

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.10970 of 2023
Reserved on:18.09.2026
Date of Decision: 28.09.2026
Date of uploading: 28.09.2026

The Lohara Cooperative Cho Reclamation and Soil Conservator
Society

.....Petitioner

Versus

State of Himachal Pradesh & Ors.

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the Petitioner: Mr. Ajay Sharma, Senior Advocate with Mr.
Tarun K. Brakta, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocates General with Mr. Ravi
Chauhan & Mr. Anish Banshtu, Deputy
Advocates General, for the respondent-
State.

Mr. Arun Kaushal, Advocate, for respondent
No.4.

Sandeep Sharma, Judge:

Being aggrieved and dissatisfied with order dated
18.12.2023 passed by Joint Registrar (Credit), Cooperative Societies,
Himachal Pradesh, whereby aforesaid authority, while allowing the
appeal filed by respondent No.4 under Section 93 of H.P. Cooperative
Societies Act, 1968 (hereinafter referred to as the "**Act**"), laying

¹Whether the reporters of the local papers may be allowed to see the judgment?

therein challenge to order of arbitration dated 04.02.2023, set aside the aforesaid order dated 04.02.2023 passed by learned Arbitrator and remanded the case back to Assistant Registrar, Cooperative Societies, Una, with a direction to refer the same to some senior officer to decide the same afresh, petitioner-society has approached this Court in the instant proceedings filed under Article 226 of Constitution of India, praying therein for the following main reliefs:-

“a. That impugned orders dated 18.12.2023, Annexure P-5, passed by the Joint Registrar (Credit) Cooperative Societies, Himachal Pradesh i.e. respondent No.3 herein, may very kindly be quashed and set aside.

b. That the award dated 4th February, 2023 passed by the learned Arbitrator may very kindly be upheld.”

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that in terms of judgment passed by this Court in CWP No. 497 of 2004, society namely *Upper Lohara Cho Reclamation and Soil Conservation Society*, came to be amalgamated with Lower Lohara Cho Reclamation and Soil Conservation Society, i.e. petitioner herein, on 14.05.2007. As a consequence of amalgamation, respondent No.4, who was earlier working as Secretary of erstwhile Upper Lohara Cho Reclamation and Soil Conservation Society, became Secretary of Lower Lohara Cho

Reclamation and Soil Conservation Society (hereinafter "*petitioner-society*").

3. After amalgamation, petitioner-society asked respondent No. 4 to make available records of audit and other proceedings of previous society, but fact remains that needful was not done, as a result thereof, petitioner-society proceeded to file a civil suit for recovery of losses to the tune of Rs. 1,00,000/- in the year 2007. However, aforesaid suit was dismissed in the year 2018 by this Court, holding that there is a bar of jurisdiction of civil Courts as contemplated under Section 72 as also under Section 92 of the Act.

4. After passing of aforesaid order, petitioner-society filed an application dated 12.01.2019 under Section 72 of the Act before Assistant Registrar, Cooperative Societies, Una (Annexure P-2), seeking therein appointment of an Arbitrator as per provisions of the Act. Arbitrator appointed by the aforesaid authority ultimately passed a detailed award dated 04.02.2023 (Annexure P-3), thereby affirming the claim of the society to the tune of Rs. 1,00,000/- with 12% interest.

5. Being aggrieved and dissatisfied with aforesaid award, respondent No.4 filed an appeal under Section 93 of the Act before Registrar, Cooperative Societies, Himachal Pradesh (respondent No. 2), which was further delegated to be decided by Registrar, Cooperative Societies, Himachal Pradesh (Annexure P-4). Vide order

dated 18.12.2023, Joint Registrar (Credit), Cooperative Societies, allowed the appeal of respondent No.4 and set aside the award dated 04.02.2023 passed by learned Arbitrator and remanded the case for reconsideration by another Arbitrator (Annexure P-5). In aforesaid background, petitioner-society has approached this Court in the instant proceedings, praying therein to set aside order dated 18.12.2023 passed by the Joint Registrar (Credit), Cooperative Societies and restore order dated 04.02.2023 passed by the learned Arbitrator.

6. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Ajay Sharma, learned Senior Counsel, duly assisted by Mr. Tarun K. Brakta, learned Counsel for the petitioner, is that impugned order passed by Joint Registrar (Credit), Cooperative Societies, is not sustainable in the eye of law, being totally contrary to the facts as well as law. To substantiate his aforesaid submission, Mr. Sharma made this Court peruse order dated 04.02.2023 passed by learned Arbitrator. He submitted that bare perusal of aforesaid order passed by learned Arbitrator reveals that number of opportunities came to be afforded to respondent No.4 to put in appearance and make available documents as well as other records, if any, in his possession to substantiate his claim, but in vain. Mr. Sharma stated that if the impugned order

passed by Joint Registrar (Credit), Cooperative Societies, is read vis-à-vis order passed by learned Arbitrator, it can be safely concluded that Joint Registrar (Credit), Cooperative Societies, has arrived at a wrong conclusion that no sufficient opportunity of being heard was ever afforded to respondent No.4. Mr. Sharma further submitted that Joint Registrar (Credit), Cooperative Societies, further erred in returning a finding that an application filed by respondent No.4, seeking therein permission to engage a lawyer, could not have been rejected by learned Arbitrator, especially when ample material was adduced on record suggestive of the fact that respondent No.4 was unwell, as a result thereof, he was unable to contest the case. While making this Court peruse order passed by learned Arbitrator as well as other material adduced on record by respondent No.4 suggestive of his illness, Mr. Sharma submitted that respondent No.4 submitted before learned Arbitrator that on account of his having a stone in his gall bladder, he was not in a position to contest the case. However, learned Arbitrator, having regard to the nature of disease, coupled with the fact that record, if any, was to be made available by respondent No.4, rightly proceeded to reject his application. He submitted that otherwise also, appeal prima facie was not maintainable, as the same was not filed before the appropriate Court/forum as described in the Act. He specifically referred to

Section 2(12) of the Act, which defines the term "Registrar". He stated that bare perusal of definition of "Registrar" as given in aforesaid provision of law suggests that Registrar of Cooperative Societies appointed under Section 3 includes any person appointed to assist the Registrar on whom all or any of the powers or duties of Registrar have been conferred or imposed under this Act. He submitted that vide notification dated 23.12.1976, His Excellency the Governor of Himachal Pradesh was pleased to appoint such officer to assist Registrar under Section of the said Act and has been pleased to confer upon said officers all powers of Registrar with respect to particular Section. He submitted that in the case at hand, Assistant Registrar, Cooperative Societies, Una, was conferred power of Registrar under Section 93 of the Act. He further referred to Rule 2(xxi) of Himachal Pradesh Cooperative Societies Rules, 1971, which defines the term "Primary Society". He stated that primary society does not enroll societies as its member and as such, petitioner, being a primary society, falls under the jurisdiction of Assistant Registrar, Cooperative Societies, Una, who, for all intents and purposes, is the Registrar as per provisions of the Act. To substantiate his aforesaid submission, he submitted that when application under Section 72 of the Act was filed, the same was only maintainable before Registrar. Assistant Registrar, Cooperative Societies, Una, while acting as

Registrar, instead of entertaining said application himself, assigned the same to Arbitrator as per provisions of Section 72 of the Act. This shows that Assistant Registrar, Cooperative Societies, Una, is the Registrar for the purpose of primary societies. In this regard, he placed reliance upon communication dated 31.07.2023 (Annexure P-6), which reads as under:-

"I am to enclose herewith a copy of letter No. CB(R/HQ)Comp.09/2023(SIU)-15928 dated 21st July, 2023 received from the Additional Director General, SV&ACB, H.P. Shimla -02 along with its enclosures on the subject cited above, wherein the above authorities has requested to take necessary action in the matter. As you must be aware, that being the Registrar of the primary societies, it is the responsibility/duty of your office to settle such issues in the provisions of the law within stipulated period of time. In view of above, you are directed to look into the matter and to ensure further necessary action as per law occupying the field. Action taken report in the matter may be conveyed to this office at the earliest, enabling this office to proceed further in the matter."

7. While referring to Rule 148 of the Rules, Mr. Sharma submitted that there is specific bar to contest the case by a legal practitioner. No doubt, on showing sufficient cause/reason, plea, if any, to engage a lawyer could have been accepted, but since in the

case at hand no cogent and convincing plea ever came to be made at the behest of respondent No.4, no illegality otherwise can be said to have been committed by learned Arbitrator by passing impugned order.

8. Having heard learned counsel representing the parties and perused material available on record, especially award dated 04.02.2023 (Annexure P-3) passed by learned Arbitrator vis-à-vis impugned order dated 18.12.2023 passed by Joint Registrar (Credit), Cooperative Societies, this Court is persuaded to accept the submission of Mr. Ajay Sharma, learned Senior Counsel representing the petitioner-society, that Appellate Court, while passing impugned order, failed to take note of proceedings conducted by learned Arbitrator.

9. Order passed by learned Arbitrator (Annexure P-3), if perused in its entirety, clearly reveals that proceedings in Reference No. 3102-3105 had commenced on 20.06.2022 and thereafter number of opportunities came to be afforded to respondent No.4 for putting up his stance, but on one pretext or other, he not only failed to come present before learned Arbitrator on many dates, but also failed to make available relevant documents to refute the claim of the petitioner-society. Having carefully perused aforesaid order passed by learned Arbitrator, wherein detail of all dates, upon which respondent

No.4 either remained absent or failed to produce record has been given, this Court has no hesitation to conclude that Joint Registrar (Credit), Cooperative Societies, while passing impugned order, has acted in hot haste manner. It appears that aforesaid authority, before considering submission made on behalf of respondent No.4 that no opportunity of being heard was granted to him, did not even bother to look into the records of the case decided by learned Arbitrator.

10. After having carefully perused award dated 04.02.2023 passed by learned Arbitrator, it cannot be said that respondent No.4 was not afforded due opportunity of being heard; rather, this Court is of the view that learned Arbitrator was over-indulgent while granting repeated adjournments.

11. It is also not understood that on what basis, Joint Registrar (Credit), Cooperative Societies, proceeded to record that learned Arbitrator, while passing award to the tune of Rs. 1,00,000/-, failed to take note of record, rather order passed by learned Arbitrator reveals that petitioner-society had made available complete record with regard to alleged misappropriation of funds of the Lower Lohara Cho Reclamation and Soil Conservation Society. Joint Registrar (Credit), while returning finding that award does not only suffer from technical shortfall, but is also bereft of sound application of statutory

provisions and logical reasoning, has itself failed to point out shortcomings, if any, in the award.

12. Leaving everything aside, once it is not in dispute that respondent No.4 had failed to produce any document to counter the claim of the petitioner-society, coupled with the fact that he repeatedly failed to make himself available before learned Arbitrator to get his statement recorded, no illegality can be said to have been committed by learned Arbitrator, while accepting the claim of the petitioner-society, which otherwise remained unrebutted.

13. Registrar, Cooperative Societies, also erred in holding that respondent No.4 was denied the opportunity to avail the services of a legal practitioner under Rule 148 of H.P. Cooperative Societies Rules, 1971 (in short "Rules). Rule 148 of the Rules provides that legal practitioner is barred except with the permission of Registrar. No doubt, in the case at hand, an application under aforesaid Rule was made by respondent No.4, but no cogent and convincing reason for making available the services of a legal practitioner ever came to be raised. Merely stating that he was having a stone in his gall bladder could not be a ground to permit respondent No.4 to avail the services of a legal practitioner. It was none of the case of respondent No.4 that on account of his having a stone in his gall bladder, he was unable to come present and make submissions. Since no plausible explanation

ever came to be rendered on record at the behest of private respondent for permitting him to avail the services of a legal practitioner, no illegality can be said to have been committed by learned Arbitrator, while rejecting the application under Rule 148 of the Rules.

14. Though Mr. Sharma also raised question with regard to maintainability of appeal, as has been recorded in his submissions, but since impugned order passed by Joint Registrar (Credit), Cooperative Societies, is not sustainable for the detailed reasons given hereinabove, this Court sees no occasion to go into that question, rather the same is left open to be decided in appropriate proceedings.

15. Consequently, in view of the above, this Court finds merit in the present petition and accordingly, the same is allowed. Impugned order dated 18.12.2023 (Annexure P-5) is quashed and set aside, as a consequence thereof, award dated 04.02.2023 passed by learned Arbitrator is restored.

Petition stands disposed of in the aforesaid terms along with pending application(s), if any.

**(Sandeep Sharma),
Judge**

September 28, 2026
(Sunil)