
(1989) 10 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3477 of 1979

Hoshiar Singh

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 03-10-1989

Acts Referred:

Citation : (1990) PLJ 231 : (1990) 2 RRR 292

Hon'ble Judges : J.S.Sekhon, J

Advocate : Mr. Randhir Singh, Advocate., Advocates for appearing Parties

Judgement

J.S. Sekhon, J.

1. The petitioners as well as Duli Chand, respondent No. 4 are members of the Rawaldhi Cooperative Agricultural Service Society Ltd., Rawaldhi (hereinafter referred to as the Society). The petitioners are also members of the Managing Committee of the Society. Respondent No. 4 took some loan from the Society on various dates, but repaid a sum of Rs. 58007. The balance a amount of Rs. 1275/ remained due from him. This amount was also confirmed on 16th December, 1974 by Shri Zile Singh, SubInspector, Cooperative Societies. This SubInspector got a promise from him for repayment of this amount by 24th December, 1974. Duli Chand respondent then filed an application denying his liability to pay this amount, which resulted in a reference for arbitration proceedings under section 55 of the Punjab Cooperative Societies Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as the Act). The arbitrator gave an award on 18th February 1978, against the petitioners, copy whereof is Annexure P 1. The petitioner challenged this award by preferring an appeal before the Assistant Registrar, Cooperative Societies, Bhiwani, who dismissed the same vide his order dated 24th July, 1978. The petitioners then filed an appeal under Section 68 of the Act before the Deputy Secretary, Cooperative Societies, on the wrong assumption that such an appeal was maintainable. The Deputy Secretary, however, treated this appeal as revision under section 69 of the Act and dismissed the same vide his order dated 14th May, 1979. The petitioners then

invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, by challenging the above referred award of the Arbitrator, the order of the Assistant Registrar and that of the Deputy Secretary, Cooperative Societies, mainly on the ground of not affording an opportunity to the petitioners to lead their evidence and nonapplication of mind.

2. The allegations of the petitioners were controverted by the answering respondent contending that Hoshiar Singh, petitioner No. 1 is the treasurer of the Society, while Amar Singh petitioner No. 2 is its President and Pahlad Ram petitioner No. 3 is its Vice President. These petitioners had misused their official position and created false documents for their own purposes regarding advance of loans to various persons in the village including the answering respondent but they themselves utilised the money so obtained. He also maintained that Shri Zile Singh, SubInspector, never examined him on 16th December, 1974, what to say of confirming the loan. He further supported awards as well as the orders of the Assistant Registrar and Deputy Secretary, Cooperation. Thus it was maintained that no case was made out for interference in the impugned orders under Article 226 of the Constitution of India.

3. I have heard the learned counsel for the parties, besides perusing the record. The perusal of Annexure P4 order of the Arbitrator, reveals that Duli Chand had allegedly taken loan on various dates as under

1.

on 25.6.70

Rs. 675/

2.

on 25.6 70

Rs. 550/

3.

on 4.3.71

Rs. 600/

On 25th January, 1971, the loanee had paid back the amount of Rs. 550/ of Tammask No. 101, whereas the remaining amount of Rs. 1275/ remained as balance. Duli Chand respondent vide his statement dated 18th November, 1977 before the Arbitrator maintained having not taken any loan from the Society and denied his signatures on the Tammask. Shamsheer Singh and Karam Singh, the sureties of the loanee also stated on 5th December, 1977 that they had never become sureties and that their thumb impressions and signatures in this regard were obtained on some pretext. The arbitrator thereafter made some verbal enquiries from the villagers and came to the conclusion that the loan amount was not given to Duli Chand but anyhow the signatures on the Tammasks had

been obtained from Duli Chand and his sureties and all this happened due to the negligence of the petitioners who happened to be the members of the Managing Committee. It is, however, noteworthy that in the earlier part of the award, the Arbitrator had expressed his inability to compare the signatures of Duli Chand on the alleged Tammasks with his genuine signatures without the help of a handwriting expert. No doubt the Arbitrator was not required to strictly follow the rules of the Evidence Act while giving an award, yet all the same in view of the specific denial of the Duli Chand dated 18th November, 1977 that the pronote did not bear his signatures, it was incumbent upon him to have examined some handwriting expert in this regard. Thus the nonexamining of any handwriting expert has resulted in denying an opportunity to lead evidence to the present petitioners. Strange enough, the Assistant Registrar, Cooperative Societies vide his order dated 24th July, 1978, Annexure P2, had not given any reason whatsoever for upholding the award of the Arbitrator. The Deputy Secretary, Cooperation, in his order dated 14th May, 1979, had also overlooked this aspect of the matter. It is not acceptable that a literate person would append his signatures on a pronote without any rhyme or reason. Thus, under these circumstances, the nonexamination of any handwriting expert and dismissing the appeal of the petitioners by the Assistant Registrar vide impugned order, would not only amount to denial of the right to lead evidence to the petitioners, but also in proving that these lapses have resulted in rendering the principle of equality before law as non est.

4. For the foregoing reasons the impugned award of the Arbitrator as well as the orders of the Assistant Registrar, Cooperative Societies and of the Deputy Secretary, Cooperation, are hereby quashed by accepting this writ petition. The Arbitrator is directed to decide the matter afresh after examining some handwriting expert and allowing the parties to lead their evidence. In the peculiar circumstances of the case there is no order as to costs.