

(2001) 04 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 51/96

S.Gurbir Singh

APPELLANT

Vs

Registrar, Cooperative Societies J&K and Others

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Jammu and Kashmir Cooperative Societies Act, 1960 — Section 24

Citation : (2001) KashLJ 342

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Sanjay Kakkar, S.K.Shukla, Advocates appearing for the Parties

Judgement

1. The petitioner was called upon to remit within three days a sum of Rs. 11.068.48/ alongwith 35 empty cylinders. It was stated that these

cylinders were unauthorisedly retained by him. The petitioner submits that in the matter of recording this finding, no inquiry was held. The

respondents were called upon to produce the records which may show that some inquiry was held against the petitioner and in that inquiry the

petitioner was associated. The perusal of the file which has been produced by the respondents does indicate that there are several matters which

were being enquired into against the petitioner. However, with regard to the aforementioned amount and 35 empty gas cylinders, the file does not

indicate that any specific chargesheet was framed. The further fact is that order of dismissal dated 06/12/1994 proceeds on the assumption that the

petitioner had misappropriated a sum of Rs. 1,14,527.45/. The petitioner appears to have preferred an appeal before the Registrar, Cooperative

Societies. This appeal was dismissed. The further fact is that petitioner Gurbir Singh has since died, an application was preferred by his son Gurjeet

Singh. He sought permission to come on the record. This application came up for hearing before this court on 01/05/1997. Notice was issued to

the other side. Objections have not been preferred. This application is allowed subject to all just exception. The respondents have not filed any

counter affidavit. In this situation two questions arise:

I) As to whether the initial liability against S. Gurbir Singh was fastened in accordance with law and

ii) As to whether the heirs of S. Gurbir Singh can be made liable to meet the liability created against him.

2. The second question assumes importance and is required to be gone into. It is only if some estate of S. Gurbir Singh has come in the hands of

his heirs only then they would be liable to make payment. It is the liability of the estate and not personal liability of the heirs. This aspect of the

matter has been considered by the High Court of Punjab in a case reported as Dilbagh Singh Ganga Singh (Detenue) vs. Tehsildar Dasuya District

Hoshiarpur and others, AIR 1964 Punjab 31, wherein it was held that "in the case of death of a borrower without payment of the loan, the son of

the borrower could not be proceeded against personally. Similar view has been expressed in Gurmukh Singh vs. The State of Punjab and Others

vs. 1986(1) Punjab Legal Reports and Statutes, 189. In this regard it would be apt to refer to section 24 of the Jammu and Kashmir Cooperative

Societies Act of 1960 wherein liability of the heirs of a deceased member is to continue for a period of one year from the event which are

enumerated in subsection (1) (a) (b). No doubt the above provision deals with a member but the principle that it is the estate of the deceased alone

in the hands of the heirs is liable would still apply.

3. This petition is accordingly disposed of with a direction to the respondents to examine the questions:

i) As to whether the legal heirs of S. Gurbir Singh have any property in their hands which once belong to S. Gurbir Singh.

ii) It is only in that eventuality the heirs can be made liable and

iii) As the matter at S. No. (i) and (ii) is required to be gone into, the limited question as to whether S. Gurbir Singh was associated with the inquiry

or not would also be gone into.

4. Disposed of accordingly