
(2012) 11 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12546 of 2011 (O and M)

K.C. Mittal

APPELLANT

Vs

Joint Registrar, Co-Operative Societies and Others

RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Limitation Act, 1963 — Section 3

Punjab Co-operative Societies Act, 1961 — Section 55, 56, 69, 85(2)(xxix)

Citation : (2013) 169 PLR 523

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : Amit Sharma, for the Appellant; Rajiv Atma Ram with Mr. Arjun Pratap Atma Ram, Amicus Curiae, Mr. Kamal K. Sharma, A.S.C. for U.T. Chandigarh and Mr. H.S. Hundal, for the Respondent

Judgement

Ranjit Singh, J.—A loan of Rs. 20,000/- taken by the petitioner has become too huge for him for repayment. He is now saddled with the liability of nearly Rs. 7.00 lacs, No doubt, there is some delay on the part of the petitioner to discharge the liability but requiring him to pay approximately Rs. 7.00 lacs for loan of Rs. 20,000/-, which the petitioner took, would sound unfair and unreasonable. President of the Society accordingly was asked to consider the proposal to settle this liability with some reasonable term. Despite efforts, no agreed solution has been possible in this case. The perusal of the facts in this case would, in fact, reveal that the employees of the Bank have constituted a society, which, in routine used to collect money from the members. This money thereafter was used for disbursing the loan by charging exorbitant rate of interest. In this background, the court entertained a doubt whether such a course would be permissible for employees of the Bank to run a parallel banking institution. It was also required to be ascertained as to how the amount earned as a profit is used, which was not clearly made out from the facts of the case. The counsel appearing for the parties conceded before the court that formation of such a society and to carry out such functioning by the society so formed

would be permissible. Plea was that number of such societies are functioning in this manner. The court still found it to be a parallel banking system being run and the effect thereof was on the petitioner, who took loan of Rs. 20,000/- but now was required to pay sum of approximately Rs. 7.00 lacs, which ultimately would be shared by the members constituting the committee as a personal profit.

2. In order to appreciate this part of the legal issue, Senior counsel Mr. Rajiv Atma Ram, who was present in the Court, was requested to assist the court. He was gracious enough to accept the request and has made reference in detail to the provisions; of various enactments ultimately to urge that the course as adopted by the respondents would appear to be permissible under law. Learned Senior counsel appearing as Amicus has made reference to various enactment, like Reserve Bank of India Act, Money Laundering Act, Punjab State Cooperative Societies Act and by making reference to various provisions of these enactments, the counsel has made submission that the cooperative society, if legally and validly formed, can run a banking system. Since there is no objection raised by the petitioner on this count and it was only on account of a doubt arising in the mind of the court that the Amicus was asked to assist in this regard, I need not express any opinion on this count, but would consider the plea raised in the petition dehors this issue.

3. Briefly noticing the facts in this; case are that the petitioner has challenged the arbitration award passed against him under Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961 (for short "the Act"). As per the petitioner, this award is made in blatant violation of the provisions of the Act and in violation of principles of natural justice. The petitioner pleads that no opportunity of hearing was ever afforded to him by the authorities to defend a time barred debt. As per the petitioner, the arbitration reference for claiming the defaulted amount of loan was raised after five years, whereas the prescribed period of limitation for raising the arbitration proceedings under Article 137 of the Limitation Act is three years. In this regard, the petitioner has placed reliance on The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, where Article 137 of the Limitation Act has been considered and it is held that application filed under the Act where no period of limitation prescribed would be 3 years.

4. The petitioner in this case admits that he had taken advance of Rs. 20,000/- in June, 1987 for construction of a house at the rate of interest of 14% per annum To secure the instalments, an undertaking and an authority letter was given on a prescribed form to the employer by the petitioner authorising him to deduct every month out of his salary the amount so as to pay the same to the society by adjusting towards his loan account. The petitioner claims that his entire liability stood discharged by the year 1993 as the remaining liability was cleared by way of one time settlement. Still, in June, 1998, arbitration proceedings were initiated u/s 55 and 56 of the Act and recovery of Rs. 20,000/- as principal amount and Rs. 26,274/- as interest and a sum of Rs. 11,568/- towards the costs was raised against the petitioner. As per the petitioner, no

summons were served on him and the ex-parte award was passed on 15.3.2000. The total amount of Rs. 57,842/- with future interest at the rate of 19.5% till finalisation of the proceedings was imposed on the petitioner.

5. The petitioner never came to know about the passing of this award till 15.3.2010. He learnt about the same only when execution proceedings were initiated on this date. Soon thereafter on 17.3.2010, the petitioner challenged the validity of the award by filing an appeal. He also moved an application seeking condonation of delay in filing the appeal. The appeal was dismissed on 17.2.2011 on the ground that it was much beyond the period of limitation. The Appellate Authority declined to condone the delay. This award, the petitioner has challenged in the present writ petition on the ground that this is wholly without jurisdiction. The petitioner, as already noticed, pleads that on the face of it, the claim or debt is time barred but was entertained against him in utter violation of the mandate contained in Section 3 and Article 137 of the Limitation Act. The primary grievance of the petitioner, however, remains that he was not properly served as per the provisions contained in Section 85(2) (xxix) and Rule 74 of the Punjab Cooperative Societies Rules, 1963. These provisions according to the petitioner regulate the service of summons.

6. Another ground raised by the petitioner that the operation area of the society was within the local jurisdiction of Chandigarh, whereas the petitioner was employed at Delhi. Petitioner has further pleaded that the arbitration has no jurisdiction to award interest beyond the settled terms as per the agreement between the parties and has also challenged the order dismissing his application for condonation of delay in an illegal manner. The petitioner accordingly has filed this petition.

7. While issuing notice of motion in this case, the court required the petitioner to deposit half of the awarded amount alongwith upto date interest within a period of four weeks with the Registrar, Cooperative Societies. On his doing so, the execution of the award was to remain stayed till further orders.

8. Written statements have been filed on behalf of respondent Nos. 1 and 2 as well as by respondent No. 3, A preliminary objection is raised in the written reply filed by respondent No. 3 alleging that the petitioner has not availed the alternative remedy of filing a revision u/s 69 of the Act. Otherwise, it is pointed out that the Arbitrator has passed an award against the petitioner and the surety against which the petitioner had a right to file appeal within 60 days. Petitioner allegedly filed appeal against the same after nearly 10 years along with the application for condonation of delay. It is also alleged that petitioner has not complied with the interim order passed by this court as he had failed to deposit 50% of the amount which works out to be Rs. 3,18,640/- whereas the petitioner has deposited only a sum of Rs. 2,10,000/-.

9. To contest the plea that the petitioner was not served, it is stated that petitioner had intentionally avoided service. As per the respondents, notice was

sent to his official address, but was received back with the report "not available on the seat". It is stated that even the surety had appeared before the arbitrator and had then approached the petitioner for repayment of the loan, but the petitioner did not choose to appear before the arbitrator. The; petitioner was then served through publication and the notice was published in Indian Express on 17.9.1999 to appear on 27.9.1999. The petitioner, however, still did not appear and was proceeded exparte. It is pleaded that claim of the society is not barred by limitation as no limitation has been prescribed for filing a reference of dispute u/s 55 of the Act. The society claims to have passed resolutions on 27.12.1986, 1.6.1990, 24.7.1991, 31.3.1992 and 22.12.1996 enhancing the rate of interest to 14.4% per annum, 15.6% per annum, 17.4% per annual quarterly compoundable and 19.2% per annum and 19.5% per annum quarterly compoundable respectively. Otherwise, it is agreed that the loan was paid at the rate of interest of 14% per annum.

10. Almost similar stand is taken by respondent Nos. 1 and 2 in their reply so filed. Respondent Nos. 1 and 2, however, have stated that society is empowered to charge penal interest. Other contentions raised by the petitioner have also been disputed.

11. I have heard the counsel appearing for the parties in this case. I am, prima-facie, not much convinced about the cause for which this society was formed. No doubt, I have not gone into the details of the legal issue arising in this case on this count, but it is primarily a profit earning cooperative society formed by some individuals serving in some organization. May be, it is so formed to help peers by advancing loans, like house building loan which the petitioner took, but apparent and prime motive of the society was to enrich the individual member constituting the society and nothing more. The petitioner has also apparently not acquainted himself well by not refunding the loan in time.

12. The petitioner has raised a dispute on facts by pleading that the loan amount stood discharged by way of one time settlement, but still he has not been able to successfully substantiate his plea in this regard. Pursuant to the interim order passed, the petitioner has deposited a sum of Rs. 2,10,000/-. A refund of this amount which is 10 times of the loan, which the petitioner took, should, in my view, settle the equities in this case. To make the petitioner to pay 10 times than the amount which he took would, in my view, take care of the delay which the petitioner caused in repayment of this amount. After all, the amount which the petitioner took as a loan was not that substantial to cause any prejudice or a serious prejudice to the society in its financial dealings. Petitioner could have taken this loan from any bank where he may not have been required to pay interest at such exorbitant rates. 14% interest is not a interest which prevailed during the intervening periods and this interest against the terms and conditions of the agreement had been enhanced finally to 19.6% which is nothing but would be killing. At least, petitioner deserves some relief in equity. Without going into the legal propositions raised in the petition, I am satisfied that ends of justice

would be met by requiring the petitioner to settle this loan account by payment of Rs. 2,10,000./- which he has already paid. Nothing more, thus, would be payable as the amount calculated and due against the petitioner to be sum of Rs. 6,65,000/- is too exorbitant, unreasonable and unfair. The writ petition accordingly is disposed of with the direction that the loan of Rs. 20,000/- taken by the petitioner would deem to be settled with payment of sum of Rs. 2,10,000/- which the petitioner has deposited pursuant to the directions issued by this court as an interim measure staying the operation of the award.