

(2011) 02 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11160 of 1994

Dharmendra Kumar

APPELLANT

Vs

U.P. Rajya Sahkari Krishi and Gramya Vikash Bank, Balia and
Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 70, 71
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 225

Citation : (2011) 02 AHC CK 0067

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—In spite of sufficient service no one has appeared on behalf of Respondent Nos. 2 and 3 i.e. Chief Development Officer Ballia and Milk Dairy Cooperative Samiti Ltd. Sher Block, Dubhar District Ballia through its Secretary Udai Narain Pathak.

2. This writ petition is directed against recovery notice, copy of which is Annexure IV to the writ petition which does not bear any date. However, original notice has been placed on record which bears the date 23.03.1994. The notice was issued by Respondent No. 1. It was mentioned in the said notice that total amount due including the interest against the Petitioner was Rs. 25465/- and that 12.04.1994 had been fixed for auction of mortgaged land of the Petitioner and Petitioner was required to clear the dues three days before that. In this writ petition on 11.04.1994 stay order was passed staying the recovery proceedings.

3. Learned Counsel for the Petitioner has argued that the amount of loan i.e. of Rs. 20,000/- was not actually given to the Petitioner but the cheque of the said amount issued by the Respondent No. 2 was transferred to current account of Respondent No. 3. The loan was given on 13.11.1992. The further case of the Petitioner is that the loan had been given for purchasing she-buffalo through Respondent No. 3, however, Petitioner was not provided the buffalo by

Respondent No. 3. In para 5 of the writ petition it has been stated that on 18.3.1993 Petitioner filed the complaint before Respondent No. 2 copy of which is Annexure 2 to the writ petition and another complaint was filed by him on 28.03.1994 before Respondent No. 1 copy of which is Annexure 3 to the writ petition.

4. The main contention of learned Counsel for the Petitioner is that matter should have been referred to arbitration u/s 70 of U.P. Cooperative Societies Act 1965. In this regard the Petitioner himself was required to apply before the Registrar as required by Rule 225 of U.P. Co-operative Societies Rules 1968 which is quoted below:

When a dispute relating to any matter referred to in Sub-section (1) of Section 70 arises, the aggrieved party shall, on the form, if any, prescribed for the purpose by the Registrar, apply to the Registrar stating the substance of the dispute and the claim; besides mentioning the name and address of the opposite party or parties. If the party desires the dispute to be decided by a board of arbitrators under Clause (c) of Sub-section (1) of Section 71, it shall also mention in the application the name of its nominee for the board of arbitrators.

5. In the representation dated 28.03.1994 (Annexure 3 to the writ petition) it was mentioned that Petitioner had received notice dated 23.03.1994 and it was requested that the same should be cancelled as without deciding the dispute recovery proceedings would be illegal. It was also requested that matter should be referred to Arbitration.

6. Learned Counsel for the Petitioner specially argued that u/s 70 of U.P. Cooperative Societies Act the dispute should have been referred to the Registrar who could act in accordance with Section 71 of the Act.

7. However, the Petitioner neither filed any application/reference before Registrar nor in his representation which are Annexures 2 and 3 any request was made for referring the matter to the Registrar. In Annexure 3 dated 28.03.1994 the only thing which was requested was that the matter should be referred to arbitration or Sri Uday Narayan Pathak should be directed to provide milk giving animal to him.

8. However, as the case of the Petitioner is that neither the amount of Rs. 20,000/- was paid to him nor animals were provided to him hence this question has to be decided before taking proceedings for recovery of loan. In this regard reference may be made to the Supreme Court authority reported in Seth Banarsi Dass (Dead) by LRs Vs. District Magistrate and Collector, Meerut and others,

9. Accordingly, it is directed that within one month from today Petitioner shall file duplicate copy of his representation dated 28.03.1994, copy of which is Annexure 3 to the writ petition along with certified copy of this judgment before Respondent No. 1. Respondent No. 1 shall decide the matter and in case it is held that Petitioner in fact took loan or was provided the animal worth Rs.

20000/- then recovery proceedings for the said amount along with entire interest which may have become due till date of decision shall be recovered from the Petitioner otherwise the amount in dispute shall not be recovered from the Petitioner.

10. In case certified copy of this judgment and duplicate copy of Annexure 3 is not filed before Respondent No. 1 within a month then this writ petition shall be deemed to have been dismissed.

11. Writ petition is accordingly disposed of.