

(2010) 01 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3122 of 2004

The Liquidator, The Malout Co-operative Spinning Mills
Limited, Malout

APPELLANT

Vs

M/s. Suresh Cotton Oil and General Mills and Others

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Companies Act, 1956 — Section 446

Punjab Co-operative Societies Act, 1961 — Section 55, 56, 58, 59, 59(1)

Citation : (2010) 2 RCR(Civil) 469

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Advocate : Puneet Kansal, for the Appellant;

Final Decision : Allowed

Judgement

T.P.S. Mann, J.—By a common order, the Court intends to dispose of the present revision as well as Civil Revision No.3123 of 2004, as both of them have been filed by the same petitioner for challenging the identical orders passed by the executing Court on 23.04.2004, whereby the objections filed by the judgment debtors were dismissed with costs. However, for facility of reference, the facts are taken from the present revision, i.e. Civil Revision No.3122 of 2004.

2. Suit for recovery for Rs.12,84,091.42p. was filed by decree holder-respondent No.1 against judgment debtor-respondent No.2 in the year 1997. The suit was decreed on 29.05.2003 (Annexure P6). During the pendency of the suit, respondent No.2 herein went into liquidation. Vide order dated April 30, 1997 (Annexure P1) passed by the Registrar, Co-operative Societies, Punjab, Shri M.S.Grewal, Additional Managing Director, Spinfed, Punjab, Chandigarh was appointed as its Liquidator. The Liquidator was also impleaded as a party to the suit. At the time of decreeing of the suit Sh.Muneshwar Chander, Deputy Registrar, Cooperative Societies, Muktsar stood appointed as a liquidator in his place. Pursuant to the passing of the decree, the decree-holder applied for its

execution. Objections (Annexure P2) were filed by the Liquidator petitioner that as per the provisions of Section 56 of the Punjab Cooperative Societies Act 1961 (in short "the Act"), all assets of the Society vested in him. u/s 59(2)(c) of the Act, the Liquidator was to decide the questions of priority arising between the claimants. u/s 82 of the Act, no civil or revenue Court had the jurisdiction in respect of any matter concerning winding up and dissolution of a Co-operative Society. No suit or proceedings relating to the business of the said Society could proceed with or instituted against the Liquidator. It was also submitted that all the assets and liabilities were being investigated by the Liquidator so as to settle the same as per provisions of the Act. The jurisdiction of the executing Court to decide the claim of the decree-holder was also disputed and, accordingly, a prayer was made that the execution application be dismissed.

3. While contesting objections, the decree-holder claimed that the appointment of the Liquidator did not affect its rights in execution of lawful and valid decree, which already stood passed in its favour. The decree operated as *res judicata* and, therefore, binding on the parties. The judgment-debtors did not take objections in the main suit and now it was estopped by its own act and conduct from raising these objections. It was only the Court passing the decree, which had to take the decision on the execution application. The provisions of Section 82 of the Act were not applicable to the facts and circumstances of the case. The dispute in the present case was not covered under the provisions of the Act and not touching with the business of the Society. However, it was admitted that the decree-holder submitted its claim before the Liquidator but no action on the same was taken. Accordingly, it was prayed that the decree be executed.

4. While dismissing the objections submitted by the judgment debtors, the executing Court held that in case they were not satisfied with the judgment and decree passed by the trial Court, they ought to have filed an appeal which they did not do so. Further, most of the objections raised by the judgment-debtors had been raised by them in their written statement filed in the suit itself and, therefore, the executing Court could not go beyond the judgment and decree dated 29.05.2003. The objections filed by the judgment debtors were just to delay the execution petition.

5. Learned counsel for the petitioner submitted that the objections raised by the judgment debtors were as per the provisions of Sections 58 and 59 of the Act. It was the Liquidator, who was to adjudicate the claim. This aspect of the case has not been referred to by the learned executing Court. Learned counsel for the petitioner also informed the Court that there was no dispute regarding the decree passed in favour of the decree-holder but objected to the execution of the decree in view of the bar contained under Sections 58, 59 and 82 of the Act.

6. Learned counsel for the petitioner contended that there was a bar u/s 82(2) of the Act to the execution of the decree as respondent-Mill was under winding up.

7. Section 82 of the Act reads as under:-

82. Bar of jurisdiction of Courts - Save as provided in this Act, no civil or revenue Court shall have any jurisdiction in respect of -

- (a) the registration of a co-operative society or its bye-laws or amendment of bye-laws;
- (b) the removal of committee;
- (c) any dispute required u/s 55 of to be referred to the Registrar; and
- (d) any matter concerning the winding-up and the dissolution of a co-operative society.

2. While a co-operative society is being wound up no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof except by leave of the Registrar and subject to terms as he may imposed.

3. Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever.

8. Learned counsel for the petitioner submitted that it was only the Liquidator who could decide the claim of the decree-holder as per the priority. Section 59 of the Act defining the powers of the Liquidator reads as under:-

59. Power of Liquidator. - (1) Subject to any rules made in this behalf, the whole of the assets of a co-operative society, in respect of which an order for winding-up has been made, shall vest in the liquidator appointed u/s 58 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.

2. Such liquidator shall also have power, subject to the control of the Registrar

- (a) to institute and defend suits and other legal proceedings on behalf of the cooperative society by the name of his office;
- (b) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members or past members or by the estates or nominees, heirs, or legal representatives of deceased members or by any officers or former officers, to the assets of the society;
- (c) to investigate all claims against the co-operative society and subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (d) to pay claims against the co-operative society, including interest upto the date of winding up according to their respective priorities, if any, full or rateably, as the assets of the society may permit; the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;

(e) to determine by what persons and in what proportions the costs of the liquidation are to be borne;

(f) to determine whether any person is a member, past member or nominee of deceased member;

(g) 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;

(h) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same;

(i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable;

(j) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;

(k) after consulting the members of the society, to dispose of the surplus, if any, remaining after paying the claims against the society, in such a manner as may be prescribed and

(l) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts and all claims present or future, certain or contingent subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the cooperative society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof.

3. When the affairs of a co-operative society have been wound up, the liquidator shall make a report to the Registrar and deposit the records of the society in such place as the Registrar may direct.

9. u/s 85 of the Act, the State Government is empowered to frame rules for following the procedure to be adopted by the Liquidator appointed u/s 58 in respect of the provisions of Section 59 of the Act. Pursuant to the powers conferred u/s 85 of the Act, statutory rules called the Punjab Cooperative Societies Rule, 1963 (hereinafter referred to as "the Rules") have been framed. Rule 63 reads as under:-

Distribution of assets (Sections 59(1) and 85(2) (xxvi) - The liquidator shall distribute the realised assets in such manner and in such priority as the Registrar may direct

10. In terms of Rule 63, Standing Order No. 17.32 of the Book of Consolidated Circular has been issued dealing with paying off the liabilities of the Society

under liquidation The said circular reads as under:-

The Liabilities of a society under liquidation should be paid off in the following order:-

- (a) Liquidation expenses
- (b) Government Dues
- (c) Claims of employees in respect of Provident and security deposit
- (d) Pay and other claims of the employees
- (e) Secured creditors (Both principal and interest)
- (f) Ordinary creditors (Principal only)
- (g) Interest to ordinary creditors
- (h) Share money to the members
- (i) Any surplus should be disposed of as ordered by the Registrar. In each of the above groups, all persons must share in the payments in proportion to their total claims and each group must be fully paid off before payment of the next group is concerned. As per the circular, the decree holders are to be treated as original creditors and the decretal amount has to be paid by the Liquidator as per the priorities referred to above. To the same effect it was held by this Court in Letters Patent Appeal No. 1435 of 2001 (The Central Co-operative Consumer Store Limited. (Super Bazar) now under liquidation through its liquidator & Anr. v. Super Bazar, Chandigarh Employees Union & Ors.), decided on November 22, 2001. The observations made are reproduced here-in-below:

It is further the case of the appellants that all the liabilities of the Super Bazar shall be discharged in accordance with the provisions of Rule 63 of the Punjab Co-operative Societies Act, 1963 read with order of priorities of discharge of liabilities prescribed vide Standing Order 17.32 of the Book of Consolidated Circulars issued by the Registrar, Co-operative Societies, Punjab, prevalent as on 01.11.1966 which are binding upon the Union Territory of Chandigarh under the Punjab Re-Organisation Act, 1966 read with notification dated 20.11.1968 whereby all the State Acts, Rules, Orders, Bye laws, Schemes, Notifications or other instructions were adopted by the Chandigarh Administration w.e.f. 01.11.1966. It is also the case of the appellants that liquidator had no authority to discharge liability except in accordance with the priorities fixed by the Registrar, Co-operative Societies. Under the Standing Order 17.32 of the Consolidated Circular of the Co-operative Department, the following line of priorities in the distribution of assets is prescribed:- (a) Liquidator expenses (b) Government dues (c) Claims of employees in respect of Provident and security deposit (d) Pay and other claims of the employees (e) Secured creditors (both principal and interest) (f) Ordinary creditors (principal only) (g) Interest to ordinary creditors (h) Share money to the ordinary creditors (i) Any surplus

should be disposed of ordered by the Registrar

12. After observing the provisions as referred to above, the Hon''ble Division Bench directed that the petitioners therein would be paid their admitted dues in accordance with the priorities settled and mentioned above.

13. The provisions of Section 82(2) of the Act are similar to Section 446 of the Companies Act. In CLA.No.561 of 2001 (M/s.Sanchi Security Co. Pvt Limited v. The Punjab Wireless System Ltd., Mohali), the Court ordered that the petitioner-Company therein would be at liberty to lodge the claim with the Official Liquidator and in case any such claim was lodged, the same be considered in accordance with law.

14. In Civil Appeal No.268 of 2005 in Company Petition No. 163 of 2001 (In the matter of M/s.Kartar Glass Work Limited (in liquidation) v. Civil Judge (Sr.Division) Nawanshahr & Anr, decided on 23.02.2006 it was held that the decree holders have to be treated as unsecured creditors and their claims have to be decided as per the priorities. The concluding para of the order reads as under:-

The application is by the Official Liquidator to stay the proceedings in Execution Cases Nos.85, 86 and 147 of 1997 against the Company in liquidation pending in the Court of Civil Judge (Senior Division), Nawanshahr.

It has been pointed out that the decree has been passed in favour of respondent No.2 as an unsecured creditor. Therefore, claim of unsecured creditor in respect of Company in liquidation cannot have any preference against the rights of the secured creditors.

Keeping in view the said fact the proceedings in Execution Cases 85, 86 and 147 are stayed. However, the Official Liquidator shall take into consideration the said decrees while settling the claim of unsecured creditors at the appropriate stage.

With the said observation, the application stands disposed of

15. In Reserve Bank of India v. Crystal Credit Corporation Ltd. 2006(132) Comp. Case 363 (Delhi), it was held that the decree holder was entitled to get money only alongwith other creditors and Official Liquidator was to take steps to realize money disbursed. The following observations from the said judgment may be noticed:-

At the same time, it has to be borne in mind that the sale proceeds of the property put to auction have to go to the Official Liquidator and these are required to be distributed, alongwith with other money realized by the Official Liquidator in accordance with the provisions of the Act by distributing the dividends to various creditors. The decree holders who have been able to get the money in the said sale would only be creditors alongwith other creditors and by realizing the money after the passing of the winding up orders they have been able to get the said money to which they were not entitled at this stage. The

money was disbursed to various decree holders and the applicant has filed the list of those decree holders, who were disbursed of the money. For that appropriate steps which the Official Liquidator should take would be to file application u/s 446 of the Act against the said decree holders for realizing this money.

16. In Civil Appeal No.208 of 2003 in Company Petition No.45 of 1997, the Court held that where the sale was conducted by the civil Court with the permission of the Company Court, the same cannot be allowed for the benefit of unsecured creditors. In H.S. Oberoi & Associate v. Punjab Wireless Systems Limited, in Company Appeal No. 174 of 2000 in Company Petition No.226 of 1998, decided on 11.07.2001, the Court held that the property attached by the civil Court in execution of decree did not create any interest in the decree holder. The operative part of the judgment reads as under:-

On the basis of the conclusion drawn above that no charge stands created in favour of the Corporation vis-a-vis the property of the respondent Company, i.e. Punwire attached vide orders dated 17.08.1999 and 06.12.1999, it is not possible for this Court to accept the prayer of the Corporation to allow it to execute the judgment and decree dated 19.09.1999 against the respondent-Company, i.e. Punwire, for the recovery of a sum of Rs.7,42,27,312/- besides costs and interest from the attached properties as a secured creditor. Thus viewed, I find no merit in the claim of the petitioner-Corporation for being permitted to continue the execution proceedings initiated by it by filing execution proceedings in this Court to enforce the judgment and decree dated 09.09.1999. The Corporation may, if be so advised, make an appropriate claim in this behalf before the liquidator in view of the fact that a winding up order has already been passed in furtherance of Company Petition No.226 of 1999 on 01.02.2001.

17. Thus, according to the petitioner, it was not open to the executing Court to execute the decree in view of the provisions contained in Sections 58 and 59 read with Section 82(2) of the Act. The only remedy with the decree holder was to file a claim with the Liquidator on the basis of decree passed in its favour and it was for the Liquidator to liquidate the liabilities of the Society as per the priority fixed and, thereafter, seek setting aside of the impugned judgment and decree passed by the trial Court.

18. Despite service, no one has put in appearance on behalf of decree holder-respondent No.1. The Court is not benefitted with the arguments which could have been raised on behalf of the decree holder. However, keeping in view the arguments submitted by the decree holder before the executing Court, regarding objections on its behalf to the stand taken on behalf of the Liquidator, its case would be that the objections of the Judgment Debtors had already been overruled by the trial Court and the decree had become final. Therefore, the executing Court could not go beyond the decree and was, therefore, bound to execute the same as passed without looking into any other matter unless it was found that the Court passing the decree did not have the jurisdiction or the

decree was a nullity. Moreover, the Liquidator was a party to the suit and, therefore, the objections sought to be taken now could have been taken before passing of the decree.

19. The impugned order passed by the executing Court while dismissing the objections raised by the Judgment Debtors has been thoroughly perused.

20. The reading of Sections 58 and 59 read with Section 82(2) of the Act as well as the rules framed thereunder makes it clear that the creditors of the Society have to be dealt with by the Liquidator and the liabilities have to be discharged on the basis of above referred priorities contained in Standing Order No. 17.32. In view of the judgments and law laid down as referred to in the earlier part of the judgment itself, it was not open to the executing Court to have rejected the objections filed by the Judgment Debtors.

21. The plea that the executing Court cannot go beyond the decree, cannot be disputed, it being settled law. However, in the present case, there is no question of the executing Court going beyond the decree as counsel for the petitioner admitted that no appeal had been filed against the decree passed by the trial Court and the same had attained finality. Moreover, the Judgment Debtor also did not dispute the decree but objected to the execution in view of the bar contained under Sections 58 and 59 read with Section 82(2) of the Act.

22. The reading of the aforementioned provisions of the Act leaves no manner of doubt that these are para materia with the provisions of the Companies Act and, therefore, law laid down by the Courts would be applicable even under the provisions of the Act.

23. Accordingly, the revisions are allowed, impugned orders passed by the executing Court are set aside and the Liquidators are directed to consider the claims of the respective decree holders in terms of priority fixed vide Standing Order No. 17.32. However, they shall treat the decree holders as ordinary creditors and consider their claim as such but as per the position where they stand in the priority.