(2013) 11 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2278 of 2001 (O&M)

Malkiat Singh	APPELLANT
Vs	
Addl. Secretary	RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2014) 2 PLR 501

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Mahesh Grover, J.

C.M. No. 15071 of 2013

1. C.M. is allowed.

Legal heir of petitioner, Malkiat Singh (deceased) as mentioned in para 2 of the application are ordered to be brought on record. Registry is directed to carry out necessary changes in the memo of parties.

CWP No. 2278 of 2001

The petitioner has impugned Annexure P-11, which is the award; on the ground that it is totally non-speaking and liability to the tune of Rs. 1,64,240/- has been fastened upon him without any basis.

The facts reveal a bit of chequered history of the case. Initially an amount of Rs. 28,203.08 was sought to be recovered from the petitioner on the basis of Annexure P-1 which is the report of checking of the stocks indicating and establishing a shortage of the stocked goods. As per Annexure P-1, a total amount of Rs. 28,203.08 paise was due against the petitioner. Out of this amount, an amount of Rs. 7,075/- could be recovered leaving the balance of Rs. 21,128.08 paise. By virtue of Annexure P-2, an order was passed by the

Assistant Registrar, Co-operative Societies, Garhshankar seeking to recover this amount from the petitioner and observing that in case recovery is not effected from the petitioner in ordinary manner, the Society would have the right to recover it through coercive process. It may be mentioned that all these proceedings were initiated against the father of the petitioner since the petitioner had proceeded abroad. An appeal was filed by the petitioner''s father, namely, Sh. Kishan Singh before the Assistant Registrar, Cooperative Societies, Hoshiarpur where the representative of the Society pleaded that since the audit of the Society was in progress they would prepare the arbitration case afresh and thus they withdrew the case on behalf of the society, implying thereby that the very basis of the recovery against the petitioner was now non-existent. After the lapse of six years, in the year 1989, an amount of 1,64,240/- was determined against the petitioner (inclusive of interest). The proceedings were initiated by the Assistant Registrar Cooperative Societies and the matter was then remanded to the Inspector, Cooperative Society on 28.11.1995. It was again returned to the Assistant Registrar for reasons which are not evident but ostensibly due to the death of Kishan Singh. By that time, the legal representatives of the deceased Kishan Singh had been brought on record and the matter progressed leading to the passing of the impugned order Annexure P-11.

2. Learned counsel for the petitioner contends that the impugned order is unsustainable as it does not disclose as to what is the basis for such a recovery, more particularly, when the original demand was for a paltry sum of Rs. 28,203.08 paise.

3. Learned counsel for the respondent on the other hand contends that the liability has been determined on the basis of an audit report. He has further contended that the petitioner never impugned this award and the only challenge made was to the recovery notice and that too in the year 2000 when the recovery notice was issued in the same year.

4. Learned counsel for the petitioner then contended that in fact he was never associated with the proceedings before the Inspector and even though he had been appearing before the Assistant Registrar who had reserved the matter at one point of time, there is no notice issued to the petitioner subsequent thereto. This fact has been denied by the respondent and they have also referred to the impugned award where the factum of the petitioners refusing the summons had been recorded.

5. I have considered the matter at length. Whether the petitioner was associated with the proceedings or not would be a relevant issue to consider the prejudice caused to the petitioner in the event of his not being associated with the proceedings. If the award is to be seen then it does not disclose any reason and the basis for such a recovery. Assuming that the petitioner had refused to accept the summons, even then, it was expected that the Award would contain sufficient material to disclose the basis of such a recovery against him.

6. Nowhere from the record is it evident that the petitioner was ever confronted with the basis of such a recovery and the shortages if any which were sought to be established and attributed to him. All throughout, an attempt has been made to highlight the amount without disclosing any foundational basis for it. The only reference that has been made in the Award to form the basis of recovery is as under:

At page 51 to 59 of the file, a decision is available which has been done by the D.R.C.Ss. Hoshiarpur on 25.2.1991. According to which Shri Malkiat Singh who is really responsible for payment of the disputed amount before the arbitrator has since died. Therefore, there is no need to examine the case any more or to afford opportunity to the 2nd party.

I, Gurmit Chand, therefore, decide that from Shri Malkiat Singh s/o Kishan Singh, Ex-Salesman and his surety''s legal heirs Smt. Harbhajan Kaur (wife), Harbans Singh, Kuldip Singh, Jagtar Singh, Balwinder Singh and Iqbal Singh (all) sons of Kishan Singh the said 2nd party, the 1st party-the Rajpur Bhaian Co-operative Agricultural Service Society will recover Rs. 64,940/- (Principal), Rs. 77878/- (interest up to 30.9.1989). Rs. 21422/- (expenses) = Total Rs. 164240/- by 31.8.1996. Intt. will be charged @ 17% till the recovery of the amount.

To the mind of this Court, the award is totally unreasoned by virtue of which, recovery is sought to be executed against the petitioner. The plea of the respondents that the award was never challenged by way of an appeal would be of no consequence at this stage of the proceedings, as the petitioner in any case has laid a challenge to the award in proceedings under Article 226 of the Constitution of India. The Court in exercise of its inherent jurisdiction finds that if the Award is permitted to be executed, it would result in a serious abuse and prejudice to the petitioner, and thus to prevent such a course, this Court holds that principles of substantial justice would demand that such a technicality should not come in the way of the petitioner in the given set of circumstances. The petitioner, however has not denied his liability to pay the additional amount determined against him i.e. Rs. 28,203.08 paise, out of which, he has already deposited Rs. 7075/-. He would thus be bound by his own admission and this amount would be deposited by him along with interest which is determined at 7% P.A. from the date it became due, till the date the amount is paid to the Society, The petitioner shall deposit this amount positively within a period of 6 weeks from today. Since the order has been pronounced in the presence of his counsel, no further excuse for making the deposit beyond time shall be entertained regarding non availability of the copy of the order. For the aforestated reasons, the impugned order Annexure P-11 is quashed. The land of the petitioner shall be released forthwith. The respondents shall also be at liberty to proceed against the petitioner in accordance with law by establishing any outstanding liability.

Petition stands disposed of.