

(1993) 04 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21 of 1983

Satya Narain

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 28-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 104 PLR 376

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Bench : Single Bench

Advocate : S.S. Dalal, for the Appellant; S.S. Gill, A.A.G., for the Respondent

Judgement

Harmohinder Kaur Sandhu, J.—Satya Narain has filed this civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ quashing the impugned orders Annexure P/1 and Annexure P/2 being illegal, without jurisdiction and against law and facts.

2. As per averments made in the petition Shri Jagdish Raj (deceased) father of the petitioner was a Secretary of the Gokalgarh Co-operative Credit and Service Society Limited, Gokalgarh. He expired on 11-2-1980 and after his death an arbitration case was referred by the Society against the petitioner and his mother and brother with respect to the recovery of some amount which was stated to be cash in hand with the deceased. Assistant Registrar Co-operative Societies Haryana, Rewari gave an award for Rs. 32380/- along-with interest and costs on 11-2-1982. The petitioner preferred an appeal against this award which was dismissed vide Annexure P/2. The petitioner contended that he was not a member of the society and no reference could be made against any person who was not a member or past member of the Society with respect to any dispute. Notice from the office of respondent No. 2 i.e. Assistant Registrar, Co-operative Societies was issued to him only and no notice was served on his brother and mother before the impugned order Annexure P/1 was passed against them. They were never communicated the date, time and place of hearing. Before passing

the award no record was perused nor even statement of the petitioner was recorded. Moreover, the award could be passed against the property of the deceased and legal heirs of the deceased were not personally liable for any debt due from the deceased. In fact respondent No. 4 was working as salesman of the Society and in the award Annexure P/I this fact was admitted that the amount in question related to the sale proceeds of fertilizer, Palm oil and cloth. Respondent No. 4 was, therefore, liable for the amount and so far as the petitioner was concerned the award against him was illegal and without jurisdiction.

3. Respondent No. 3 filed written statement wherein it was contended that the impugned orders were quite legal and valid. The dispute between the society and heirs or legal representatives of the deceased employee could be referred to arbitration. The petitioner being son of Jagdish Raj, an employee of the Society, was liable to be proceeded against under the provisions of Section 55(t) (c) of the Punjab Co-operative Societies Act, 1961.

4. I have heard the counsel for the parties.

5. Although it was contended in the petition that no reference could be made to the arbitrator for the settlement of the dispute because the petitioner was not a member of the Society, yet at the time of arguments this fact was conceded that reference was validly made as the petitioner was the legal representative of Jagdish Raj who was Secretary of the Society. According to Clause (c) of sub-Section (1) of Section 5 of the Punjab Co operative Societies Act, 1961 a dispute between the Society or the Committee and any past Committee, any officer, agent or employee, or any past officer, past agent or past employee, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society could be referred to arbitration. The dispute was therefore, validly referred to the Assistant Registrar and the award given by him cannot be assailed on this ground. So far as service of notice regarding date, time and place of hearing on other legal representatives of Jagdish Raj is concerned, they have not come forward to dispute the award on the ground that they had no knowledge of arbitration proceedings.

A perusal of Annexure P/1 shows that registered notices were sent to them and they refused to accept the same The validity of the impugned award, therefore, cannot be challenged on that score also.

6. The main contention of the learned counsel for the petitioner was that the petitioner could not be made personally liable to make payment of the debt due from his father. Recovery of the amount, if any, could be made from the estate of the deceased in the hands of his legal representatives and-not personally from them, in support of his contention the learned counsel placed reliance on the case of Subhash Chander v. The State of Haryana 1980 P. L. J 497 in this case before the award was made heirs of the deceased were made parties. Then recovery was ordered from the legal representatives of the deceased. It was held that recovery of amount from the legal representatives of the deceased was

illegal but the same could be made from the estate of the deceased in the hands of his heirs. The heirs were not personally liable.

7. In the case of *Gurmukh Singh v. The State of Punjab* 1983 P. L. J. 82 a borrower died without making payment of loan and recovery of the amount was ordered from the heirs of deceased borrower. It was held that son of the borrower could not be proceeded against personally.

8. In the instant case it is not denied that the amount, if any was due from Jagdish Raj who worked as Secretary of the Society. His legal representatives could not be made personally liable to pay that debt. The Society can proceed against the assets of the deceased only in the hands of his legal representatives in order to make recovery of the debt.

9. In the result I partly accepted this petition and direct the respondents not to proceed against the petitioner personally for the recovery of the amount due from Jagdish Raj deceased. They may proceed against the estate of the deceased, if any, in the hands of his heirs. No orders as to costs.