
(1978) 03 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : E.F.A. No. 134 of 1975

Mohinder Singh

APPELLANT

Vs

Ludhiana Co-op.Marketing Society Ltd.

RESPONDENT

Date of Decision : 16-03-1978

Acts Referred:

Citation : (1978) ILR (P&H) 521 : (1978) PLJ 201 : (1984) RRR 382

Hon'ble Judges : Harbans Lal, J

Advocate : Mr. B.S. Shant, Advocate, Mr. B.S. Khoji, Advocate., Advocates for appearing Parties

Judgement

Harbans Lal, J. (Oral)

1. The Ludhiana Cooperative Marketing Society Limited (hereinafter called the respondent society), applied for execution of the award dated 4, 1971 against the appellant, in the Court of the Subordinate Judge, First Class, Ludhiana. During execution proceedings, the appellant filed the objection petition contending that as he was not a member of the respondent society, the award by the arbitrator was without jurisdiction and as such a nullity and not executable. The objection petition was contested by the respondent society. On the pleadings of the parties, the following issues were proued :

1. Whether the award dated June 4, 1971, is a nullity as alleged by the objector ?
2. Whether the objection petition is barred by limitation?
3. Whether the judgmentdebtor is estopped by his own act and conduct?
4. Whether this court has got no jurisdiction to entertain the present petition?
5. Relief

2. The executing Court held that the award was not a nullity and the arbitrator had the jurisdiction to give the said award and that the appellant was estopped by his own act and conduct from challenging the award as being a nullity on the

ground that he was not a member of the respondent society and as such, it was held that the Court had no jurisdiction to entertain the objection petition. The objection regarding bar of limitation raised by the respondent society was not pressed. The objection petition having been dismissed by the impugned order, the appellant has challenged the same in the present appeal.

3. It is strenuously urged by the learned counsel for the appellant, that the appellant had sold his produce to the respondent society from time to time and thus was entitled to claim the considerable amount in lieu thereof from the respondent society. As the same was not paid, the appellant filed an application, Exhibit DHW12 on July 18, 1969, wherein the appellant claimed to be a member of the respondent society and requested the Assistant Registrar, exercising the powers of the Registrar to refer the matter to arbitration. The matter was referred to the arbitration of Shri Bawa Singh, arbitrator, who later gave the award on March 7, 1973, a copy of which of Exhibit OW1/1. Its perusal shows that the arbitrator after recording the statement of the appellant and scrutinising the record of the respondent society came to the clear conclusion that the appellant was not proved to be the member of the respondent society and thus dismissed the petition as not maintainable because no award could be made relating to a dispute between a cooperative society and nonmember. In view of these facts, the case of the appellant is that as he was not held to be a member of the respondent society by order of the arbitrator dated March 7, 1973. Exhibit OWD/1 the said order is binding on both the parties. This being the position there is no escape from the conclusion that the award which is sought to be executed by the respondent society against the appellant passed by Pritam Singh, arbitrator, is without jurisdiction. In reply to the same, the case of the learned counsel for the respondent society is that the appellant did not raise any objection before the arbitrator that he was not a member of the respondent society and as such, the arbitrator had jurisdiction in that matter and, therefore, the appellant was estopped from raising this contention in execution proceedings. The learned counsel for the appellant has relied upon *Sri Ram Avtar Aggarwal v. District Cooperative Sugarcane Supply Society Ltd. Bareilly, A.I.R. 1960 Allahabad 500*, wherein it has been held that where a party goes to an arbitrator under the mistake belief that he was an officer of the society and consequently an award is made, the arbitration proceedings could not bind him at all. There is considerable weight in this contention of the learned counsel for the appellant. According to the learned counsel, at the time the award, in question was made, the appellant was under the mistaken belief that he was a member of the respondent society because he had business dealings with the latter. He was under this misunderstanding that he filed an application, Exhibit DHW 1/2 on April 18, 1969 for the adjudication of his claim against the respondent society by the arbitrator and the arbitrator was also appointed by the Assistant Registrar. However, when during the arbitration proceedings, the record of the society was scrutinised, it was brought to light that, in fact, the appellant had not been enlisted as the member of the society in the record of the society and on that

basis, the arbitrator gave a positive finding that the appellant was not proved to be a member of the respondent society and as such, refused to adjudicate upon his claim. It was as a consequence of this decision that he was forced to file a civil suit against the respondent society which is still pending. It is further contended that the respondent society having derived advantage over the appellant by getting a decision from the arbitrator in their favour and against the appellant now cannot take up a contrary position and execute the award against the appellant. It is not denied that in case it is held that the appellant was not a member of the respondent society the matter could not be referred to the arbitrator under section 56 of the Punjab Cooperative Societies Act, 1961 and even if so referred, the decision of the award by the Arbitrator would be without jurisdiction.

As my conclusion is that in fact in view of the decision of the arbitrator on March 7, 1973 appellant was held to be not a member of the respondent society, the award clearly was without jurisdiction and as such was a nullity.

It is contended by the learned counsel for the respondent society that even if the appellant was dissatisfied with the award on any ground, his remedy was by way of a suit challenging the validity of the award. However, it has been held by a Full Bench of this court in *Ran Singh v. The Gandhar Agricultural Cooperative Service Society Gandhar*, 1975 Punjab Law Journal 162 that in case the award is without jurisdiction, the same can be challenged in execution proceedings and it is not necessary for the judgmentdebtor to challenge the same only in a civil court.

It is also contended by the learned counsel for the respondent society that in proceedings initiated on the application of the appellant in which it was held by the arbitrator in his order, exhibit QW 1/1, that the appellant was not proved to be a member of the respondent society, the respondent society could not file any appeal as the claim of the appellant had been dismissed, and further that the respondent society in its written statement had agreed that the appellant was a member of the respondent society. This contention, however, has no merit. The fact remains that the arbitrator decided the rights of the parties on merits and the same will be binding on both unless set aside on the principle of constructive res judicata. The respondent society having taken advantage of that decision cannot now take up a contrary position in its anxiety to take undue advantage over the appellant in the claim against him. Though the appellant did take up the position in his application that he was a member of the respondent society. Yet the same was not borne out from the records of the respondent society. The appellant could not claim to be a member as a fact unless he had been registered as such in the record of the society. If due to no fault of his, he was not enlisted as a member and thus forced to suffer consequences regarding his claim against the respondent society which was quite considerable he will not be estopped from taking advantage of the order which was passed by the arbitrator on merits. For the reasons mentioned above, the appeal is allowed with costs and it is held that the award being against a person who was not a member of the

respondent society was without jurisdiction and as such a nullity and the same is inexcusable.