
(2000) 09 P&H CK 0125
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3849 of 1999

Sita Ram

APPELLANT

Vs

Assistant Registrar, Co-op. Societies

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Citation : (2001) 2 LJR 730 : (2002) 1 LLR 87 : (2001) 1 PLJ 73 : (2000) 4 RCR(Civil) 700

Hon'ble Judges : S.S.Sudhalkar, J and Mehtab S.Gill, J

Advocate : Mr. Amar Singh, Advocate.For the Respondent No.1 : Mr. A.K. Sharma, DAG, Punjab.For the Respondent No. 2 : Mr. Arvind Mittal, Advocate.,
Advocates for appearing Parties

Judgement

S.S. Sudhalkar, J.

1. Petitioner is the ExSecretary of respondent No. 2 The Moonak Cooperative Agricultural Service Society (hereinafter referred to as the "Society"). Vide order dated 19.11.1984, the Joint Registrar, Cooperative Societies, Patiala Division, Patiala passed an order against the petitioner and held him responsible to pay Rs. 38,842.56 and he was directed to pay the said amount to the respondent Society alongwith interest at the rate of 10,5% per annum along with costs of Rs. 200/-. The petitioner received a notice under Section 68 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the "Act"). The notice is dated 27.11.1997 which is regarding recovery of the amount and the petitioner was also directed to remain present in the Court of Assistant Collector Grade I on 19.12.1997. The petitioner has filed this writ petition for challenging the notice annexure P/2 and has prayed that the same be quashed.

2. We have heard learned counsel for the parties.

3. The case of the petitioner is that the award was passed ex parte against him on 19.11.1984 and after 12 years of the award, execution could not be made in view of the Article 136 of the Limitation Act (hereinafter referred to as the Act).

He has cited before us the case of Harbans Singh and others v. Salempura Cooperative Agricultural Service Society Ltd., Salempura and others, 1991 PLJ 567 : 1991(2) RRR 501 (P&H). It is a judgment of a Division Bench of this Court. In that case it is held that the recovery of the amount due as arrears of land revenue is covered by Article 136 of the Limitation Act and the period for the same is 12 years. In that case it was observed by the Division Bench of this Court that Article 136 of the Act would not be applicable for effecting recovery of the amount due as arrears of land revenue under the Punjab Land Revenue Act.

4. In reply to above contention learned counsel for respondent No. 2 argued that respondent No. 2 had filed application for recovery well within the period of limitation. According to him, he had moved an application with a resolution for the recovery on 25.4.1986 and also by resolution dated 16.1.1985 and, therefore, respondent No. 2 had not missed limitation and hence plea of the petitioner may not be accepted. According to him the resolution were sent for the purpose of execution. Affidavit has been filed by Assistant Registrar Cooperative, Sunam (respondent No. 1) stating that respondent No. 2 Society passed resolution dated 25.4.1986 for execution of the award dated 19.11.1984 and on receipt of the said resolution by the office, approval was got accorded from the Collector, Sangrur on 6.6.1986 for the execution of the said award as arrears of land revenue and notice under Section 68 of the Land Revenue Act was issued by the Assistant Registrar, Cooperative Societies, Sunam, in exercising the powers of Assistant Collector Ist Grade to the petitioner on 27.11.1997 which was received by him on 10.12.1997.

5. From the factual position before us it is clear that the resolution for execution was already sent for recovery well within the period of 12 years. This has also been shown to us from the original files. Counsel for respondent No. 2 argued that if delay has been caused thereafter, right of respondent No. 2 cannot be affected for delay. Counsel for the petitioner argued that Article 136 of the Act still hold the decision because the execution is not within time. He has read over to us Article 136 of the Act. The first column of the Article reads as under :

Description of Suit

Period

of limitation

Time from which period begins to run

136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil Court.

Twelve years

When the decree or the order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making the

payment of delivery in respect of which execution is sought takes place; Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

6. According to counsel for the petitioner, the limitation is for the execution and, therefore, execution cannot be made after the period of 12 years. However, it has to be read along with Section 3 of the Act. It is as under :

"3. Bar of limitation (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."

7. On reading the schedule along with Section 3 it is clear that what is contemplated under Article 136 is an application for execution of decree and not the execution itself. Therefore, we do not accept the argument of learned counsel for the petitioner on this point also.

8. In view of the above, we do not find any merit in this writ petition and the same is hereby dismissed.