

(1973) 01 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Reference No's. 2 and 3 of 1971

The Kotgarh M.P. Co-operative Society

APPELLANT

Vs

Kedar Nath and Others

RESPONDENT

Date of Decision : 17-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38
Constitution of India, 1950 — Article 14

Citation : (1973) 2 ILR HP 210

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Thakur, J

Bench : Division Bench

Advocate : H.S. Thakur, for the Appellant; Chhabil Dass, for the Respondent

Judgement

R.S. Pathak, C.J.—This and the connected reference arise out of execution proceedings.

2. The Kotgarh Multipurpose Co-operative Society and the Theog Multipurpose Co-operative Society were each granted an award in arbitration proceedings u/s 88 of the Himachal Pradesh Co-operative Societies Act, 1956. They sought execution of the awards in the Court of the learned Senior Subordinate Judge, Mahasu. As one of the objections raised to the execution, it was contended that Section 101 of the Himachal Pradesh Co-operative Societies Act, 1956, read with the entry at serial No. 3 of the First Schedule thereto and Rule 92 of the rules made under that Act were ultra vires, and there was no forum prescribed in law for executing the awards. Reliance was placed on Paras Ram v. Union of India and Ors. AIR 1970 Del 119, The learned Senior Subordinate Judge has referred the point to this Court for its opinion.

3. Section 87 of the Himachal Pradesh Co-operative Societies Act, 1956 (hereafter referred to as the Act) provides for the reference of a dispute touching the business of a society to the Registrar. Section 88 provides that on the receipt of such a reference the Registrar shall either decide the dispute himself or refer it for disposal to one or more arbitrators appointed by him. Section 100 declares,

inter alia, that an order made by the arbitrator on a dispute referred to him u/s 88 "shall, if not carried out, on a certificate signed by the Registrar or a liquidator be deemed to be a decree of a civil court and shall be executed in the manner as provided in Section 101". Section 101 declares that "any sum payable to the State Government or to a society in accordance with any order, decision or award, under the Act shall be recoverable in the manner provided in the First Schedule". The First Schedule contains a number of entries, and so far as Section 100 is concerned the only entries relevant are serial No. 4, which speaks of "sums assessed by a liquidator as contributions u/s 105" and serial No. 5, which speaks of "sums due under any rule made under this Act".

4. Section 118(2)(xiii) empowers the State Government to make rules providing for the "procedure for and method of recovery of any sums due under this Act or the rules". It seems that in exercise of its rule-making power the Himachal Pradesh Government included in the Himachal Pradesh Co-operative Societies Rules certain provisions dealing with the settlement of disputes by arbitration. Those provisions are rules 84 to 94. They detail the procedure for setting up the machinery of arbitration, reference of the dispute and the manner of making the award. Rule 92 provides:

Execution of awards:

(1) The award of the Arbitrator or decision of the Registrar shall be enforceable in the manner as provided under serial No. 3 of the First Schedule of the Himachal Pradesh Co-operative Societies Act, 1956 (Act No. 13 of 1956) viz:

By the Collector as arrears of Land Revenue upon requisition by the society

Or

By any Civil Court having local jurisdiction, in the same manner as a decree of such court, upon application by the society.

(2) When an award in a monetary dispute has been obtained against a society it shall not be executed except against the assets of the society including amounts due to the society by its members.

Explanation.--For the purposes of rules 89 to 92 the expression "the Arbitrator" means the authority which may decide the dispute whether the authority is the Registrar or an Arbitrator or a Board of Arbitrators.

It is apparent that by virtue of Section 100 of the Act the award made by the arbitrator is by legal fiction deemed to be a decree of a civil court and its execution is contemplated in the manner provided in Section 101. And when Section 101 is applied it is clear that the sum awarded can be recovered only by reference to the entry at serial No. 5 of the First Schedule. When the entry at serial No. 5 refers to "sums due under any rule made under this Act", it includes sums due pursuant to any award or decision provided for by the rules. That is apparent from reading Sections 100 and 101 together. In order to give effect to

Sections 100 and 101, the award has to be executed, and the amount thereunder recovered, in the manner provided in the First Schedule and therefore, the appropriate entry in the First Schedule must be so construed as to include an amount due under an award. The only entry which can appropriately cover such a case is the entry at serial No. 5. That is because the award is made under Rule 90 which provides:

90. Award or decision.--(1) The Arbitrator...shall make an award, in accordance with justice, equity and good conscience, and he shall record his award in writing, and sign and date it and shall announce it.

The amount due under the award is a sum due under Rule 90 and can therefore be said to fall within the scope of the entry at serial No. 5.

5. Now "sums due under any rule made under this Act" are to be recovered, according to the entry at serial No. 5 of the First Schedule, in the manner prescribed". The manner prescribed for recovering a sum due under Rule 90 is set out in Rule 92. Rule 92, which has been set out above, provides that the award is enforceable either by the Collector as arrears of land revenue upon requisition by the society or by "any civil court having local jurisdiction, in the same manner as a decree of such court, upon application by such society". Rule 92 provides for the enforcement of awards made by Arbitrators (and it is pertinent to note that "an arbitrator" has been defined by the Explanation to Rule 92 as including the Registrar) and of decisions made by the Registrar. They may be enforced in accordance with the procedure prescribed in Rule 92. The awards in question in the two references before us fall within the scope of Section 100 of the Act. And, according to that section, they are deemed to be decrees of a civil court. When executing the awards, effect must be given to that legal fiction. Therefore, when proceeding to enforce the awards under Rule 92 they must be treated as decrees of a civil court. How then will Rule 92 be applied? It provides for either one of two procedures (a) recovery by the Collector as arrears of land revenue or (b) execution by a civil court having local jurisdiction in the same manner as a decree of such court. Now, if Section 100 of the Act had merely declared that an award would be executed in the manner provided in Section 101, it might have been possible to say that a choice was open to the society to have the award enforced either by the Collector as arrears of land revenue or by a civil court as if it was a decree of such court. But Section 100 does something more. It declares that an award of the kind mentioned therein shall be deemed to be a decree of a civil court. As Section 100 deals with the manner for recovery of money, it is apparent that the award is deemed to be a decree of a civil court for the purposes of recovery proceedings. When applying Rule 92, that necessarily implies that such an award can be enforced only in a court having local jurisdiction as if it was a decree of such Court. The legal fiction embodied in Section 100 of the Act that such an award would be deemed to be a decree of a civil court would be meaningless if the intention was that it could be enforced also as an arrear of land revenue.

6. I would go further and hold that if the entire provision of Rule 92 in terms could be said to apply to such awards as are before us, then the provision in that rule for enforcement as arrears of land revenue must be taken to proceed beyond the scope and intent of Section 100 of the Act and therefore to be void.

7. Therefore, in my opinion, an award contemplated by Section 100 is executable only by a civil court having local jurisdiction, and it will be executed as if it were a decree passed by such court. Section 38 of the CPC provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. The execution of such an award is thus brought within the scope of Section 38 of the Code. The court, which is competent to execute the award will be a court having local jurisdiction, that is to say a court having territorial jurisdiction to entertain the dispute had it been brought to it by way of suit.

8. In this view of the matter, when an award contemplated by Section 100 of the Act can be enforced only in a civil court as if it was a decree of such court and not by the Collector as an arrear of land revenue, the question, whether Section 101 of the Act read with the entry at serial No. 3 in the First Schedule and Rule 92 contravene Article 14 of the Constitution does not arise. That question could have arisen only if either one of the two alternative procedures was available unenforcing the awards under consideration in these cases.

9. Accordingly, I direct that the references be returned to the Court below with the opinion that the awards under consideration can be executed in the court having territorial jurisdiction as if they were decrees passed by it. In the circumstances of the case I make no order as to costs.

Chet Ram Takur, J.

10. I agree.