
(1971) 01 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Execution Second Appeal No. 252 of 1968

The Phagwara Co-operative Union Ltd.

APPELLANT

Vs

The Indian Engineering Co-operative Society Ltd., etc.

RESPONDENT

Date of Decision : 20-01-1971

Acts Referred:

Citation : (1973) 2 ILR (P&H) 38 : (1972) 74 PLR 724

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : J.V. Gupta, for the Appellant; K.N. Tewari, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Sodhi, J.—This is an execution first appeal against the order of Subordinate Judge, 1st Class, Phagwara, who, on an objection raised by the judgment-debtor, dismissed the execution application on the ground that the decree sought to be executed was a nullity.

2. Facts that have led to the appeal can be stated in a narrow compass.

3. There was a dispute between the Phagwara Cooperative Union Limited, Phagwara, a society registered under the Punjab Cooperative Societies Act, 1961 (Punjab Act No. 25 of 1961), hereinafter called the Act, and the Indian Engineering Cooperative Society Limited, Phagwara, similarly registered. The Phagwara Cooperative Union was alleged to have advanced some loan for which Smt. Jaswant Kaur, Respondent, was a surety. The Assistant Registrar appointed one Benarsi Dass, Sarpanch of village Panchhet as an Arbitrator u/s 56 of the Act, by an order made on 9th August, 1965. The award, as stated by the Sarpanch, was given on 8th September, 1965, though the copy that is on the record bears the date, 29th September, 1965. A certified copy of the award, as supplied to the judgment-debtor Respondent, has been shown to me and it bears the date 8th September, 1965. In view of the statement of the Sarpanch as made in Court, it has to be accepted that the award was made on 8th

September, 1965. There is no denying the fact that the date of hearing by the Arbitrator was fixed for 8th September, 1965, and the acceptance of the registered notice sent to the judgment debtor was refused on 9th September, 1965. What it comes to is that before the notice could reach the judgment-debtor Respondent, the award had already been given by the Arbitrator. There can be no manner of doubt that an award made without communicating the date, time and place of hearing to the parties concerned must be held to be without jurisdiction and, therefore, a nullity. There are rules called the Punjab Co-operative Societies Rules, 1963, made by the State Government in exercise of the rule making power conferred by the Act. Chapter VII, containing Rules 51 to 57, deals with the procedure for the settlement of disputes by an Arbitrator. Rule 53 enjoins upon the Registrar or any other person acting as arbitrator to inform the parties about the date, time and place of hearing the dispute and the arbitrator is bound to hear them and also the witnesses who attend. The award is to be based on evidence, if any, produced by the parties and the award so made is required to be announced to them and a copy thereof filed in the office of the Registrar. The Arbitrator, in the instant case, acted in clear violation of the statutory rules inasmuch as he gave no opportunity to the alleged debtor Society to be heard and to produce any evidence if it so desired. The action of the Arbitrator was, therefore, not only in clear violation of the Rules but also against the well-established rules of natural justice requiring that no one shall be condemned unheard. The executing Court was thus well-justified in upholding the objection of the judgment-debtor and declaring the award to be incapable of execution as it was without jurisdiction and a nullity.

4. Mr. K.N. Tewari, learned Counsel for the Respondent, urges that a notice was necessary to the judgment-debtor by the Registrar or the Assistant Registrar before the Arbitrator was appointed but it is not necessary to express any opinion on that question when the award is otherwise patently illegal and inexecutable for reasons stated above.

5. In the result, there is no merit in the appeal which stands dismissed. The parties are left to bear their own costs.