
(1977) 07 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 4 of 1975

S.D.P. Sabha, Baijnath

APPELLANT

Vs

The Kangra Central Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 01-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37, 38, 47

Citation : (1977) 6 ILR HP 438

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : D.P. Sood, for the Appellant; R.N. Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This is an appeal against an order of the learned Senior Subordinate Judge, Kangra at Dharamsala, dismissing an objection u/s 47 of the Code of Civil Procedure.

2. A claim was made by the Respondent for the recovery of Rs. 39,358/- as principal and Rs. 9,198/- as interest in repayment of a loan taken by the Appellant. A dispute having arisen, the matter was referred to arbitration. On March 30, 1967, an award was made by the Assistant Registrar, Co-operative Societies, Kulu, as Arbitrator. Besides awarding the entire sum of Rs. 39,358/- claimed as principal and Rs. 9,198/- as interest thereon, the Arbitrator also awarded costs of the arbitration in the sum of Rs. 9,711/-. An appeal filed by the Appellant was partly allowed by the Registrar by an order dated November 6, 1967, whereby while maintaining the award for Rs. 39,358/- and Rs. 9,198/- mentioned above he set aside the part of the award in respect of costs. An execution petition was then filed by the Respondent for the recovery of Rs. 48,556/-, representing the total of Rs. 39,358/- and Rs. 9,198/-. An objection was filed by the Appellant, and the objection has been dismissed by the learned Senior Subordinate Judge, Kangra at Dharamsala, by his order dated September 26, 1974.

3. In this appeal, the Appellant has raised two points:

(1) The execution proceeding is invalid inasmuch as it has not been made on a certificate signed by the Registrar.

(2) The execution proceeding lay outside the jurisdiction of the learned Senior Subordinate Judge, inasmuch as he could entertain suits upto Rs. 50,000/- only.

4. On the first point, learned Counsel for the Appellant refers to Section 63 of the Punjab Co-operative Societies Act, 1961, which provides:

63. Execution of orders etc.--Every decision, award or order duly passed by the Registrar or arbitrator under Sections 54, 56, 62 and 68, respectively, shall, if not carried out,-

(a) on a certificate signed by the Registrar, or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court; or

(b)....

It is urged that unless a certificate signed by the Registrar is issued, the award made by the Arbitrator cannot be executed u/s 63(a) of the Act. Now, this objection was not raised in execution proceedings before the learned Senior Subordinate Judge, Nor has it been made the subject of a ground in the appeal before me. The objection calls for an investigation into the question of fact whether a certificate signed by the Registrar has been issued so that the present execution proceeding can be maintained. In the circumstance that it has not even been taken as a ground in the appeal in this Court, and there is no material before me to indicate whether such a certificate was or was not issued, it is not possible to embark upon an adjudication on this point.

5. On the second point, learned Counsel for the Appellant refers to Section 38 of the Code of Civil Procedure, which provides that a decree may be executed either by the court which passed it, or by the court to which it is sent for execution. He contends that the award, by reason of Section 63(a) of the Punjab Co-operative Societies Act, 1961, must be deemed to be a decree of a civil court for the purpose of execution, and has to be executed in the same manner as a decree of such court, and consequently the execution falls to be considered within the terms of Section 38. Now, the expression "court which passed a decree" has been defined in Section 37 of the Code to include "the court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit". Assuming that the definition contained in Section 37 can be invoked, it seems to me clear that the execution proceeding before the learned Senior Subordinate Judge was not outside his jurisdiction. The claim made by the Respondent against the Appellant in the arbitration proceeding was for a total of Rs. 48,556/- (representing both principal and interest). Learned Counsel for the Appellant urges that the sum of Rs. 9,711/- awarded as arbitration costs must

also be included, and when that is done the entire amount covered by the award exceeds Rs. 50,000/- and therefore falls beyond the pecuniary jurisdiction of the learned Senior Subordinate Judge. To my mind, the arbitration costs cannot be considered for the purpose of determining the pecuniary valuation of the claim. The controversy between the parties was confined to the claim for principal and interest. That was the subject-matter of the dispute between the parties. If a suit had been filed, it would have been valued accordingly. There is no escape from the conclusion that the value of that claim alone will determine the valuation of the dispute before the Arbitrator. The amount being less than Rs. 50,000/-, the learned Senior Subordinate Judge had jurisdiction to entertain the execution proceeding.

6. Accordingly, the appeal fails and is dismissed. But in the circumstances, there is no order as to costs.