
(1984) 01 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 654 of 1976

Satnam Singh

APPELLANT

Vs

Tarn Taran Primary Land Mortgage Bank Ltd.Taran Taran

RESPONDENT

Date of Decision : 11-01-1984

Acts Referred:

Citation : (1984) ILR (P&H) 134 : (1984) PLJ 104 : (1984) RRR 320

Hon'ble Judges : Pritpal Singh J., J

Advocate : J.S. Bhatti, Advocates., Mr. S.S. Mahajan, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. This appeal has been filed by the plaintiff Satnam Singh against the judgment and decree dated January 12, 1976 of the Additional District Judge, Amritsar, by which the decision of the trial Court rejecting his plaint was affirmed and his first appeal was dismissed.

2. The admitted facts of the case are that the plaintiff appellant Satnam Singh, as a Member of the Tarn Taran Primary Cooperative Land Mortgage Bank, defendant No. 1, took a loan of Rs. 6000/ from the Bank for installing a tubewell. At his instance Rs. 2671/ out of the loan were paid to Kapla Industries, defendant No. 2, for supplying engine of the tubewell. The rest of the amount of loan i.e. Rs. 3329/ was received by the appellant himself. Since defendant No. 2 failed to supply the engine despite several requests, this suit was brought by the appellant against the defendants respondents for declaration that he is liable to pay only Rs. 3329/ as refund of loan to defendant No. 1.

2A. The Tarn Taran, Primary Cooperative Land Mortgage Bank contested the suit and inter alia objected that in view of section 55 of the Punjab Co operative Societies Act, 1961, (hereinafter called 'the Act') the appellant's suit is not triable in a Civil Court and further that the suit is incompetent as the requisite notice under section 79 of the Act was not served by the appellant before filing it.

3. The learned trial Court framed ten issues out of which following two issues were treated as preliminary issues:

(1) Whether the Civil Court has no jurisdiction to try this suit?

(3) Whether a notice was given as prescribed by law before filing the suit, if not its effect?

4. Both the preliminary issues were decided against the appellant by the trial Court with the result that the appellant's plaint was rejected. The lower appellate Court affirmed these findings and dismissed the first appeal of the plaintiffappellant.

5. I have heard the learned counsel for the appellant and I find not the least reason to interfere with the concurrent decision of the Court below.

6. It is provided by section 55 of the Act that any dispute touching the constitution, management or the business of a cooperative society shall be referred to the Registrar of the Cooperative Societies for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes. It is clarified in subsection (2) that a claim by a Society for any debt or demand due to it from its member, whether such debt or demand be admitted or not, shall be deemed to be a dispute touching the constitution, management or business of the Cooperative Society.

7. It is not disputed that the appellant is a member of defendant No. 1 Bank which is a Cooperative Society. It is also admitted that the appellant was granted a loan of Rs.6000/ by the Bank. There can be no manner of doubt that a sum of Rs.2671/ out of the loan was paid by the Bank to Kapla Industries, defendant No. 2, for supplying the engine of the tubewell at the instance of the appellant. The Bank was not obliged to install a tubewell in the land of the appellant and, therefore, it could not have paid the price of the engine to defendant No. 2 on its own responsibility. The defendantBank is, therefore, entitled to claim refund of the whole loan from the appellant and in any case a dispute arising of its claim to refund the loan must be deemed to be a dispute touching the constitution, management or business of the Co operative Society which is not justiceable in the civil Court in view of section 55 of the Act.

8. The contention of the learned appellant's counsel is that despite the prohibition contained in section 55 of the Act such a dispute can be entertained and decided by a civil court. In support of this contention, I was referred to a judgment of this Court in Harbhajan Singh v. The State of Punjab and others, 1972 P.L.R. 854. In this judgment it was held as follows:

"Another point raised on behalf of the contesting respondents was that the petition should be thrown out on the short ground that an alternative remedy was open to the petitioner by way of arbitration proceedings under section 55 of the Act. Normally the point would have found favour with me but I find that the palpably wrong interpretation placed by respondent No. 3 on subsection (2) of

section 26B of the Act goes to the very root of the matter and the injustice done is so manifest that it is plainly discernible. Besides the alternative remedy does not appear to me to be equally effective in the circumstances of the case inasmuch as arbitration proceedings are likely to drag on for a considerable period of time and are also normally entrusted to officials of the Cooperative Department in which respondent No.3 occupies a high position. In similar circumstances writs were issued in *Devi Ram v. State of Punjab* and *Nathu Ram v. State of Punjab*. I find, therefore, that the present is not a fit case in which the petition should be rejected for the reason that an alternative remedy is open to the petitioner."

9. It is plain from this judgment that since a palpable wrong interpretation was being placed by the Joint Registrar of Cooperative Societies, respondent No. 3 on subsection (2) of section 26B of the Act, it was found that it was a fit case for the High Court to interfere in its writ jurisdiction. It is nowhere held in this judgment that even in the presence of section 55 of the Act a dispute touching the constitution, management or the business of a Cooperative Society can be taken to a civil Court for decision. In my view, therefore, this judgment does not help the appellant in any manner.

10. The learned counsel also placed reliance on the judgment in *Union of India v. Hindu Undivided Family Business Ram, Lal Mansukh Rai and another*, 1968 P.L.R. 412. It was held therein that while a forum is provided for appeal and revision under sections 35 and 36 of the Central Excise and Salt Act, there is no express exclusion of the jurisdiction of the civil courts to question any assessment of duty under the Act or any order of confiscation or penalty which is outside the scope of the Act or the Rules made thereunder. Therefore, a suit in a civil Court will lie to question the order of a tribunal created by a statute even if its order is, expressly or by necessary implication made final, if the tribunal abuses its power or does not act under the Act but in violation of its provisions. This judgment has no application to the instant case because there is express exclusion of jurisdiction of civil Court to decide a dispute like the present one in section 55 of the Act. Hence, the decision of the Courts below on the first issue is quite proper and calls for no interference.

11. Now coming to issue No. 3 which is the second preliminary issue, it is laid down in section 79 of the Act that no suit can be instituted against a Cooperative Society or any of its officers in respect of any act touching the business of the Society till the expiry of three months next after notice in writing served upon the Registrar or left at his office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims. Admittedly, no such notice was served by the appellant on the Registrar before the filing of the suit. The appellant did give a notice to the Secretary of the Punjab State Land Mortgage Bank but it does not satisfy the provisions of section 79 of the Act. This notice cannot be deemed to be a notice to the Registrar envisaged by section 79 of the Act. The decisions of the Courts below on issue No. 3 is,

therefore, also correct and proper and no fault can be found therewith.

12. There being no infirmity in the judgment of the lower appellate Court, this appeal is dismissed with no order as to costs.