

(1984) 08 AHC CK 0079

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1529 of 1976

Ram Charan Lal

APPELLANT

Vs

The Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 31-08-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Uttar Pradesh Co-operative Societies Act, 1965 — Section 70

Citation : (1984) AWC 719 Supp

Hon'ble Judges : R.M. Sahai, J;J.N. Dubey, J

Bench : Division Bench

Advocate : D.P.S. Chauhan, for the Appellant; Ratnakar Bharti, B.D. Agarwala and Ravi Kant, for the Respondent

Final Decision : Allowed

Judgement

J.N. Dubey, J.—This writ petition has been filed for quashing arbitration proceedings pending before the Deputy Registrar (Central) Cooperative Societies, Lucknow u/s 70 of the U.P. Cooperative Societies Act (hereinafter referred to as the Act).

2. The petitioner took a loan of Rs. 16,000/- from the U.P. Cooperative Bank Limited, Lucknow (hereinafter referred to as the Bank) on 27th October, 1960. Subsequently there arose some dispute regarding repayment of the loan and as such the matter was referred to arbitrator u/s 70 of the Act on 20-5-1966. The arbitrator gave his award on 30th November, 1966 for a sum of Rs. 15,949-76 against the petitioner and his surety. However, the award was not executed and at the instance of the Bank the matter was again referred to the arbitrator on 20th June, 1975.

3. The petitioner has come up to this Court under Article 226 of the Constitution for quashing the second arbitration proceedings.

4. We have heard learned Counsel for the parties and have perused the record.

5. It has been contended by the learned Counsel for the petitioner that the dispute between the parties was finally adjudicated upon by the arbitrator on 30th November, 1966 and the second arbitration proceedings with respect to the same dispute were barred by the principle of res-judicata.

6. On the other hand, learned Counsel for the opposite parties contended that as the CPC does not apply to the arbitration proceedings the question of second arbitration proceedings being barred by the principle of res-judicata did not arise.

7. It is true that CPC does not apply to the arbitration proceedings and as such principle of res-judicata as contained in Section 11 thereof have No. application. However, in our opinion, second arbitration proceedings between the same parties on the same matter in controversy are barred by the general principle of res-judicata. It is now well settled that the provisions of Section 11 CPC are not exhaustive with respect to an earlier decision operating as res-judicata between the same parties on the same matter in controversy in a subsequent suit or proceedings, on general principles of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res-judicata in a subsequent suit or proceeding.

8. In *Ram Kripal Shukla v. Mussammat Rup Kuari* XI Indian Appeals 37 the Privy Council held:

The matter decided by Mr. Probyn was not decided in a former suit) but in a proceeding of which the application in which the orders reversed by the High Court were made was merely a continuation. It was as binding between the parties and those claiming under them as an interlocutory judgment in a suit is binding upon the parties in every proceeding in that suit, or as a final judgment in a suit is binding upon them in carrying the judgment into execution. The binding force of such a judgment depends not upon 13, Act X of 1877, but upon general principles of law. If it were not binding there would be No. end to litigation.

9. The decision in *Ram Kripal Shukla v. Mussammat Rup Kuarl* (supra) was followed by the Privy Council in *Shcoparsan Singh v. Ramnandan Prasad Narayan Singh* AIR 1916 PC 78, *G.H. Hook v. Administrator General of Bengal* AIR 1921 P C 11, *T.B. Ramchandra Rao v. A.N.S. Ramchandra Rao* AIR 1922 PC 80 , AIR 1930 22 (Privy Council) and AIR 1939 133 (Privy Council) to hold that earlier decisions in probate, administration and land acquisition proceedings etc. would operate res-judicata in a subsequent suit with respect to the rights of the parties.

10. The question of applicability of the general principles of res-judicata was considered by the Supreme Court in *Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others*, . The Supreme Court approved the decisions of Privy Council in *G.H. Hook v. Administrator General of Bengal*, *T.B. Ram Chandra Rao v. A.N.S. Ram Chandra Rao* and *Mt. Bhagwati v. Ram Kali* (supra) and held that the previous decision in land acquisition proceedings will operate as res-judicata in

the subsequent suits between the parties.

11. In Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, the Supreme Court applying the principle of res-judicata in writ petitions under Articles 32 and 226 of the Constitution observed--

This Court has laid it down in the case of Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, that the principle underlying res-judicata is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided the matter may have No. jurisdiction to try the subsequent suit and even though the subject matter of the dispute was not exactly the same in the two proceedings. In that case the rule of res-judicata was applied to litigation in land acquisition proceedings. In that case the general principles of law bearing on the rule of res judicata, and not the provisions of Section 11 of the Code of Civil Procedure, were applied to the case. The rule of res-judicata is meant to give finality to a decision arrived at after due contest and after hearing the parties interested in the controversy.

12. The Supreme Court again examined the question of applicability of the principle of general res-judicata in Daryao and Others Vs. The State of U.P. and Others, and held as under;

But, is the rule of res-judicata merely a technical rule or is it based on high public policy? If the rule of res-judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res-judicata as indicated in Section 11 of the CPC has No. doubt some technical aspects, for instance the rule of constructive res-judicata may be said to be technical; but the basis on which the said rule rests is founded on consideration as of public policy. It is in the interest of public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest the individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res-judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

If a judgment has been pronounced by a court of competent jurisdiction it is binding between the parties unless it is reversed or modified by appeal, revision or other procedure prescribed by law, Therefore, if a judgment has been pronounced by the High Court in a writ petition filed by a party rejecting his prayer for the issue of an appropriate writ on the ground either that he had No. fundamental right as pleaded by him or there has been No. contravention of the right proved or that the contravention is justified by the Constitution itself, it must remain binding between the parties unless it is attacked by adopting the procedure prescribed by the Constitution itself. The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential

part of the rule of law and the rule of law obviously is the basis of the administration of justice on which the Constitution lays so much emphasis.

13. In *L. Janakirama Iyer and Others Vs. P.M. Nilakanta Iyer and Others*, however, the Supreme Court observed:

Where Section 11 is thus inapplicable it would not be permissible to rely upon the general doctrine of res-judicata. We are dealing with a suit and the only ground on which res-judicata can be urged against such a suit can be the provisions of Section 11 and No. other.

14. In *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, , and *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, the Supreme Court explained its earlier decision in *L. Janakirama Iyer v. P.M. Nilakanta Iyer* (supra) and held.

...We are of opinion that the provisions of Section 11, CPC are not exhaustive with respect to an earlier decision operating as res-judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res-judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject matter. The nature of the former proceeding is immaterial.

15. In *Jodhan Vs. Board of Revenue and Others*, a Division Bench of this Court considering the effect of the two decisions of the Supreme Court in *Daryao v. State of U.P.* and *L. Janakirama Iyer v. P. M. Nilakanta Iyer* (supra) held--

Section 11 CPC is applicable only to cases where both the earlier proceeding and the later proceeding and which is said to be barred by the earlier one are civil suits, whereas in other cases, in which neither of the two proceedings or only one of them is a civil suit, the general doctrine of res judicata, shorten of the limitation imposed by Section 11, is to be applied.

16. In *Govindan Gopalan v. Raman Gopalan* AIR 1978 Kerala 217 a Full Bench of Kerala High Court held--

The result is that the decision of the Land Tribunal as to the existence of a tenancy will be res-judicata in a subsequent civil suit or proceedings and will be a bar for a further decision on the same point by the Land Tribunal or a court in a subsequent suit or proceedings.

17. In *Seth Kerorimall Vs. Union of India (UOI)*, and (sic) *Jiwnani Engineering Works Pvt. Ltd. Vs. Union of India (UOI)*, the Calcutta High Court held:

...the same dispute once referred and embodied in an award could not be subject matter of a fresh reference and to that extent rule of res-judicata applied to

arbitration proceeding.

18. In this view of the matter the first arbitration award dated 30-11-1966 will clearly operate as bar in the second arbitration proceedings.

19. In the result, the writ petition succeeds and is allowed. The second arbitration proceedings in Arbitration Case No. 133 of 197S pending before the Deputy Registrar (Central) Cooperative Societies, Lucknow are quashed. The petitioner shall be entitled to his costs.