

**(1963) 04 P&H CK 0021**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 604-D of 1960**

Shiv Charan Lal

APPELLANT

Vs

R.L. Dhingra and Another

RESPONDENT

**Date of Decision :** 18-04-1963

**Acts Referred:**

Arbitration Act, 1940 — Section 11, 46

**Citation :** AIR 1964 P&H 89 : (1963) 2 ILR (P&H) 615 : (1963) 65 PLR 1114

**Hon'ble Judges :** Harbans Singh, J

**Bench :** Single Bench

**Advocate :** R.P. Bansal, for the Appellant; O.P. Gupta, for the Respondent

**Final Decision :** Dismissed

## Judgement

Harbans Singh, J.—This petition raises the question whether Sub-section (2) of S. 11 of the Arbitration Act, 1940, which gives power to a Court to remove an arbitrator, who has misconducted himself or the proceedings, is applicable to an arbitration proceeding u/s 54 of the Bombay Co-operative Societies Act, 1925 (hereinafter referred to as the Act) as applied to Delhi.

2. The relevant portion of Section 54 of the Act runs as follows:-

If any dispute, touching the constitution or business of a society, arises between members -it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons, of whom one shall be nominated by each of the parties concerned ". Section 54-A relates to the powers of the Tribunal constituted under the Act to modify and correct or remit awards made u/s 54. It is provided in this section that no such award shall be modified, set aside or referred back to the arbitrators except on any of the following grounds:-

(i) on objection to the legality of the award if apparent on the face of it, or

(ii) the award has been vitiated in consequence of corruption or misconduct on the part of any of the arbitrators, or

(iii) the award is in any way perverse. Sub-section (2) of Section 54-A provides as follows:-

In making an order under Sub-section (1) that the dispute shall be referred back to arbitration, the Tribunal may direct that all or any of the arbitrators who made the award, shall not act again as arbitrators for deciding the dispute.

Reference here may also be made to Rule 35 of the rules made under the (sic). The last two paragraphs of this rule are as follows:-

The Registrar or his nominee will act as Chairman of the Committee of three Arbitrators. He will fix the date and place of hearing the dispute and carry on the necessary correspondence in connection with the disposal of the case.

When any dispute is referred to the Registrar's nominee or to three arbitrators for decision and is not decided by them within two months or such further period as the Registrar may allow, the Registrar may decide the dispute himself or refer again to his nominee for decision." Section 46 of the Arbitration Act, lays down that the provisions of the Arbitration Act (except certain sections with which we are not concerned) shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration was pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

3. We have, therefore, to see whether the relevant provisions of Section 11 of the Arbitration Act are in anyway inconsistent with the provisions of the Act and the rules, referred to above. Sub-sections (1) and (2) of Section 11 of the Arbitration Act are as follows:-

11(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable despatch in entering on and proceeding with the reference and making an award.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

In view of Rule 35, reproduced above, it was conceded that Sub-sections (1) and (2).of Section 11 would not apply to arbitration under the Act for the simple reason that the power of removal of an arbitrator, who fails to decide the dispute within the time fixed is given only to the Registrar and, consequently, the Court cannot exercise this power. It was, however, urged that there is no provision either in the Act or the rules which authorises any officer to remove an arbitrator before he has given an award if he misconducts himself or the proceedings. As is clear from the provisions of Sub-section (2) of Section 54-A, after an award has been made the Tribunal may set aside the award on the ground that the

arbitrator had misconducted himself or the proceedings. On similar grounds an award can be set aside by the Court under the Arbitration Act. It is, however, to be noticed that under Sub-section (2) the Tribunal is given power in any way, to remove the arbitrator. "Arbitrator" as used in this section does not refer to the Registrar or his nominee but refers to the two arbitrators who have been appointed by the parties. u/s 54 the Registrar himself can act as arbitrator. He has been appointed as persona designata. Therefore, one cannot imply a power in the Court under the Arbitration Act to remove him for alleged misconduct. In fact, even the Tribunal under the Act has not given power under Sub-section (2) to remove him. In fact Sub-section (3) of Section 54-A rather provides that where a dispute is referred back to arbitration under Sub-section (1), the arbitrators shall make afresh award, within such time, as may be fixed by the Tribunal, and if the arbitrators fail to make a fresh award, within the time so fixed, the Registrar or his nominee shall decide the dispute. Thus, the Registrar and his nominee occupy a special position under the Act, and reading Section 54, 54-A and Rule 35 together no doubt is left in one's mind that the power of the Court to remove a Registrar or his nominee is excluded by necessary implication, if not expressly.

4. I am, therefore, of the view that the decision of the Court below that the Registrar's nominee, to whom the dispute had been referred in the present case, cannot be removed by the Court u/s 11 of the Arbitration Act for the alleged misconduct, is well based and I find no force in this revision and dismiss the same. In view of the fact that there was no decided case on the point, I leave the parties to bear their own costs.