

(1979) 04 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2091 of 1972

Deva Raj

APPELLANT

Vs

The District Cane Officer and Others

RESPONDENT

Date of Decision : 12-04-1979

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Co-operative Societies Act, 1965 — Section 70, 91
Constitution of India, 1950 — Article 14
Uttar Pradesh Co-operative Societies Act, 1965 — Section 70, 91
Constitution of India, 1950 — Article 14
Uttar Pradesh Co-operative Societies Act, 1965 — Section 70, 91

Citation : (1979) AWC 430

Hon'ble Judges : R.S. Singh, J;K.N. Seth, J

Bench : Division Bench

Advocate : Sripat Narain Singh, for the Appellant; V. Sahai, B. Dayal and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth and R.S. Singh, JJ.—This petition is directed against the notice dated 22-9-1971 issued by the District Cane Officer, Saharanpur u/s 91 of the U.P. Co-operative Societies Act (hereinafter referred to as the Act) calling upon the Petitioner to pay a sum of Rs. 4401.32 failing which the amount shall be realised by sale of his properties.

2. It appears that the Petitioner was sanctioned a loan of Rs. 3,000/-out of which a sum of Rs. 1500/-was paid to him on 26-11-1962. The loan was for setting up a tubewell. The balance amount of Rs. 1500/-was kept in the Petitioner's account but was payable after the work had been commenced by him. Since the Petitioner failed to utilize even the initial advance of Rs. 1,500/-the remaining part of the sanctioned loan was not released. Notices demanding the amount were served on the Petitioner on various dates. The notices included the principal together with the interest due upto the date of the notice. The Petitioner denied

his liability to pay the amount claimed. The dispute was referred to arbitration. In fact these arbitration cases were started on the basis of three notices served on the Petitioner. The difference in the amount mentioned in the notices was due to the difference in the amount of interest which had fallen due when the notices were issued. It is not disputed that the arbitration proceedings are still pending.

3. Learned Counsel for the Petitioner contended that recourse to Section 91 of the Act could not be had as the claim of the Society against the Petitioner was still pending before the Arbitrator. In the alternative it was urged that if it was claimed that remedy u/s 91 of the Act was available to the Society apart from the remedy by way of arbitration then this provision was ultra vires being violative of Article 14 of the Constitution as the remedy u/s 91 was more drastic.

4. Section 91 of the Act provides for a remedy to the Cooperative Society for recovery of the amount due to it. It is open to the Society to make an application to the Registrar or any other Gazetted Officer subordinate to him and authorised by him in this behalf who on being satisfied of the existence of the debt or outstanding demand make an order directing the payment of such debt or outstanding demands due to the society by any member or past or deceased member, by sale of the property or any interest therein, which is the subject matter of charge. This remedy is available notwithstanding the fact that the remedy by way of arbitration is also available to the society. This remedy cannot be availed of while the matter has already been referred to the arbitration and the Arbitrator is seized of the dispute between the parties. The opening words of the section "notwithstanding anything contained in Chapter IX" does not mean that the remedy u/s 91 may be availed of even in a case where the dispute is being enquired into by the Arbitrator. It only implies that this remedy is available to the Society apart from the remedy available u/s 70 of the Act. Both the remedies cannot be availed of simultaneously. Since the dispute between the parties is before the Arbitrator, recourse could not be had to the remedy provided u/s 91 of the Act in respect of the same matter.

5. In the result, this petition is allowed. The impugned notice dated 22-9-1971 is quashed. It shall be open to the society to approach the Arbitrator for an early decision of the dispute raised before him. Parties shall bear their own costs.