

(1970) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : C.R. No. 279 of 1970

Deputy Registrar Co-op. Societies, Bilaspur Division, Bilaspur	APPELLANT
Vs	
Narayan Prasad Mishra and another	RESPONDENT

Date of Decision : 10-12-1970

Acts Referred:

Arbitration Act, 1940 — Section 12, 14, 14, 15, 15
Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Co-operative Societies Act, 1960 — Section 3, 64, 66, 77, 82(1)

Citation : (1977) ILR (MP) 1123 : (1972) MPLJ 997

Hon'ble Judges : G.P. Singh, J

Bench : Single Bench

Advocate : J.R.P. Sinha, for the Appellant; R.K. Pandey and Ravish Agrawal for Non-applicant No. 1, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

The facts giving rise to this revision are that the non-applicant Narayan Prasad Mishra was elected a Director and thereafter President of the Co-operative Marketing Society, Kargi Road (Kota). The non-applicant Siddhgopal raised a dispute challenging the election of Mishra. That dispute was decided by the Deputy Registrar by his order dated August 24, 1967 and the election of Mishra was held to be void. Mishra then filed an application u/s 14 of the Arbitration Act for directing the arbitrator, namely, the Deputy Registrar, to file his decision or award. This application was filed with the object of enabling Mishra to file objections under sections 30 and 33 of the Arbitration Act for setting aside the decision of the Deputy Registrar. During the pendency of the application u/s 14, an application for injunction was moved. On September 26, 1967 the trial Court issued an injunction restraining the Deputy Registrar from implementing his decision. Against this order an appeal was filed by the Deputy Registrar in the Court of District Judge, Bilaspur, which was dismissed. The Deputy Registrar has

now filed this application in revision.

The main point argued by the learned counsel for the applicant is that the Arbitration Act has no application to a decision or an award made under the Madhya Pradesh Co-operative Societies Act, 1960, and the Courts below were in error in issuing the injunction.

To appreciate the contention raised in this revision, reference is necessary to section 46 of the Arbitration Act which makes the Act applicable to statutory arbitrations. The section reads as follows :

Section 46. The provisions of this Act except sub-section (1) of section 6 and sections 7, 12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment, were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

The words used in this section-""except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder"-make it clear that if the provisions of the Arbitration Act are inconsistent with the provisions of the Co-operative Societies Act, the former Act will not have any application to any decision or award under the latter Act to the extent of the inconsistency between the two Acts. In this revision I am concerned essentially with the application of sections 14 to 17, and 30 to 33 of the Arbitration Act. The question is whether these provisions are inconsistent with the provisions contained in the Co-operative Societies Act.

Under the Co-operative Societies Act the disputes mentioned in subsections (1) and (2) of section 64 are referred to the Registrar for adjudication. The Registrar either himself decides the dispute u/s 66 or sends it for disposal to a nominee or board of nominees. The decision of a nominee or the board of nominees is deemed to be a decision of the Registrar. The powers of the Registrar under sections 64 and 66 can also be exercised by the officers mentioned in section 3 of the Act if the State Government by special or general order authorises them to do so, and the Deputy Registrar is one of the officers who have been so authorised. Every decision or award made u/s 66 is enforceable u/s 85. Every such decision, on a certificate signed by the Registrar or any person authorized by him, is deemed to be a decree of a civil Court and is executed in the same manner as a decree of such Court. It can also be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. Further, it can also be executed by the Registrar or any other person empowered by him in that behalf by the attachment and sale or sale without attachment of any property of the person or a society against whom the decision has been made. As provided in section 82(1) no civil or revenue Court has any jurisdiction in respect of any dispute required to be referred to the Registrar. Except as provided in the Act, no order, decision or award made under the Act

can be questioned in any Court on any ground whatsoever; that is expressly laid down in section 83(3). Provision for two appeals is made in section 77 of the Act; there is no limitation as to grounds that can be taken in first appeal but second appeal lies only on grounds of law similar to those mentioned in section 100 of the Code of Civil Procedure. Any decision given u/s 66 can thus be challenged in two appeals. These provisions of the Co-operative Societies Act contain a self-contained comprehensive scheme. It is important to note that a decision of the Registrar is by itself enforceable, it can be challenged in appeals " on merits as provided in the Act and it cannot be challenged in any civil Court on any ground whatsoever.

Now, let us turn to the relevant provisions of the Arbitration Act. Section 14 of the Act makes provision for the filing of the award. On the award being filed, the Court can modify it on grounds mentioned in section 15 and can remit it to the arbitrator for reconsideration on grounds mentioned in section 16. Section 31 of the Act indicates the Court where the award is to be filed u/s 14 and confers on that Court jurisdiction to decide the validity, effect or existence of an award or arbitration agreement. Section 32 bars the maintenance of a suit for a decision upon the existence, effect, or validity of an arbitration agreement or award ; it also provides that no arbitration agreement or award can be set aside, amended, modified or in any way affected otherwise than as provided in the Act. Section 33 provides the mode of challenging the existence or validity of an arbitration agreement or award Section 30 provides the grounds on which an award can be set aside. If the award that is filed in Court is not modified or remitted or set aside, the Court u/s 17 delivers a judgment in terms of the award and upon the judgment so pronounced a decree follows. It is this decree which is executable and not the award on which it is based. These provisions of the Arbitration Act go to show that the scheme is that an award as such is not executable or appealable, it can be modified, remitted or set aside on the specified grounds by the Court in which it is filed and steps have to be taken to obtain a judgment and a decree on the basis of an award to make it executable.

A comparison of the aforesaid provisions of the two Acts reveals inconsistency in three broad aspects. First, a decision of the Registrar under the Co-operative Societies Act itself becomes a decree on a certificate granted by the Registrar and is even otherwise executable; whereas, an award under the Arbitration Act is not executable and proceedings have to be taken to obtain a judgment and decree on its basis. Secondly, a decision of the Registrar under the Co-operative Societies Act is appealable; whereas, no appeal lies against an award under the Arbitration Act. Thirdly, a decision of the Registrar cannot be challenged in a civil Court on any ground whatsoever; whereas, an award under the Arbitration Act can be modified, remitted or set aside by the Court. In view of these inconsistencies, sections 14 to 17 and 30 to 33 of the Arbitration Act, with which we are concerned, can have no application to a decision of the Registrar under the Co-operative Societies Act.

Mishra entirely misconceived his remedy in applying to the Court for requiring the Deputy Registrar to file the decision rendered by him with the object of ultimately having it set aside. A decision or an award under the Co-operative Societies Act cannot be challenged by recourse to Arbitration Act. Such a challenge is clearly barred by section 82(3) of the Co operative Societies Act. As the proceeding instituted by Mishra was itself not maintainable, the Courts below acted illegally in issuing a temporary injunction restraining the Deputy Registrar in giving effect to his decision.

Learned counsel for Mishra contends that the Deputy Registrar had no locus standi to file an appeal in the Court of the District Judge and to come up in revision to this Court. Learned counsel argues that the Deputy Registrar was merely a pro forma party. This contention must be rejected. The Deputy Registrar was not only made a party but the temporary injunction was also obtained against him. Now, when an injunction was issued against the Deputy Registrar who was joined as a party in the trial Court, he was certainly a person who could prefer an appeal against the order made against him and for that reason he could also file the present revision. It was also contended that the injunction was issued under inherent powers and, therefore, no appeal lay to the District Judge and the Deputy Registrar should have come up in revision within limitation against the order of the trial Court itself. The point that the appeal before the District Judge was incompetent was not taken in that Court. Even if that appeal was not maintainable and the applicant should have come up in revision against the trial Court's order, this Court is not powerless to grant relief to the applicant, for this is a fit case where the Court should interfere suo motu even without an application of any party. When it is clear that the proceedings in the civil Court against the decision of the Deputy Registrar were entirely misconceived, it becomes the duty of this Court to interfere in the circumstances of the case.

The revision is allowed, the order passed by the Courts below are set aside. The non-applicant No. 1 shall pay the costs of the applicant of all the Courts. Counsel's fee Rs. 50.