

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2698 of 1999

Janardan Sharma, son of late Laxami Narain Singh, resident of Village- Bagodar,
P.S. Hasua, District Nawadah

.... Petitioner/s

Versus

1. The State of Bihar
2. The Joint Registrar, Co-operative Societies, Magadh Division, Gaya
3. The District Co-operative Officer, Gaya
4. The Assistant Registrar, Co-operative Societies, Gaya Circle, Gaya
5. The Magadh University Central Consumers Co-operative Store Ltd. Bodh
Gaya, District- Gaya
6. The Administrator, Magadh University, Central Consumers Co-operative Store,
Bodh Gaya, District- Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate

For the State : Mr. A.K. Dubey, AC to AAG 4.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-03-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present writ petition, petitioner is challenging the
order dated 24.11.1998, passed by the Joint Registrar, Co-
operative Societies, Magadh Division, Gaya in Award Appeal
No.3 of 1997 filed by the Secretary, Magadh University Central
Consumers Co-operative Store Ltd., Bodh Gaya.

It appears that Janardan Sharma (petitioner) was working
as Co-operative Extension Officer, Magadh University Central
Consumers Co-operative Store Ltd., Bodh Gaya. After
supersession Executive Officer was appointed and when auditing



was conducted it was found that petitioner was liable to pay Rs.87,541.45 as it was found that he has not properly accounted the aforesaid amount. That led to initiation of a proceeding under Section 40 of the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as 'the Act') and the Joint Registrar vide its order dated 21st July, 1987 quashed the proceeding on the ground of limitation.

Again a proceeding was initiated under Section 48 of the Act which was numbered as Award No. 29 of 1995-96. The District Cooperative Officer, Gaya vide its order dated 25.10.1997 on the basis of the judgment in the case of Uma Shankar Sharan Srivastava Vs. B.S. Co-operative Market Union, reported in 1985 PLJR 19 has held that when proceeding under Section 40 of the Act has terminated or quashed the second proceeding under section 48 of the Act is not maintainable. Both the aforesaid two judgments were under consideration by the Full Bench in the case of The Kinjer Vyapar Mandal Sahyog Samiti Ltd. V. The Deputy Registrar, Co-operative Societies, Patna Division and others, reported in 1986 PLJR 264 and this Court in the Full Bench has over ruled the view taken by the learned Single Judge and held that scope and area of proceeding under Section 40 of the Act is quite different. The



judgment under Section 48 of the Act will not act as res-judicata or any impediment in a proceeding under section 48 of the Act. On the basis of the view taken by this Court the appellate court in Award Appeal No.3 of 1997 vide order dated 24.11.1998 has set aside the order of District Co-operative Officer, Gaya on the fact that the petitioner deposited certain amount has arrived to a conclusion that there is nothing to be adjudicated further on that basis alone he has passed the order.

In such view of the matter when the appellate authority has not decided the case on merit it was the duty of this Court to remand back the case to the original authority to pass the order in accordance with law.

Accordingly the order dated 24.11.1998 as well as 25.10.1997 are set aside with a direction to the District Cooperative Officer, Gaya after giving notice to the parties to pass an order in accordance with law within a period of six months after receipt or production of this order. If the District Co-operative Officer will arrive to a finding that petitioner was liable to pay the amount the same will be paid along with interest within a period of six months from the date of order. If the parties will not co-operate the proceeding District Co-operative Officer will be at liberty to decide the case ex-parte.

With the aforesaid observation and direction this writ
petition is allowed.

(Shivaji Pandey, J)

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