**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Writ Petition No.15339 of 2000 (O&M)

Date of Decision: 29.04.2015

P.C.Vasudeva

.... Petitioners

Vs.

The Registrar, Co-operative Societies, Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Sanjeev Singh Thakur, Advocate for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana .

Mrs. Shashi Jain, Advocate for the Intervenor.

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JASWANT SINGH, J. (Oral)

The petitioner-P.C.Vasudeva was admittedly the President of Nationalized Bank Karamchari Co-operative Urban Salary Earner Thrift and Credit Society Ltd., Panchkula/respondent No.3 (for short 'Cooperative Society') w.e.f. 03.05.1990 till 26.09.1996. The said Cooperative Society is stated to have been wound up vide order dated 17.11.1997 (**Annexure P-3**) and a Liquidator was appointed.

In the present writ petition, prayer is for quashing a Notice dated 22.05.2000 (**Annexure P-10**) for recovery of a loan amount of Rs.8,31,600/- along with interest outstanding against the petitioner till 31.03.2000 and also a Notice under Sections 102 and 103 (**Annexure P-12**) under the Haryana Cooperative Societies Act, 1984 (for short '1984 Act') issued by the Arbitrator, Assistant Registrar, Cooperative Societies, Panchkula asking him to appear for adjudication for recovery of another sum of Rs.8,80,200/- payable up to 31.02.2000 being in default as a principal debtor/surety.

The petitioner is stated to have filed a reply dated 14.10.2000 (**Annexure P-11**) to the Notice (**P-10**) wherein it is stated that no longer amount had been personally raised by the petitioner, however, the outstanding loan due from other Members were sanctioned by the entire Managing Committee and, therefore, seemingly the petitioner out was not warranted.

On notice, the written statement of the Liquidator on behalf of respondent No.3/Cooperative Society has been filed. It is stated that the said orders/notices passed by the Liquidator are appealable under Section 114 sub Section 1 Clause N before the Authorities enumerated under sub Section 2, therefore, the petition is liable to be dismissed on the ground of available of alternative remedy. On merits, it is stated that the Managing Committee had authorized the present petitioner, being President to advance loans to Members and the petitioner being the sole Authority has factually advanced the loan on extraneous consideration, which has resulted into loss to the Cooperative Society. It is further stated that in every meeting of the Cooperative Society, it was the legal duty of the petitioner to verify whether there was a surety or a guarantor who would be liable in case the loanee Member fails to make the payment.

A separate written statement has been filed by the State Authorities/ respondent Nos.1 and 2 stating that since the petitioner was not performing his duties in accordance with law, the majority of the Members of the Society had resigned and, therefore, the Assistant Registrar was constrained to appoint the Liquidator to run the affairs of the Society. It is further stated that certain Members of the Society including one Smt. Shashi Jain (applicant in C.M. No.36952 of 2002) had filed their application before the State Consumer Disputes Redressal Commission, Haryana and the said Authority by the detailed order dated 21.12.1998 had decided in favour of the said Members and against the Members of the Managing Committee including the present petitioner/P.C.Vasudeva, the then President of the Society.

Learned Counsel for the petitioner has argued that the action of the respondents in seeking attachment of the property of the petitioner on the basis of the notice under Section 104 of 1984 Act is wholly illegal, arbitrary and without jurisdiction. The respondents are proceeding to recover the amount as if the petitioner had availed the loan and has failed to repay the same. As already stated the loan amount in respect of S/Sh. Murari Lal, S.K.Batra/Arora and Tajinder Singh was sanctioned by the Managing Committee in which the petitioner neither stood guarantor nor surety for the repayment thereof. The petitioner, for this, cannot be held guilty nor the entire responsibility can be fixed upon the petitioner when the decision to advance loan was a collective decision of the entire Managing Committee. The action of the respondents, thus, cannot be sustained in the eyes of law, hence, is liable to be set aside.

On the other hand, learned Counsel for the respondents have argued that the writ petition itself is not maintainable because the impugned notice itself is appealable under Section 114 (1)(N) before the Authorities enumerated under sub Section 2 of 1984 Act and further it is apparent from the record that petitioner had advanced loan on extraneous consideration which has resulted into loss to co-operative society and, therefore, the petition is liable to be dismissed.

Learned Counsel for the parties have been heard.

It is apparent from the record that the guilt of the petitioner has been adjudicated by the Consumer Forum right upto the National Consumer Dispute Redressal Forum vide order dated 25.05.2005 and it was found that the petitioner herein had committed serious fraud with people including one Ms. Shashi Jain.

The order dated 25.05.2005 and calculation sheet were placed on record vide order dated 17.05.2006 as Annexures A-1 to A-2, respectively. In view of the above, the arguments of petitioner that he is not liable is misconceived and liable to be rejected.

Not only this, it is apparent that the petitioner has an alternative efficacious remedy of filing an appeal under Section 114 (1) (N) and still he preferred the present writ petition, which is not maintainable in the present form, because of alternative remedy available to him.

In view of the above, the present petition is dismissed.

April 29, 2015 **(JASWANT SINGH)**
Gagan **JUDGE**