
(1975) 11 PAT CK 0002
In the Patna High Court
Case No : A.F.A.O. No. 219 of 1972

Din Dayal Singh

APPELLANT

Vs

The Bihar State Co-operative Marketing Union Ltd.

RESPONDENT

Date of Decision : 13-11-1975

Acts Referred:

Citation : AIR 1976 Patna 179 : (1975) 9 PLJR 130 : (1975) PLJR 130

Hon'ble Judges : Uday Sinha, J; Shambhu Prasad Singh, J

Bench : Division Bench

Advocate : Janardan Sinha and Raghubansh Singh, for the Appellant; Rama Raman and S.B. Pathak, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Yogendra Prasad Vs. Addl. Registrar, Co-op. Societies, Bihar and others, AIR 1991 SC 2137 : (1992) 1 BC 53 : (1992) 1 SCC 720 Supp : (1991) 1 SCR 143 Supp : (1991) 2 UJ 635

Shambhu Prasad Singh, J.—This is a decree-holder's appeal against concurrent orders of the Courts below holding his execution petition as not maintainable and dismissing it. The appellant was a share-holder member of the Bihar State Co-operative Marketing Union, the respondent. He also took contracts for doing certain works for the respondent. As there were differences as to the amount payable to him for the said work a dispute arose u/s 48 of the Bihar and Orissa Co-operative Societies Act (hereinafter referred to as "the Act"). The claim of the appellant was, however, rejected by the District Co-operative Officer. Against that order the appellant preferred an appeal which was heard by the Deputy Registrar, Co-operative Society (Judicial), The Deputy Registrar allowed the appeal and passed a decree for Rs. 28,143.68 P. against the respondent. The appellant levied execution before the Execution Munsif, Patna. The respondent went in revision to the Registrar, Co-operative Societies, against the order of the Deputy Registrar. The Registrar modified the order of the Deputy Registrar reducing considerably the amount decreed in favour of the appellant. The appellant,

however, did not amend his execution petition in the light of the order passed by the Registrar or did he file a copy of the order of the Registrar.

2. An objection was raised on behalf of the respondent that the execution case was not maintainable for the decree of the Deputy Registrar had merged in the decree of the Registrar and that decree alone could be executed. The contention of the appellant was that no revision lay to the Registrar against the order of the Deputy Registrar and the order and decree of the Registrar modifying the order and decree of Deputy Registrar were without jurisdiction. The Execution Munsif upheld the contention of the respondent. Thereafter there was an appeal by the appellant to the District Judge which was heard by the Additional Subordinate Judge 6th Court, Patna, who confirmed the order of the Execution Munsif and dismissed the appeal.

3. Mr. Janardan Sinha appearing for the appellant in this Court has contended that an order passed on appeal by the Deputy Registrar (Judicial) u/s 48 of the Act was final and could not be revised by the Registrar in exercise of revisional powers conferred upon him u/s 56 of the Act. According to Mr. Sinha, u/s 56 of the Act the Registrar can revise orders passed u/s 44 of the Act and not other sections of the Act and even if it is held that the Registrar in exercise of the powers conferred upon him u/s 56 of the Act can revise orders passed under sections other than Section 44, he cannot revise orders passed u/s 48 of the Act. On the other hand, on behalf of the respondent it has been contended that power of revision conferred upon the Registrar u/s 56 of the Act is wide enough to apply to orders passed under all sections of the Act including Section 48. In support of this contention reliance has been placed on a Bench decision of this Court in *Sahebganj Motor Transport Co-operative Society Ltd. Vs. The Registrar, Co-operative Societies and Others*, In that case the Registrar had revised an order passed u/s 11 of the Act and it was held that he had power to do so u/s 56 of the Act.

4. In order to appreciate the contentions raised before us it may be necessary to refer to certain sections of the Act. Section 48 (1) provides for reference of certain disputes to the Registrar. Subsection (2) of Section 48 lays down that on receipt of such reference the Registrar (a) may decide the dispute himself, or (b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf, or (c) subject to any rule, refer it for disposal to an arbitrator or arbitrators. Sub-section (6) says that any person aggrieved by any decision given in dispute transferred or referred under Clause (b) or (c) of Sub-section (2) may, within three months from the date of such decision, appeal to the Registrar. Sub-section (7) provides that the Registrar, in the case of disputes under this section, shall have the power of review vested in a Civil Court u/s 114 and under Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 and shall also have the inherent jurisdiction specified in Section 151 of the said Code. Then Sub-section (8) lays down that the Registrar may where it appears to him advisable, either on application or of his own motion, state a case and refer it to the District Judge

for decision, and the decision of the District Judge shall be final. Sub-section (9) reads as follows:--

"Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under Clause (b) or (c) of Sub-section (2) shall be final."

Section 6 of the Act provides that the State Government may appoint a person to be Registrar of Co-operative Societies for the State or any portion of it, and may appoint persons to assist such Registrar and that the State Government may by general or special order published in the official gazette confer on any person appointed to assist the Registrar, all or any of the powers of the Registrar under the Act except the powers u/s 26.

5. It is not in dispute that both the District Co-operative Officer and the Deputy Registrar (Judicial) were appointed to assist the Registrar u/s 6 (1) of the Act and were conferred powers u/s 6 (2) of the Act to exercise the powers of the Registrar. The District Co-operative Officer, therefore, decided the dispute under Clause (b) of Sub-section (2) of Section 48 and the Deputy Registrar heard the appeal which was filed under Sub-section (6) of that section. The exact question which arises for decision in this appeal is whether the appellate order of the Deputy Registrar passed u/s 48 (6) could be revised by the Registrar u/s 56 of the Act.

6. Section 56 of the Act reads as follows:

"The Registrar may on application or of his own motion revise any order passed by a person exercising the powers of a Registrar or by a liquidator u/s 44."

Sub-sections (3) and (6) of Section 44 of the Act themselves refer to the power of the Registrar to revise an order passed under that section. It has been contended on behalf of the appellant that the fact that other sections of the Act do not refer to the powers of revision by the Registrar and Section 44 refers to it shows that the power of revision conferred on the Registrar u/s 56 is confined to order passed u/s 44 only and the words "under Section 44" in Section 56 qualify both (1) "any order passed by a person exercising the powers of a Registrar" and (2) "by a liquidator". It has also been emphasised that the use of the expression "any order passed by" only once and not again before the expression "by a liquidator" supports this contention. On the other hand, it has been contended on behalf of the respondent that if the intention of the legislature would have been that the Registrar could revise only such orders which were passed u/s 44, then provision for that would have been made in that section and the power of revision would not have been conferred by the legislature on the Registrar by a separate section, namely, Section 56. It has been urged that the very fact that power of revision has been conferred on the Registrar by an independent section shows that the power can be exercised by the Registrar in respect of any order passed by a person exercising the powers of a Registrar under any of the

sections of the Act. The decision of the question is not free from difficulty and much can be said in support of the contention of the appellant. However, in view of the Bench decision of the Court in *Shahebgunj Motor Transport Co-operative Societies*" case (supra) which is binding on us, unless the matter is referred to a larger Bench, I proceed on the assumption that the power of revision conferred on the Registrar u/s 56 of the Act is not limited to orders passed by a person exercising the powers of a Registrar u/s 44 only. However, I am of the opinion that in spite of the view that Section 56 is not limited in its application to orders passed u/s 44 only, it has got no application to orders passed by a person exercising the powers of a Registrar u/s 48 of the Act.

7. Relevant provisions of Section 48 of the Act have already been referred to and it has been noted that the section itself provides for appeal as well as review and then lays down that save as expressly provided in that section, a decision of the Registrar under that section and subject to the orders of the Registrar on appeal or review a decision given in a dispute transferred or referred under Clause (b) or (c) shall be final. The expression. "Save as expressly provided in this section" in Sub-section (9) of Section 48 is of special significance. By use of that expression the legislature appears to have clearly laid down that provisions of other sections of the Act do not affect the finality of the order passed u/s 48. It is true that Sub-section (9) of Section 48 gives finality to decisions given in a dispute transferred or referred under Clause (b) or (c) of Sub-section (2) only and not to a decision under Clause (a) of Sub-section (2) but reading Section 48 as a whole it is manifest that the decision contemplated under Clause (a) of Sub-section (2) must be by the Registrar "himself" (used in Clause (a)) and not by "any person exercising the powers of a Registrar in this behalf" (used in Clause (b)). An order under Clause (a) which can be passed by the Registrar himself, and not by any person exercising the powers of a Registrar, obviously cannot be revised u/s 56 of the Act. In this case however, we are concerned with an order passed in an appeal against the decision given in a dispute transferred under Clause (b) of Sub-section (2) and I am of the opinion that on account of the language of Sub-section (9) of Section 48, the appellate order of the Deputy Registrar in this case passed u/s 48 (6) of the Act could not be revised by the Registrar u/s 56 of the Act. It has rightly been contended on behalf of the appellant that no revision lay to the Registrar against the order of the Deputy Registrar and the order and decree of the Registrar modifying the order and decree of the Deputy Registrar were without jurisdiction. In the circumstances, the Courts below have erred in rejecting the application for execution of the order and decree passed by the Deputy Registrar.

8. It appears that the amount claimed in the dispute and awarded in the decree passed by the Deputy Registrar was beyond the pecuniary jurisdiction of the Execution Munsif of Patna before whom the execution petition was filed. Perhaps, it was filed there on account of the language of Section 51 which reads as follows:

"Orders passed under Sections 44, 48 and 50 shall, in addition to any other

method of enforcement provided under this Act, on application be enforced as follows:--

(a) When passed by the Registrar, a liquidator or by an arbitrator or arbitrators, by any Civil Court having local jurisdiction in the same manner as a decree of such Court,

(b) When passed by the District Judge in the same manner as a decree of the District Judge made in any suit pending before him."

The section refers only to "local jurisdiction", i. e., territorial jurisdiction of the Court before which the execution petition is to be filed and not of its pecuniary jurisdiction. In the circumstances the Execution Munsif appears to have jurisdiction to entertain the petition for execution. Really no objection was taken before that Court or before the lower appellate Court that the execution petition could not be filed before the Execution Munsif for lack of pecuniary jurisdiction. This point was also not raised before this Court. I do not, therefore, propose to discuss this point any further.

9. In the result, the appeal is allowed with costs. The orders of the Courts below dismissing the execution case of the appellant are set aside and the Execution Munsif, Patna, is directed to dispose of the execution case in accordance with law. Hearing fee for this Court is assessed at Rs. 150/- only.

Uday Sinha, J.

I agree.