 1 on the ground that he did not clear the dues of respondent No. 2 i.e. The Jatehri Co-operative Credit and Service Society Ltd. Jatehri, Tehsil Jagadhri, District Yamuna Nagar (hereinafter called the Society). It has been further averred that the petitioner's father who is a primary member of the Society had secured loan from the Society after giving surety of the persons. The father of the petitioner visited Jagadhri on 25.5.2000 and was detained by the Secretary and the Executive Officer as they had a warrant of arrest against the petitioner's father. The petitioner's father was put in civil imprisonment.

3. Notice of motion was issued to the respondents.

4. Respondents No. 2 and 3 filed their separate written statements. Respondent

No. 2 admitted that the father of the petitioner was arrested under a warrant of arrest issued on 25.5.2000 as he had not cleared the dues of the respondent-Society. It was, however, denied that the father of the petitioner secured loan from the Society after giving surety and mortgaging his land.

5. I have heard arguments on behalf of counsel for the parties and perused the petition, written statements and the annexures attached therewith.

6. The counsel for the petitioner, at the very outset, has drawn my attention to an authority of this Court in *Gomti Devi v. Kalka Co-operative House Building Society Ltd., Kalka and others* 1988(2) RCR 417 : 1988 PLJ 416(DB) in which it was held that if the recovery of the amount due from a member is to be made as arrears of land revenue, then the authority ordering detention of the loanee should take every step for the recovery of the loan amount and arrest and detention of the person should be the last resort.

7. The counsel for the respondent No. 2 has argued that loan could not be recovered from the father of the petitioner as he had not given any type of surety. I called for the register maintained at the time when the loan was sanctioned. A perusal of the same shows that one Girdhari Lal and Sukhdeep Singh stood sureties for Hem Raj son of Shri Parma Nand. Going by the authority reported in *Gomti Devi* (supra), it is clear that the respondents should have first attached the land of the father of the petitioner and they should have further tried to get the amount from the sureties and if all the methods has failed, only then they should have come forward to arrest Hem Raj, father of the petitioner.

8. In the light of above observations, it is directed that the respondents will not arrest Hem Raj son of Shri Parma Nand, father of the petitioner unless all the other remedies to recover the amount of loan due from Hem Raj father of the petitioner have been exhausted.

9. With the above observations, this writ petition is allowed.

10. Petition allowed.