
(2012) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5293 of 2009

Haim Singh, Salesman

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Co-operative Societies Act, 1984 — Section 102

Citation : (2012) 2 ILR (P&H) 113

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : R.D. Gupta, for the Appellant; A.P. Setia, Advocate and S.S. Antal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—The challenge in this petition filed under Articles 226 and 227 of the Constitution is to the Arbitration Award dated 18.07.2007 passed by the Assistant Registrar, Cooperative Societies, Ambala acting as an Arbitrator u/s 102 of the Haryana Cooperative Societies Act, 1984 (for short "the Act") directing the petitioner Haim Singh, Salesman to pay an amount of Rs. 1,61,500/- along with 18% interest within a period of one month and for quashing the impugned order dated 12.01.2009 passed by the Special Secretary to Government of Haryana, Cooperation Department, Chandigarh exercising revisional jurisdiction against the order dated 18.07.2007. The short issue involved as projected by the learned counsel for the petitioner is that an inter se dispute between two employees would not form subject matter of arbitration proceedings under the Act. Arbitration disputes under the Act are envisaged and contemplated between a society and a member/s but not disputes between two employees i.e. the petitioner and one Gulab Singh - respondent No. 5. The short facts necessary for adjudication of this matter are that the petitioner was working as a salesman under the control and supervision of the Manager of the respondent Society namely Sh. Gulab Singh during the year 2007. In the year

2007, objection was raised in the audit report when audit was carried out by the Audit Department that they had been an embezzlement of a sum of Rs. 1,61,500/- during the year 1992-93 when both the petitioner and said Gulab Singh were working together in the society. It is the petitioner's case that he has been unlawfully saddled with payment of amount of Rs. 1,61,500/- and that this amount stood duly paid to the society and further to the respondent -Bank.

2. Learned counsel for the petitioner has pointed out from the written statement filed by respondent No. 5 - Gulab Singh an admission that being in charge of the society he was made to deposit the said amount by the Divisional Officer of the Bank and a verbal understanding was reached between the petitioner and the respondent No. 5 that the latter will make the payment to the Society within a short period and as a guarantee to this promise he agreed to sign a payment voucher of the same amount to be shown as advanced to him in case he does not pay the same. It is not disputed that no financial loss has been occasioned either to the society or to the bank by the events of 1992-93. Respondent No. 5 has remained silent all along having once made good the amount of embezzlement. If there was a verbal understanding between the petitioner and respondent No. 5 then it would be a personal and private dispute between them which has nothing to do with the respondent Society and the respondent Bank.

3. I have heard learned counsel for the parties at length. Learned counsel for the petitioner has relied upon a decision of this Court reported in Nanak Chand, Inspector Cooperative Societies, Sohna, Distt. Gurgaon versus State of Haryana 1997 (2) R.C.R. (Civil) 408, to contend that arbitration under the cooperative law is not permissible vis-?-vis an inter se dispute between employees. It may or may not be that the petitioner had or had not embezzled money in the year 1992-93. The remedies against such action could have been both criminal and civil. The society was not a complainant. The alleged embezzlement came to light in 2007. Respondent No. 5 sat back happily from 1992-93 without claiming the amount from the petitioner. I pointedly asked Learned counsel for respondent No. 5 as to his client's silence throughout this period but he had nothing to offer by way of explanation. I feel that both the petitioner and respondent No. 5 cannot be said to be above-board. But, it is not possible for this Court to consider seriously disputed questions of fact between them. Yet what remains at the end of the day, in my considered view, is that the arbitration proceedings initiated and concluded under the Act were wholly nonest and ab initio void. Consequently, I have no hesitation in quashing both the impugned orders as being misdirected and suffering from inherent lack of jurisdiction. I would leave the private parties to seek remedies, if any, available to them against each other in accordance with law.

4. The learned counsel for respondent No. 6 - Bank did not dispute that no financial loss had been occasioned to the Bank and that the dispute was essentially a private dispute without any public law element involved therein. In view of the above, the writ petition is allowed. The impugned orders dated

18.07.2007 and 12.01.2009 are hereby quashed with no order as to costs.