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**(1982) 08 P&H CK 0045**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : F.A.F.O. No. 249 of 1973**

Harchand Singh

APPELLANT

Vs

Khiala Kalan Agricultural Co-operative Service Society Ltd.  
and Others

RESPONDENT

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**Date of Decision :** 09-08-1982

**Acts Referred:**

Arbitration Act, 1940 — Section 33, 46

**Citation :** AIR 1983 P&H 19 : (1983) 1 ILR (P&H) 463

**Hon'ble Judges :** S.S. Sandhawalia, C.J;R.N. Mittal, J

**Bench :** Division Bench

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## Judgement

S.S. Sandhawalia, C.J.—Whether the provisions of the Co-operative Societies Act, 1961, expressly or by necessary implication exclude the applicability of S. 33 (read with S. 46) of the Arbitration Act, 1940, to a statutory award under S. 56 of the former Act is the significant question which has necessitated this reference to the Division Bench,

2. The facts are in narrow compass. The dispute arose betwixt Harchand Singh appellant, then serving as Cashier of the Khiala Kalan Agricultural Co-operative Service Society (hereinafter referred to as the Co-operative Society), on the one hand and the society on the other. This dispute was referred to Mr. K. L. Sharma, the Manager of Faridkot Central Co-operative Bank Limited, Faridkot, as Arbitrator under S. 56 of the Punjab Co-operative Societies Act, 1961(hereinafter referred to as "The Societies Act"). The arbitrator rendered his award on 15th of Jan., 1969, against the appellant and held him liable to pay the amount in dispute. The appellant then preferred an appeal u/s 68 of the Societies Act, which was dismissed by the Assistant Registrar, Co-operative Societies, Bhatinda, on 15th of Nov., 1971. It was thereafter that the appellant resorted to the filing of an application under S. 33 of the Arbitration Act for seeking a declaration that the entire arbitration proceedings held and conducted by Mr. K. L. Sharma were without jurisdiction. illegal and inoperative. The society contested the application,

inter alia, on the grounds that the Civil Court has no jurisdiction to entertain the petition and further that the petition had been filed after the period of limitation and that the same was not maintainable. The Court had framed these following issues :--

- (1) Whether this Court has got jurisdiction to hear the petition?
- (2) Whether petition has been filed within limitation?
- (3) Whether petition is not maintainable on the grounds taken in reply filed ?
- (4) Whether the certified copy of order was not properly stamped, if so, its effect ?

3. The Court held that it has no jurisdiction to hear the petition; that the same was filed within limitation, and that the petition was not maintainable. Issue No. 4 was not pressed. Ultimately the Court dismissed the application. Aggrieved by this order, the appellant preferred this appeal against the order of the Subordinate Judge.

4. This F. A. O. Had first come up before my learned brother R. N. Mittal, J. while sitting singly. The solitary contention pressed before him (as before us now) was that the Civil Court had the jurisdiction to try the application u/s 33 and that it erroneously held otherwise. In support of this stand primary reliance was placed on Jullundur Central Co-operative Bank Ltd. v. Jawala Dass, Civil Revn. No. 402 of 1962, decided on August 16, 1963. This judgment undoubtedly lent support to the stand of the appellant. However, finding this view contrary to those prevailing in Calcutta and Hyderabad High Courts the matter was referred to Division Bench for an authoritative decision.

5. At the very threshold it deserves notice that though Section 33 of the Arbitration Act refers in terms to an arbitration agreement, yet by virtue of Section 46 of the said Act, it would become applicable to every arbitration under any other enactment for the time being in force. It is thus patent that the Arbitration Act would apply to a statutory arbitration including those in the Societies Act, unless there is its provisions are inconsistent with the same or any rules made thereunder.

6. For clarity sake the matter herein deserves examination from the twin aspect of an express and implied exclusion. It is, therefore, apt to deal with these two aspects distinctly and separately. It is, however, elementary that if both an express and an implied bar is indicated then these would coalesce to make the exclusion of the jurisdiction of the Civil Courts and the applicability of the Arbitration Act even more categoric.

7. Inevitably one must advert to the express exclusion of the Civil Court and consequently of the Arbitration Act under the Societies Act. Herein, what calls for pointed notice is a triple bar imposed by the statute both in Section 55 and Section 82 of the Societies Act which may be read at the very threshold. Section

55 of the Societies Act provides as under :--

"55. Dispute which may be referred to arbitration :--(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching, the constitution, management or the business of a co-operative society arises :--

(a) to (d) xxx xxx"

Such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) xxx xxx"

(a) and (b) xxx xxx"

(c) Any dispute arising in connection with the election of any officer of the Society.

xxx xxx"

82. Bar of jurisdiction of Courts :--

(1) save as provided in this Act, no civil or revenue Court, shall have any jurisdiction in respect of:--

(a) to (b) xxx xxx

(c) Any dispute required u/s 55 to be referred to the Registrar; and

(d) xxx xxx

(2) xxx xxx"

(3) Save as provided in this Act, no order, decision or award, made under this Act, shall be questioned in any Court on any ground whatsoever."

8. A plain reading of the aforesaid provisions would indicate that at least within the specific context of a statutory arbitration u/s 56 of a Societies Act and the Award rendered therein the legislature has imposed a triple bar in pre-emptory terms for excluding the jurisdiction of the Civil Courts. This would inevitably out the application of Section 33 of the Arbitration Act because cannot be denied that the same has to be enforced in that forum alone. Section 55 aforesaid expressly lays down, that disputes falling within its ambit would be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect thereof. The use of such wide language as "other proceedings" is significant. Again Section 82(1)(c) of the Societies Act in terms bars the jurisdiction of the civil or revenue Courts in respect of any dispute required to be referred to the registrar u/s 55. A general exclusion is then spelt out in Section 82(3) providing that no Award made under this Act shall be questioned in any Court on any ground whatsoever except as provided in the "Societies Act" itself. The wide amplitude of the language used herein is again

worthy of pointed notice.

9. Though the language of the statutory provisions is categoric enough, the provisions of Section 55 and 82 of the Societies Act have been the subject matter of interpretation by a Full Bench in *Ran Singh Vs. The Gandhar Agricultural Co-operative Service Society, Gandhar*, wherein it was observed as under (at p. 96) :--

"A combined reading of these provisions shows that it has been made imperative for either a Society or its member to refer their disputes inter se to the registrar for decision. Not only has the jurisdiction of ordinary Civil Courts been taken away for entertaining any suit or other proceedings in respect of such a dispute but an express bar has been created against the Civil Courts regarding all types of jurisdictions in respect of disputes required to be referred to the Registrar. The use of the words "in respect of" is pregnant with significance. It perhaps shows that even if the decision of the Registrar or the arbitrator is wholly illegal, an aggrieved party would have to take resort to the remedies provided by the Act itself and a Civil or a Revenue Court will not be competent to adjudicate upon the matter unless there is a specific provision to the contrary in the Act..... .."

It thus seems to follow both on the language of Sections 55 and 82 of the Societies Act and the authoritative precedent that the provisions of Section 33 of the Arbitration Act would be ousted with regard to a statutory Award under the Societies Act.

10. Now apart from an express bar it would appear that the patent inconsistencies betwixt the provisions of the Societies Act and those of the Arbitration Act militate strongly in favour of an implied exclusion of the provisions of one statute from the other. Admittedly, the Societies Act and the Rules framed thereunder provide in great detail for both the reference of the dispute u/s 55 of the Societies Act and the rendering of the statutory Award u/s 56 of the Arbitration (sic) Act. Section 68(1)(b) of the said Act then provides a statutory appeal against the Award and inevitably in this appeal, the challenge thereto can be a wide ranging one. Section 69 of the Act in specific cases provides further for a revision against the appellate forum. There is no corresponding provision under the Societies Act or Rules framed thereunder which would necessitate any application for making an Award, a rule of the Court as under the Arbitration Act. On the other hand, Sec, 63 in terms provides inter alia that upon the issuance of a certificate, the Award would be deemed to be a decree of the Civil Court It would thus be obvious that the provisions of the Societies Act which in detail govern the statutory arbitrations thereunder are in principle and details inconsistent with those under the Arbitration Act. Once it is so held, Section 46 of the Arbitration Act would be itself straightway attracted in so far as it provides that the provisions of the Arbitration Act would not be applicable to statutory arbitrations under other statutes which are inconsistent therewith or any Rules made thereunder.

11. Now apart from the express provisions of Section 46b of the Arbitration Act it is otherwise well-settled that the jurisdiction of a Civil Court and the provisions of Acts enforceable therein may be excluded by the clear implication arising from the scheme of an Act. This is more so when the legislature sets up a special formula for determining the disputes and the rights and liabilities of the parties under the statute itself. In *State of Kerala Vs. Ramaswami Iyer and Sons*, their Lordships have authoritatively laid down the rule in the following terms (at p. 1740) :--

"But the jurisdiction of the Civil Court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the Legislature sets up a social tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of the Civil Courts would be deemed excluded by implication. ...."

12. There is then a long line of precedents holding directly that the provisions of the Arbitration Act are ousted by similar or analogous provisions of the various Co-operative Societies Acts. Reference in this connection may first be made to the observations of Chagla, J. (as the learned Chief Justice then was) in *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, . A Division Bench of the Calcutta High Court in *Nanda Kishore of the Calcutta High Court in Nanda Kishore Goswami and Another Vs. Bally Co-operative Credit Society, Ltd. and Others*, , took the view that the provisions of the Co-operative Societies Act, 1912 and the Rules framed there under, were inconsistent with the provisions of the Arbitration Act and would, therefore, exclude its applicability, A similar view has been expressed by the Division Bench in *B. Balreddy v. Joint Registrar, Co-operative Society* AIR 1955 AP. 238. Directly on the point is the observation of the Division Bench in *Bhadur Singh Vs. The District Judge, Rampur and Others*, , holding that the provisions of Section 33 of the Arbitration Act are inconsistent and inapplicable to the statutory Award under the Co-operative Societies Act.

13. By way of analogy, massive support for the aforesaid view accrues from the observations in *Dist. Co-operative Federation Ltd., Meerut v. Registrar, Co-operative Societies, U. P. Lucknow*, : AIR 1966 All 489; *Union of India (UOI) Vs. Ramdas Oil Mills*, ; *The State of Bihar Vs. Damodar Valley Corporation and Others*, ; *Dinshaw Manekji Petit Vs. G.B. Badkas and Others*, and *H.P. State Co-operative Bank Ltd. Vs. Smt. Naroo Devi and Others*, .

14. Inevitably one must now advert to *Jullundur Central Co-operative Bank Ltd's* case (Civil Revn. No. 402 of 1962, D/- 16-8-1963)(Punj)(supra). The judgment therein shows that counsel were rather remiss in not bringing to the pointed notice of the Court the express bar spelt out in Ss. 55 and 82 of the Arbitration Act, and the inherent inconsistencies betwixt the Societies Act and those in the arbitration Act. *Nanda Kishore Goswami's* case and *Nanda Kishore Goswami and Another Vs. Bally Co-operative Credit Society, Ltd. and Others*, the earlier judgments were apparently not brought to the notice of the learned single Judge.

It is manifest that the subsequent line of precedents after the judgment was rendered in 1962, in Jullundur Central Co-operative Bank Ltd.'s case (supra), has consistently taken a contrary view. With the greatest respect, therefore, it must be held that Jullundur Central Co-operative Bank Ltd.'s case (supra) was incorrectly decided and is hereby overruled.

15. The answer to the question posed at the outset is, therefore, rendered in the affirmative and it is held that the provisions of the Co-operative Societies Act, 1961, exclude the applicability of Section 33 of the Arbitration Act to a statutory Award u/s 56 of the former Act.

16. Applying the above it is inevitable that the solitary contention pressed before us--that the Civil Court had the jurisdiction to try the application u/s 33--has to be rejected. Affirming the trial Court's finding on this point, (the other issues were not challenged before us) we dismiss the present appeal. In view of some conflict of precedent within this Court, we leave the parties to bear their own costs.

R.N. Mittal, J.

17. I agree.

18. Appeal dismissed.