
(1978) 09 AHC CK 0003
In the Allahabad High Court
Case No : Writ Petition No. 1554 of 1976

Khaki Prasad

APPELLANT

Vs

Harsingpur Sadhan Sahkari Samiti Ltd. and Others

RESPONDENT

Date of Decision : 14-09-1978

Acts Referred:

Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 237

Citation : (1979) AWC 1

Hon'ble Judges : S.C. Mathur, J;K.S. Varma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.C. Mathur and K.S. Varma, JJ.—The present writ petition is directed against an award given by opposite party No. 2 under the provisions of the U.P. Co-operative Societies Act. The facts so far as they are relevant for deciding the present writ petition may be shortly stated.

2. Opposite party No. 1 is a Cooperative Society registered under the U.P. Co-operative Societies Act. It preferred an arbitration in respect of a loan alleged to have been advanced to the Petitioner. Opposite party No. 2 was the arbitrator in the case. It appears that he directed the secretary of opposite party No. 1 to effect service of the summons upon the Petitioner. The manner in which service was effected or sought to be effected upon the Petitioner has been indicated in paragraph 6 of the counter-affidavit filed by Shri Ram Murti Singh, the Secretary of opposite party No. 1. In this paragraph he has asserted that Shri Bajrang Singh peon and Qurq Amin of the Co-operative Department, Block Haldharmau went to effect service of the notice on the Petitioner but the Petitioner was not present at the spot and, therefore, a copy of the notice dated 30-5-1974 was pasted on 10-6-1974 in presence of Sri Hariram and Rampher. These witnesses were alleged to be the residents of the same village in which the Petitioner resides. In this very paragraph it has further been stated that on 4-6-1974 the deponent of the affidavit viz. Ram Murti Singh himself went to serve the notice

upon the Petitioner but he refused to take the same and as such he made a note that the notice be served on him by pasting the same through some peon. It was on this basis that pasting was alleged to have been made on 10-6-1974.

3. In spite of the alleged pasting of notice on 10-6-1974 no appearance was put in on behalf of the Petitioner before the arbitrator, opposite party No. 2, and the arbitrator, accordingly, gave his award on 12-6-1974 a copy of which has been filed as Annexure 1 to the writ petition. Against this award the Petitioner preferred an appeal before opposite party No. 3 which as contained in Annexure 6 would indicate that opposite party No. 3 did not apply his mind to this specific grievance made on behalf of the Petitioner. Before us it was urged by Shri G.K. Mehrotra learned Counsel for the Petitioner that the service which was alleged to have been effected upon the Petitioner through pasting was absolutely invalid and was contrary to statutory provisions. He invited our attention to Rule 237 of the U.P. Co-operative Societies Rules, 1968. He urged that the alternative mode of service by pasting could be resorted to if both the modes prescribed in Sub-clauses (i) and (ii) of Clause (c) of Rule 237 had been exhausted. In the present case, it is no body's case that any attempt was made to serve the Petitioner by registered acknowledgment due post also. Clauses (c) and (d) of Rule 237 are as follows:

(c) The summons may be served

(i) by registered (acknowledgment due), or

(ii) by personal service through the secretary of the society or a member of the staff of the financing or supervising society.

(d) If the service of summons could not be effected by any of the modes specified under Sub-rule (c), it may be effected by any other mode provided in the Code of Civil Procedure, 1908 (Act No. 5 of 1908).

4. Under Clause (d), the other modes provided in the Code of Civil Procedure, 1908 for serving could be resorted to only if "any of the modes specified under Sub-rule (c)" could not be effective. These words which have been reproduced from Clause (d) clearly indicate that the alternative or substituted mode of service could be effected only if service by neither of the two modes prescribed in Clause (c) could be effective. Under Clause (c) one of the modes prescribed for effecting service is by registered post, acknowledgment due and the other mode prescribed is by personal service through the secretary of the Society or a member of the staff of the financing or supervising society. As already noted herein above, there was, no dispute that no attempt was made to serve the Petitioner with summons of the case by registered post acknowledgment due. In this view of the matter there was no service of summons upon the Petitioner and therefore, the award made by the arbitrator opposite party No. 2 was without jurisdiction.

5. In view of the above decision, it is not necessary for us to go into other

questions which have been raised by the Petitioner. The writ petition has to be allowed on the ground that the Petitioner did not have opportunity to meet the case set up against him by the society.

6. In view of the above, the writ petition is allowed and the award dated 12-6-1974 and the appellate order dated 15-4-1976, Annexure 6 to the writ petition, passed respectively by opposite parties Nos. 2 and 3 are quashed. The Petitioner is entitled to his costs which he will receive from opposite party No. 1.

7. In this petition, the Petitioner has also prayed for the issue of a writ of mandamus for the release of his goods attached on 19-4-1976 in execution of the award made by opposite party No. 2. In view of the fact that the award itself has been quashed by us this prayer has to be allowed. Accordingly, a writ in the nature of mandamus shall issue commanding the opposite parties to release the goods of the Petitioner which had been attached on 19-4-1976, a list of which is contained in Annexure 7 to the writ petition.

8. Since we have allowed the writ petition only on the ground that the Petitioner did not have opportunity to contest the case set up by opposite party No. 1, it will be open to the opposite parties to proceed against him in respect of the claim preferred by opposite party No. 1. The claim preferred by opposite party No. 1 shall be decided only after giving opportunity of hearing to the Petitioner in accordance with the law indicated herein above.