

(1988) 08 RAJ CK 0065
In the Rajasthan High Court
Case No : CivilWrit Petition No. 1176 of 1987

Nand Kishore Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) WLN 266

Hon'ble Judges : S.C. Agrawal, J;Pana Chand Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Chandra Agarwal, J.—In this writ petition, the petitioner is seeking to challenge the proceedings that have been initiated against him under the provisions of the Rajasthan Co-operative Societies Act, 1965 (here in after referred to as the Act) and the Rajasthan Co-operative Societies Rules, 1966 (here in after referred to as the Rules) with regard to the recovery of certain amounts said to have been obtained by the petitioner as loan. A notice dated 25th January, 1979, was issued to the petitioner u/s 117 of the Act. Another similar notice was issued u/s 117 of the Act on 13th March, 1984. The said notice was followed by an order dated 18th April 1984, passed u/s 117 of the Act. Thereafter an order dated 13th March, 1987, was passed u/s 118(1)(c) of the Act, whereby proceedings were initiated for execution of the decree for recovery of Rs. 10,048/-by attachment of the property of the petitioner. In pursuance of the order, the tractor of the petitioner was attached on 24th April, 1987.

2. In the written petition, the case of the petitioner is that he had not taken any loan and the proceedings which have been initiated against him are completely without jurisdiction.

3. A notice was issued to the respondents requiring them to show cause why the writ petition should not be admitted and in response to the said notice, a reply

has been filed on behalf of respondents Nos. 2 and 3, namely Assistant Registrar, Co-operative Societies and Vikraya Adhikari, Central Co-operative Bank, Kota. The petitioner has filed a rejoinder to the reply.

4. Shri Jindal, the learned Counsel for the petitioner has urged that the order u/s 117 dated 18th April, 1984, was passed before the service of the notice dated 13th March, 1984 on the petition. We find that there is no basis for the aforesaid contention because in the writ petition, the petitioner has nowhere alleged that the notice dated 13th March, 1983, was received by him after the passing of the order dated 18th April, 1984. On the other hand, in the reply that has been filed on behalf of respondents Nos. 2 and 3. it has been stated that the said notice was served on 23rd March, 1984 on Shri Ram Chandra the adult son of the petitioner who was living with the petitioner and was a member of the family. This fact has not been denied by the petitioner in the rejoinder. In the circumstances, it cannot be said that the order dated 18th April, 1984, u/s 117 of the Act was passed by the Additional Executive Officer of the Central Co-operative Bank without serving notice dated 13th March, 1984. It appears that the petitioner submitted a representation dated 25th April, 1984, to the Additional Executive Officer after the passing of the order dated 18th April, 1984. In our opinion, the said representation could not be considered by the said officer after the passing of the order dated 18th April, 1984. If the petitioner felt any grievance against the order dated 18th April, 1984 passed u/s 117 of the Act, he should have filed a revision against the said order, which he failed to do. Moreover, after passing of the order dated 18th April, 1984 u/s 117 of the Act, order dated 13th March, 1983 was passed u/s 118(1)(c) of the Act. An appeal lay against the said order u/s 124(1)(n) of the Act and the petitioner could have availed the said remedy of appeal. In the aforesaid circumstances, the petitioner cannot be permitted to assail these orders under Article 226 of the Constitution of India.

5. The writ petition, therefore, fails and is hereby dismissed with no order as to costs;