
(1984) 01 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 170 of 1976

Ram Prakash

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-01-1984

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 117

Citation : (1984) WLN 158

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Lodha, J.—The Assistant Registrar, Co-operative Societies, Ganga Nagar issued a notice dated 31-9-70 to the petitioner Ram Prakash saying that a sum of Rs. 12,441.20 principal+5,514.70 interest total 17,955.90 was out-standing against the petitioner to the Ganganagar Kisan Co-operative Marketing Society Ltd., Sri Ganganagar on account of loan till 12th December, 1970 which had not been paid by the petitioner and, therefore, he should either deposit the above amount with the said society by 15-1-71 under intimation to the Assistant Registrar or if he had any objection to this demand, he may submit the same to him by 15-8-71. On 16-8-71 the petitioner appeared before the Assistant Registrar & asked for a copy of the "Khata" & also requested that the account may be explained to him. He filed an application (Ex 8) in this respect. Thereafter on 5-10-71 the petitioner filed a reply (Ex. 3) to the notice stating that the rate of interest had not been settled between him and the society and that only interest at the Government rate should therefore, be charged against him. The other request made was that the petitioner was a poor cultivator and, therefore, the petitioner may be allowed to pay the amount in easy instalments. There upon the learned Assistant Registrar by his order dated 5-10-71 (Ex.4) found that the interest at the rate of 12% per annum was being charged by the society from all the members and, therefore, it was proper to charge the same rate of interest

from the petitioner. He found that on 30-6-71 a sum of Rs. 19,448.84 was outstanding against the petitioner. The petitioner admitted this amount and, therefore, he was directed that he should pay the amount by 15-11-71. It was also directed that interest at the rate of 12% per annum shall continue on this amount from 1-7-71. Aggrieved of this order the petitioner filed a revision before the Registrar, Co-operative Societies but the same was rejected on 24-9-73 vide Annx 6. Still aggrieved by the order of the learned Registrar the petitioner filed a further revision before the Government and the same was heard by the Special Secretary Co-operative Deptt. who rejected the same on 2-12-75. The petitioner has now approached this Court by way of a writ application praying that the order of the Assistant Registrar dated 5-10-71 and those of the Registrar and the Special Secretary, Co-operative Department, Government of Rajasthan referred to above may be quashed.

2. The case of the petitioner is that respondent No. 5 Ganganagar Kisan Co operative Marketing Society Ltd. was not a credit society nor the amount outstanding against the petitioner was a loan and, therefore, the society could not have moved the Assistant Registrar for the recovery of the same and the Assistant Registrar could not have exercised the power u/s 117 of the Rajasthan Co-operative Societies Act, 1965 that no interest was settled between the petitioner and the society and, therefore, no interest was chargeable but the learned Assistant Registrar did not make any enquiry in this respect. It was also the case of the petitioner that the Assistant Registrar should not have invoked his power u/s 117 of the Act in the circumstances of this case but resort should have been made to Section 77 of the Act. It was also contended that a copy of the application made to the Assistant Registrar was not supplied to the petitioner either along with notice or even after the demand and, therefore, the petitioner was not in a position to raise objections to the same. He, therefore, did not have proper opportunity of hearing and the proceedings before the Assistant Registrar were thus vitiated. It was also contended that the petitioner never admitted the amount being due and the statement contained in the order dated 5-10-71 that the petitioner admitted the liability is patently wrong. It was further contended that the learned Registrar, Co-operative Societies wrongly upheld the order of the Assistant Registrar by observing that the revision was against the consent order whereas there was no consent order or decree. Similarly the Special Secretary also improperly rejected the revision.

3. In reply the non-petitioner Nos. 1 to 4 have refuted these contentions and have further stated that the petitioner is not entitled to any relief.

4. I have heard the learned Counsel for the parties.

5. I am of the opinion that the only contention which the petitioner can be allowed to raise in this writ application is with regard to the question of interest. All the other contentions referred to above do not appear to have been raised either before the learned Assistant Registrar or the Registrar or the Special Secretary and they being question of fact cannot be allowed to be raised for the

first time in writ application asking for the writ of certiorari. It was never contended before the Assistant Registrar that the respondent No. 5 was not a credit society or that the amount due was not on account of loan. Only two contentions were raised before the learned Assistant Registrar, one was with regard to the rate of interest and the other regarding instalment. So far as the interest is concerned it was the rate alone which was in dispute. The petitioner had clearly stated that the society was entitled to charge interest at the Government rate, therefore, liability to pay interest was never disputed by the petitioner. When only the rate of interest was challenged and instalments were asked for, it is plain that the petitioner did not challenge the liability so far as the principal amount is concerned neither it was contended that it was not a loan. Now when the liability to pay the principal as also the interest was not disputed the authorities below were quite justified in holding that it was a matter of consent and, therefore, the learned Registrar was quite right in not interfering with the order of the learned Assistant Registrar. That being so the learned Special Secretary also cannot be said to have wrongly rejected the revision. The further contention that the Assistant Registrar should not have and could not have exercised his jurisdiction u/s 117 of the Rajasthan Cooperative Societies Act but should have proceeded u/s 77 of the Act also does not stand scrutiny in as much as the recourse to Section 77 is called for when there is any dispute raised in respect of the debt or demand but where no such dispute is raised and only a prayer for instalment or scaling down the interest is made, the recourse to Section 77 may not be necessary.

6. The contention that a copy of the application filed by the respondent No. 5 before the Assistant Registrar was not sent to the petitioner along with the notice u/s 117 of the Act nor was it supplied even on demand deserves to be rejected outright on the ground that when the petitioner had already filed his reply on 5-10-71 it must be presumed that he had been given a copy of that application on his demand on 16-8-71 and even if such copy had not been given to him and he filed his reply 15-10-71 the non supply of the copy loses all its significance.

7. Thus the only matter which requires consideration in this writ application is about the rate of interest because that was a matter raised before the Assistant Registrar. However, on a scrutiny of the matter I am clearly of the opinion that in this respect also the petitioner has no case in as much as even the rate of interest was agreed to by the petitioner before the learned Assistant Registrar in his order dated 5-10-71 has stated that interest at the rate of 12% per annum was being charged by the society from all its members and according to the records of the society a sum of Rs. 19,148.84 including interest was outstanding against the petitioner on 5-10-71 and that Shri Ram Prakash admitted the above sum to be due. When Shri Ram Prakash had thus admitted the total amount due including interest it must be deemed that he agreed to the rate of interest also specially when the society had been charging interest at this rate from the other members also. In the writ application the petitioner has of course stated that he had not made such admission before the learned Assistant Registrar but looking

to the circumstances of the case I have no reason to doubt the statement recorded by the learned Assistant Registrar in his order dated 5-10-71. In these circumstances when the rate of interest was admitted by the petitioner before the Assistant Registrar he cannot now be allowed to challenge the same before this Court nor could have challenged it before the learned Registrar or the Special Secretary. In these circumstances the petitioner is not entitled to any relief.

8. For the reasons stated above this writ application fails and is here by rejected. However, looking to the circumstances of the case I shall make no order as to costs.