

(2014) 07 P&H CK 0131
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7930 of 2014 (OandM)

The Chandigarh Pepsu Cooperative House Building	APPELLANT
Vs	
The Secretary	RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Punjab Co-operative Societies Act, 1961 — Section 55, 56

Citation : (2014) 4 RCR(Civil) 608

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Rajeshwar Singh, Advocate for the Appellant

Judgement

Paramjeet Singh, J.—Learned counsel for the petitioner has produced receipt depositing costs of Rs. 5,00/- in pursuance of order dated 07.07.2014, photocopy of which is taken on record.

C.M. No. 8421 of 2014

Allowed, as prayed for. Annexures P-32 to P-34 are taken on record.

C.W.P. No. 7930 of 2014

Instant writ petition has been filed under Articles 226/ 227 of the Constitution of India for quashing the order dated 07.01.2011 (Annexure P-2) passed by the Joint Registrar Cooperative Societies, U.T. Chandigarh whereby reference filed by respondent No. 3 under Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961 (in short "1961 Act") has been allowed and order dated 09.07.2013 (Annexure P-3) passed by the Secretary Department of Cooperation whereby appeal filed by the petitioner-Society has been dismissed.

In brief, facts relevant for disposal of the present petition are to the effect that respondent No. 3 made a reference under Sections 55 and 56 of the "1961 Act"

for refund of Rs. 1,38,657/- from the petitioner-Society which allegedly charged excess amount on account of flat allotted to him. It was also prayed that respondent No. 3 may be refunded the amount along with interest @ 12% per annum. Respondent No. 3-Pawan Kumar is a member of the petitioner-Society having membership No. 55. The society allotted flat No. 2226 vide letter dated 14.02.2006 to respondent No. 3 and possession of the same was handed over to him on 05.03.2006. Vide letter dated 14.12.2005, the Society charged an amount of Rs. 38,664/- as interest @ 18% per annum in violation of directions issued by the Registrar Cooperative Societies. Vide letter dated 23.04.2004, all the cooperative house building societies have been directed to charge interest @ 12% per annum for the dues to be paid by the defaulting members. Apart from the interest amount, the Society also charged Rs. 13,62,897/- instead of Rs. 12,81,128/- vide letter dated 14.02.2006 as cost of the flat. The prayer was made for refund of the excess amount of cost and excess interest charged from respondent No. 3. The stand of the petitioner-Society before the authorities below was to the effect that respondent No. 3 had approached the District Consumer Disputes Redressal Forum, Chandigarh for taking the same relief, the limitation for filing a civil suit is three years. Respondent No. 3 made all the payments three years prior to filing of reference and he was issued possession of the house on 05.03.2006. It was also pleaded by the petitioner-Society that reference was to be dismissed under Order 2 Rule 2 C.P.C. It was pleaded by the petitioner-society that it had charged the amount in accordance with the instructions of the authorities. It was also pleaded by the petitioner that there was a representation to review the issue of delayed payments and it was decided by all the societies that interest should not be less than 22% per annum on delayed payments in view of the interest being charged by the Chandigarh Housing Board @ 20% per annum. In spite of that, the Society has charged interest @ 18% per annum on delayed payment, therefore, the petitioner-Society pleaded that no excess amount was charged from respondent No. 3. After considering the respective case of the parties, the Joint Registrar, Cooperative Societies, U.T. Chandigarh passed the following order:

"After hearing counsels for the respective parties and perusing the documents placed on record, I do agree with the contentions of counsel for respondents No. 1 and 2 that amount of Rs. 12,81,128/- shown in the letter dated 14.2.2006 issued to the petitioner is a tentative price of the flat and may vary with the passage of time. With regard to charging of interest from the petitioner, I am of the considered view that the society should have charged interest @ 12% from the petitioner on the delayed payments as the order of Registrar, Cooperative Societies, U.T. Chandigarh has never been challenged before any higher authority.

In view of above, respondent-Society is directed to charge the interest from the petitioner @ 12% on the delayed payments and refund the excess amount taken from the petitioner within a month. No order as to costs."

2. Against that, the Society preferred an appeal which has been dismissed by the

Secretary, Cooperation, Union Territory, Chandigarh vide impugned order dated 09.07.2013 and following order was passed:

"Aggrieved by the said orders dated 07.01.2011 passed by the Joint Registrar, Cooperative Societies (Exercising the powers of Registrar), Cooperative Societies, Union Territory, Chandigarh, the petitioner has preferred an appeal. The case is fixed for hearing today. A number of times, the name of the appellant have been called to be present in the Court. However, till the rising of the court nobody appeared on behalf of the appellant. A number of opportunities were afforded to be heard earlier. Moreover, the appeal is badly time barred by more than 9 months. It appears that the appellant is not interested in pursuing the case. Therefore, the appeal is dismissed on merit and however the appeal is time barred by limitation."

3. I have considered the rival contentions of learned counsel for the parties and perused the record.

4. Perusal of standing order dated 23.04.2004 (Annexure P-8) reveals that the interest was to be charged @ 12% per annum for the dues to be paid by a defaulter member. The said guidelines were applicable with immediate effect i.e. from the date of issuance of the standing order dated 23.04.2004 (Annexure P-8). The Society has charged excess amount. Admittedly, in the letter dated 14.02.2006 issued by the Society, cost of the flat is mentioned as Rs. 12,81,128/- whereas the amount charged is Rs. 13,62,897/-, meaning thereby Rs. 81,769/- were charged in excess. Besides this, interest has been charged on the delayed payment @ 18% per annum contrary to standing order dated 23.04.2004 (Annexure P-8). The authorities below have passed the impugned orders in view of evidence available on record and considering the fact that excess amount has been charged. Resultantly, the authorities have rightly ordered for refund of the excess amount of interest charged from respondent No. 3.

5. Now the question arises whether principle of limitation applies to reference under Sections 55 and 56 of the "1961 Act" which read as under:

"55. Disputes which may be referred to arbitration:-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer,

agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;

such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of co-operative society, namely-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not; and

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a cooperative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

56. Reference of disputes to arbitration:- (1) The Registrar may, on receipt of the reference of dispute under section 55.-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that subsection and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice."

6. Section 3 of the Limitation Act, 1963 (in short "1963 Act") reads 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.

(2) For the purposes of this Act-

(a) a suit is instituted-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

7. From the perusal of Section 3 of the "1963 Act", it is evident that proceedings before an arbitrator is not a suit, appeal or application, therefore, Section 3 of the "1963 Act" has no application to arbitration proceedings of the present case. It is well settled that expiry of period of limitation prescribed for a suit does not destroy the right, it only bars the remedy for enforcement of right in a Court of law. Therefore, provisions of "1963 Act" do not prevent an arbitrator from entertaining a claim even if it may be barred by limitation. Section 55 of the "1961 Act" is a statutory provision which authorizes the Registrar specifying that any dispute between a Society and its members can be referred for its settlement. The Registrar under Section 56 of the "1961 Act" may decide the dispute himself on reference under Section 55 of the "1961 Act" or refer it for disposal to any other person as arbitrator. Scheme of the "1961 Act" is a simple procedure for adjudication of a reference dispute for the benefits of a cooperative society and its members. The Registrar, Cooperative Societies while accepting application for reference of dispute to an arbitrator does not decide anything himself. He merely refers the matter to a third person for adjudication of the matter in dispute. When the subject matter of the dispute falls within the ambit of Section 55 of the "1961 Act", then there is practically no discretion left with the Registrar to decline such a reference. After complying with the prescribed procedure in the present case, reference was made and decided. It is not the case of the Society that Joint Registrar, Cooperative Societies, U.T. Chandigarh

was biased and passed the impugned order (Annexure P-2) with mala fide intention. It is also admitted fact that respondent No. 3 is a member of the Society and the present dispute is between the Society and its member with regard to refund of excess amount charged from him. The relevant provision of arbitration in "1961 Act" is statutory and cannot be compared to a contractual arbitration which occurs in the mercantile disputes.

8. I am of the view that provisions of "1963 Act" are not applicable to the initiation of arbitration proceedings in respect of the claims made and adjudicated upon under Sections 55 and 56 of the "1961 Act". If the contrary view is taken, it might seriously prejudice the practice of referring the dispute to arbitration under Sections 55 and 56 of the "1961 Act" as the proceedings under these provisions are statutory arbitration. For the reasons recorded above, this Court is of the view that authorities have not committed any error which would call for interference in exercise of extraordinary jurisdiction under Articles 226/227 of the Constitution of India.

Dismissed in limine.