
(1954) 03 AHC CK 0007
In the Allahabad High Court
Case No : Misc. Writ No. 95 of 1953

Sm. Ramditi Kharbanda

APPELLANT

Vs

Collector, Allahabad and Others

RESPONDENT

Date of Decision : 09-03-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1954 All 646

Hon'ble Judges : V. Bhargava, J

Bench : Single Bench

Advocate : Shambhu Prasad, for the Appellant; A.P. Pandey, for the Respondent

Judgement

V. Bhargava, J.—The petitioner by this petition under Article 226 of the Constitution seeks the issue of a writ of certiorari quashing the order of opposite party No. 4, the liquidator appointed under the Co-operative Societies Act in connection with the liquidation of the Housing and House Mortgage Society Limited, Allahabad, passed on the 1st August 1952 ordering realisation of a sum of Rs. 9,379/10/- from the petitioner as arrears of land revenue. Further, a writ of mandamus is sought for a direction to the opposite parties to furnish to the petitioner all the particulars of the claims of the Society in liquidation against the petitioner or her husband and to take proceedings in a civil Court according to law in respect of these claims.

2. It appears that Shri M. L. Kharbanda, the husband of the petitioner, was a member of a limited co-operative society known as the Housing and House Mortgage Society Limited, Allahabad. After having become a member of the Society he obtained a loan of Rs. 2,500/- repayable with interest at the rate of Rs. 71/2 per cent. in monthly instalments of Rs. 25/- each, from the Society on the basis of an agreement. It further appears that subsequently further loans were taken. It is not necessary to specify all the loans that were taken for the purpose of deciding this writ petition; nor have the details of those loans been given to the Court clearly by either party. Some time in 1949 the Society went

into liquidation. By that time, part of the loan that had been taken had been repaid. According to the petitioner the amount that had been repaid was Rs. 1,400/-. Subsequently also some payments were made by the petitioner herself on the death of her husband; two such payments being sums of Rs. 500/- each in or about August 1950 and January 1951.

Thereafter a letter was received by the petitioner from the liquidator calling upon her to pay a sum of Rs. 8,740713/- consisting of Rs. 7,769-4-0 due as principal of the loans taken, Rs. 476-9-0 as interest on it and Rs. 495/- as liquidation costs. The petitioner protested against this demand and there was a certain amount of correspondence. Thereafter the liquidator moved the Collector through the Registrar to realise this amount as arrears of land revenue. Consequently this petition was presented in order to quash those proceedings.

3. A number of affidavits have been filed in connection with this petition, but it is not necessary to relate all the facts contained in those affidavits. I shall, therefore, only mention those facts which are essential for the purpose of deciding this case. There is no dispute that Shri M. L. Kharbanda was a member of this Society, nor is there any dispute that the Society has gone into liquidation and that opposite party No. 4 has been appointed as liquidator in accordance with the provisions of the Co-operative Societies Act. In Section 42, Co-operative Societies Act, the powers of the liquidator have been defined. He is entitled to determine the contributions to be made by the members, and past members of the Society to the assets of the Society, and further to give such directions in regard to the collection and distribution of the assets of the Society as may appear to him to be necessary for winding up the affairs of the Society.

He is also empowered to determine by what persons and in what proportion the costs of liquidation are to be borne. In pursuance of these powers the liquidator proceeded to make a determination and passed a contribution order on 1-8-1952, a copy of which is Annexure E to the affidavit filed on behalf of the petitioner in support of this petition. This Annexure shows that the liquidator purported to pass a contribution order and in that contribution order he held that the petitioner was liable to pay to the liquidator as contributions a sum of Rs. 8,884-10-0 and as costs of liquidation a sum of Rs. 495/-, The order is headed as:

"Contribution Order.

Passed by the liquidator determining contribution to be made by the members, past members or the legal representatives of members to the assets of the society."

It is also clear that the sum of Rs. 8,384-10-0, determined as contribution payable by the petitioner, represents either the entire amount which was due from the petitioner in respect of the loans that had been taken by her husband and the Interest thereon, or at least the major part of the sum that may be due as loan and interest. This fact is clear from the entire correspondence which

passed between the parties and which has been filed before the Court. It appears that the liquidator was wrong in treating the amount due from the petitioner in respect of the loan taken by her husband as contributions. Section 42, as mentioned above, deals separately with contributions to be made by the members etc., with costs of liquidation and with collection and distribution of assets of the society. The amounts due by a debtor to the society can be treated as assets of the society and not as contributions. This fact is clarified further by the rules framed under the Act.

Rule 144 deals with the determination of dues and assets of the society as they stand at the time of the cancellation of the registration which brings about liquidation. The liquidator is required to draw up a scheme for the recovery of the assets and submit it for the approval of the Registrar. Rule 145 proceeds to give power to the liquidator to determine the contributions to be made by the members, past members of the society or their legal representatives so as to determine the costs of liquidation that are to be paid by particular persons. These two rules, therefore, clearly make a distinction between the dues and assets of the society on the one side and contributions and costs of liquidation on the other. After both have been determined, the liquidator is to submit the order for the approval of the Registrar.

Under rule 147, the Registrar has been given special power to lay down the principles on which and the manner in which the contributions are to be determined. There is no power in the Registrar to direct the manner of determination of the dues and assets of the society. The reports submitted by the liquidator have to be approved by the Registrar. Rule 148 enjoins on the liquidator the duty of recovering all sums and other properties to which the society may be entitled as well as the contribution which he orders. Here again a distinction is made between contributions & all other sums and properties. The manner of realisation is laid down in Rules 149 and 150 which refer back to Section 42, Sub-section (4A) and Clause (a) of Sub-section (5) respectively. The contribution and the costs of liquidation are to be recovered u/s 42 Sub-section (4A) as arrears of land revenue whereas the orders for the realisation of all other amounts have to be enforced by a civil court having local jurisdiction in the same manner as a decree of such court under Clause (a) of Sub-section (5) of Section 42.

These provisions clearly indicate that the contributions paid by the members, past members or their legal representatives and costs of liquidation have been placed in a class apart and a distinction has been drawn between them and other assets and dues of the society. The amount which was claimed from the petitioner in respect of loans advanced to her husband or interest thereon was the dues of the society and not contribution, and the liquidator obviously made a mistake in including those amounts in the contribution order. Further, these amounts are not recoverable under Sub-section (4A) of Section 42 as arrears of land revenue. These amounts can only be recovered by following the procedure

laid down by Clause (a) of Sub-section (5) of Section 42. Consequently, the proceedings that are being taken for the realisation of sums due on account of the loans advanced to the petitioner's husband, as arrears of land revenue are not in accordance with, law and they are liable to be quashed.

Since on the quashing of these proceedings for realisation of those sums as arrears of land revenue, the liquidator, in order to realise those sums, will have to approach the civil court under Clause (a) of Sub-section (5) of Section 42, it is unnecessary for me to enter into the disputes between the parties about the liability of the petitioner to pay those sums at once or to pay them at all. The question whether the amount claimed as loans and interest is realisable and what is the amount realisable, must be agitated by the petitioner before the appropriate court when proceedings are taken by the liquidator for the purpose of enforcing that liability.

The point whether the petitioner should have filed her objections before the liquidator or before the Registrar or can put forward her objections when proceedings are taken by the civil court under Clause (a) of Sub-section (5) of Section 42 is also a matter that can be decided when those proceedings are taken. It is not necessary to go into this question at this stage in these proceedings for the issue of a writ restraining the opposite parties from taking proceedings for realising as arrears of land revenue the amounts due in respect of the loans and interest thereon.

4. So far as the costs of liquidation are concerned, the various provisions of the Act and the rules mentioned by me above clearly show that the liquidator had the power to determine the costs of liquidation and such costs of liquidation can be recovered as arrears of land revenue under Sub-section (4A) of Section 42. The petition does not disclose that the determination of the costs of liquidation was beyond the jurisdiction of the liquidator or was made after violating any principles of natural justice that would justify this Court in interfering with that order, If the petitioner has any grievance that the costs of liquidation had been determined incorrectly or on wrong basis such as fixation of the costs of liquidation on persons in proportion to their liabilities as debtors instead of their liability as members, past members or their legal representatives it is for her to move the appropriate authorities which may be the liquidator or the Registrar. The costs of liquidation being payable by a member, past member or his legal representative are liable to be paid by the petitioner in that capacity. Therefore, whatever proceedings are being taken in respect of the realisation of the costs of liquidation can continue.

But I may also make it clear that the contribution order to which I have referred above does not make it clear that the entire amount of Rs. 8,884/10/- is in respect of loans and interest thereon and there is a possibility that apart from the amounts due as loans and interest thereon it might include sums ordered as contribution from the petitioner in her capacity as a legal representative of a past member. It so, the order passed by me today shall not stand in the way of

realisation of that latter sum from the petitioner.

5. Consequently, I direct that a writ shall issue directing the opposite parties not to realise as arrears of land revenue any amount, which can be recovered from the petitioner under the contribution order dated 1-8-1952, which is in respect of the amount due to the Society or claimed by it for loans advanced to the petitioner's husband or interest thereon. The rest of the prayers in the petition are rejected.

6. The parties shall bear their own costs.