

(2003) 07 P&H CK 0125

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1535 of 1982

Ram Dhan Sikka

APPELLANT

Vs

The Liquidator, Gurgaon Cycle Cooperative Industrial Society
Ltd.

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Citation : (2004) 136 PLR 887 : (2004) 1 RCR(Civil) 490

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : J.L. Malhotra, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The appellant Ram Dhan has filed the instant Regular Second Appeal against the judgment and decree passed by both the Courts below, vide which his suit for permanent injunction restraining the respondent Liquidator Gurgaon Cycle Coop. Industrial Society Limited from recovery an amount of Rs. 27,500/- from him as an arrears of land revenue, has been dismissed.

2. The appellant had filed the instant suit in the year 1979 with the averments that on 7.9.1970 the respondent passed an order u/s 59 of the Cooperative Societies Act, 1961 (hereinafter referred to as "the Act"), vide which the appellant was held liable to pay an amount of Rs. 27,500/- to the Society. On the basis of that order, a letter of demand was sent by the Assistant Registrar (Industrial) Cooperative Societies Gurgaon to the Collector, Gurgaon for recovery of Rs. 27,500/- from the appellant as an arrears of land revenue. Thereupon, the Collector, Gurgaon has sent that recovery certificate to the Collector Delhi, upon which recovery proceedings were initiated in the Court of Assistant Collector 1st Grade, Delhi. The order of the Liquidator dated 7.9.1970 was alleged to be illegal, null and void and against the principle of natural justice and the appellant is not bound by the same. It was also averred that the Liquidator has no power

to determine the liability of the members of the Society u/s 59 of the Act to order payment of a non-existing debt.

3. The respondent contested the aforesaid suit on the ground that the Civil Court has no jurisdiction to try the suit u/s 82 of the Act. It was also denied that the impugned award made by the Liquidator was illegal, null and void.

4. On the pleadings of the parties, the following issues were framed by the learned trial court:-

"Whether the order of liquidator dated 7.9.70 is illegal void and arbitrary for the reasons mentioned in plaint? OPP

2. Whether civil court has jurisdiction to try the suit? OPP

3. Whether the suit is not maintainable for want of valid notice? OPD

4. Relief.

5. On issue No. 1, it was held that the award dated 7.9.1970 was passed by the liquidator u/s 59 of the Act after issuing notice to the appellant and after providing him due opportunity of hearing. After considering the contention of the appellant, the impugned award was also held valid on merit. On issue No. 2, it was held that the civil court has no jurisdiction to try the instant suit filed by the Appellant.

6. The aforesaid findings of the learned trial court were affirmed by the learned first appellate court.

7. I have heard learned counsel for both the parties and have perused the record of the case.

8. Both the Courts below have recorded a concurrent finding of fact. In this appeal no question of law is involved. Learned counsel for the appellant neither formulated any substantial question of law in this appeal nor canvassed any such question during the course of arguments. Learned counsel for the appellant submitted that before passing the award the respondent did not issue any notice to the appellant. He submitted that since the notice (Ex.D3) issued to him, in fact, was issued u/s 55 of the Act and not u/s 59 of the act, therefore, it was defective and cannot be deemed to be a valid notice. The learned first appellate court has considered this argument of learned counsel for the appellant and has held that there was a typographical mistake in the notice. Instead of Section 59, by mistake the notice was mentioned to be issued u/s 55. Since the notice was issued from the Liquidator, therefore, it was clear that it was not a notice u/s 55 of the Act which deals with reference to Arbitration. Since it was not stage of arbitration as the notice was issued by the Liquidator, therefore, there was no ambiguity in the notice and the appellant was not in dark about the real nature and character of the notice. I do not find any illegality or infirmity in the aforesaid finding recorded by the learned first appellate court. I also do not find any infirmity or illegality in the findings of the Courts below on issue No. 2,

wherein it was held that the Civil Court has no jurisdiction to decide the controversy.

9. In view of the aforesaid discussion. I do not find any merit in the instant appeal and the same is hereby dismissed.

No order as to costs.