
(2004) 02 MP CK 0059
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3955/94

Mst. Gujar Bai and Others	Vs	APPELLANT
Bunkar Sahkari Samiti Limited and Another		RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Citation : (2004) 3 MPHT 216 : (2004) 3 MPLJ 9

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Ramesh Shrivastava, for the Appellant; R.S. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

The petitioners aggrieved by the order passed by the District Judge, Chhindwara (Annexure A-1), dated 18th March, 1994 by which the order

passed by the Civil Judge Class-I, Saunsar, dated 13-11-1992 (Annexure A-2) was reversed, have filed this petition, under Article 227 of the

Constitution of India.

Facts of the case are that the petitioners' predecessor Dharam Das filed a dispute before the Assistant Registrar, Co-operative Societies,

Chhindwara for recovery of Rs. 9,131. This dispute was decided as case No. 230/69 on 16-3-1969 and decree of the aforesaid amount along

with 6 per cent interest per annum with cost was passed in favour of Dharam Das. Thereafter, Dharam Das filed execution proceedings before the

Civil Judge Class I, Saunsar u/s 85-A of M.P. Co-operative Societies Act, 1960 (hereinafter referred as "the Act" for brevity). In the execution

proceedings, judgment-debtor moved an application that the award passed by the Assistant Registrar, Co-operative Societies can not be executed

by the Civil Court because the execution proceedings ought to have been filed before the Assistant Registrar, Co-operative Societies. This prayer

was opposed by Dharam Das on the ground that the proceedings were initiated on the basis of certificate issued for the recovery of the amount

and the recovery certificate was issued by the Assistant Registrar u/s 84-A of the Act. This certificate shall be deemed to be a decree of the Civil

Court and shall be executed like a decree of Civil Court. The Executing Court rejected the objections raised by the respondent, but on revision,

vide order (Annexure A-I), respondent No. 2, the learned District Judge reversed the order of the Executing Court and the proceedings initiated

by the Dharam Das were set aside. This order has been assailed by the petitioners by filing this petition on the ground that the certificate issued by

the Assistant Registrar, Co-operative Societies u/s 84-A of the Act shall be deemed to be a decree of Civil Court and may be executed by the

Civil Court in the same manner as a decree of Civil Court.

The learned Counsel appearing for petitioner submitted that the certificate issued by the Assistant Registrar u/s 84-A of the Act may be executed

as a decree of Civil Court. He has placed his reliance to Section 85 of the Act and a Division Bench decision of this Court in Magan v. Sagar Co-

operative Bank 1969 MPLJ 168, and contended that the Civil Court is well within its jurisdiction to execute the aforesaid certificate as a decree of

Civil Court.

The learned Counsel appearing for respondent No. 1 opposed the prayer and contended that in view of the specific provision of Section 85 of the

Act, the execution application can not be filed directly in the Civil Court. The procedure is envisaged under the Act which ought to have been

followed by the petitioner. He has also placed his reliance to a Single Bench judgment of this Court in Khayaliram v. Ved Prakash in Civil Revision

No. 1110 of 1983, decided on 2-44985 (reported in 1987 MPWN 143) and contended that the order (Annexure A-1) is in accordance with law

and need not be interfered by this Court.

To appreciate the rival contentions of the parties, it is necessary to look into the relevant provisions of the Act which read as under :--

84-A. Recovery of sums due to certain societies.-- (1) Notwithstanding anything contained in Sections 64, 69 and 78 on an application made by

a co-operative housing society or Madhya Pradesh State Co-operative Housing Federation or Primary Urban Co-operative Bank for recovery of

arrears of its dues, the Registrar may, after making such enquiry as he deems fit, grant a certificate for the recovery of the amount stated therein to

be due as an arrears.

(2) The certificate granted by the Registrar shall be final and conclusive proof of the arrears stated therein, and the same shall be recoverable as

arrears of land revenue.

Execution of orders, etc.-- Every order or award passed or decision given by the Registrar under any provision of this Act, every order passed by

the Appellate or Revisional Authorities and every order made, decision given by the Liquidator, if not carried out--

(a) on a certificate signed by the Registrar or any person authorised by him in this behalf be deemed to be decree of a Civil Court and shall be

executed in the same manner as a decree of such Court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue; or

(c) be executed by the Registrar or any other person empowered by the Registrar in this behalf, by the attachment and transfer in the manner as

may be prescribed or sale or sale without attachment of any property of the person or a society against whom the order, decision or award has

been obtained or passed :

Provided that any application for the recovery under Clause (b) shall be made--

(i) to the Collector and shall be accompanied by a certificate signed by the Registrar or by any person authorised in this behalf; and

(ii) within five years from the date fixed in the order, decision or award and if no such date is fixed, from the date of order, decision or award, as

the case may be.

The procedure for execution of decisions or awards is envisaged under the M.P. Co-operative Societies Rules, 1962. Relevant Rule 55 reads as

under :--

55. Procedure for execution of decisions or awards.-- (1) Every decision given or

award made by the Registrar, his nominee or Board of

nominees in respect of a dispute shall be forwarded by the Registrar to the society or to the party concerned with instructions that the society or, as

the case may be, party concerned with instructions that the society or as the case may be, the party concerned should initiate execution

proceedings according to the provisions of Section 85.

(2) If the amount due under the decision or award is not recovered within fourteen days it shall be forwarded to the Registrar with an application

for execution along with all information required by the Registrar. The decree-holder shall state whether he desires to execute the award by a Civil

Court under Clause (a) or by the Collector under Clause (b) or by Registrar or any person empowered by the Registrar in this behalf under Clause

(c) of Section 85.

(3) On receipt of such application for execution, the Registrar shall forward the same to the proper authority for execution along with a certificate

issued by him under Clause (a) or Clause (b) of Section 85.

Under Section 85 (a), it is provided that on a certificate signed by the Registrar or any person authorised by him in this behalf be deemed to be

decree of a Civil Court and shall be executed in the same manner as a decree of the such Court. Though Sub-sections (b) and (c) provide different

mode of recovery/enforcement of the orders, but for execution of the order as a decree of Civil Court, the procedure is envisaged under Rule 55

which provides that the award made by Registrar or his nominee shall be forwarded by the Registrar to the Society or the party concerned with

instructions that the Society or the party concerned as the case may be should initiate execution proceedings according to the provisions of Section

85. If the amount due under the decision or award is not recovered within fourteen days it shall be forwarded to the Registrar with an application

for execution along with all information required by the Registrar. The decree holder shall state whether he desires to execute the award by a Civil

Court under Clause (a) or by the Collector under Clause (b) or by Registrar or any person empowered by the Registrar in this behalf under Clause

(c) of Section 85.

The aforesaid provision is very specific which provides that the decree-holder shall state before the competent authority whether he desires to

execute the award by a Civil Court and on receipt of such application for execution, the Registrar shall forward the same to the Civil Court along with the certificate issued by him under Sub-section (a) of Section 85. The aforesaid provision specifies that in this regard, written application for execution by Civil Court is necessary to be filed by the decree-holder before the Registrar. Thereafter on sending the matter to the Civil Court for execution along with certificate signed by the Registrar or any person authorised by him in this behalf shall be deemed to be a decree of Civil Court and shall be executed in the same manner as a decree of Civil Court.

In Khayaliram's case (supra), the learned Single Judge of this Court while considering Section 85 and Rule 55 held ;--

After hearing the learned Counsel for the parties and perusing the record, I am of the view that this revision must be allowed. Section 85 (a) of the

Act does not say that any decision or award of the Deputy Registrar would be executable by the Civil Court. It only says that the decision or

award of the Registrar would be executable as a decree of a Civil Court. According to me, there is a world of difference between the words

executable by Civil Court"" and ""executable in the same manner as the decree of a Civil Court"". In the absence of a specific provision conferring a

jurisdiction on a Civil Court to execute the award of a Deputy Registrar as its own decree, the Civil Court can not suo-motu assume jurisdiction on

the basis of an application for execution filed to it directly by a decree holder. Magan Bhai's case (supra) relied on by the learned Counsel for non-

applicant No. 1 is quite distinguishable. Under the old C.P. & Berar Co-operative Societies Act, there was a specific provision, empowering the

Civil Court to execute the award of the Registrar. No such provision is contained in the present Act or the Rule framed thereunder and, therefore,

there is no force in the contention of the learned Counsel for the non-applicant No. 1 that the Civil Court could have entertained the execution

petition for execution of an award passed by Deputy Registrar. In view of my finding that the Civil Court has no jurisdiction to entertain the

execution petition filed by the non-applicant No. 1 for executing the award given by the Deputy Registrar, it is not necessary for me to deal with

other points, which were raised on behalf of the applicant. 1969 MPLJ 168 distinguished. Revision allowed.

The learned Single Judge after considering the provisions of Section 85 and Rule 55 held that the Civil Court can not directly entertain the

application for execution of award passed by the Registrar. This award may be executed only on transfer from the Registrar or its nominee as per

procedure envisaged under Rule 55. After following the aforesaid procedure, the Civil Court is empowered to execute the award u/s 85 of the

Act. In the circumstances, the application for execution of the award can not be directly entertained by the Civil Court and the decree holder/a

person in whose favour there is an award or order of the Registrar, ought to have applied before the Registrar for the execution and on the request

made by the decree-holder, the award/order along with certificate of the Registrar shall be sent to the Civil Court for the execution.

So far as Division Bench judgment in Magan Bhai's case (supra) is concerned, this case was decided on the basis of the provision of the old C.P.

and Berar Co-operative Societies Act in which there was a specific provision empowering the Civil Court to execute the award of the Registrar,

but in the present Act and Rules, there is no such provision to that effect. In this regard, the Division Bench in Paras 8, 9 and 10 has considered the

relevant provision of old C.P. & Berar Co-operative Societies Act and there is no such provision in the present Act or Rules. In these

circumstances, the Division Bench's judgment in Magan Bhai's case (supra) is not applicable because it was based on entirely different provisions.

The judgment of Khayaliram's case (supra) is fully applicable in the present case and it is held that the Civil Court can not entertain directly the

application for execution of the award passed by the Registrar, even if, the Registrar has certified the amount due under the award. Only on

request before the Registrar for transfer to the Civil Court and on being issued such certificate envisaged u/s 85 (a) of the Act, the Civil Court is

empowered to execute the award as a decree of Civil Court. Accordingly, the order passed by the learned District Judge, Chhindwara is affirmed.

But considering the fact that this litigation is pending since 1969 and the petitioners' predecessor, Dharam Das, filed an application before the Civil

Judge Class I, Saunsar for the execution of award by the Civil Court, which was entertained, but subsequently vide the impugned order, it was

dismissed by the learned District Judge, in the circumstances, in the interest of justice, it is directed that the application filed by the petitioners

before the Civil Court be returned back to the petitioners with liberty to file it before the Assistant Registrar, Co-operative Societies, Chhindwara

in accordance with provision of Rule 55 of the Rules. The Assistant Registrar, Co-operative Societies on filing of the aforesaid application shall

issue notice to respondent No. 1 for the satisfaction of the award. If the award is not satisfied within a period of 14 days, the Assistant Registrar on

filing an application by the decree holder, shall pass order in accordance with provisions of Section 85 of the Act. If the petitioners apply before

the Assistant Registrar that they desire to execute the decree by the Civil Court under Clause (a) of Section 85, the Assistant Registrar shall after

considering the prayer pass order under Sub-rule (3) of Rule 55 of the Rules.

With the aforesaid directions, this petition stands finally disposed of with no order as to costs.