

CWP No. 15717-2001

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

CWP No. 15717-2001 (O & M)

Date of Decision: 19.02.2015

Amarjit Singh (since deceased) through his LRs

... Petitioner(s)

Versus

The State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Harit Sharma, Advocate,
for the petitioner.

Mr. B.S.Cheema, DAG, Punjab.

Ms. Jagdeep Bains, Advocate,
for respondent no.8.

Paramjeet Singh, J. (Oral)

CM-2123-2015

Allowed, as prayed for. Affidavit of Sh. Subhash Chander, Secretary, the Fatehgarh Korotana, Cooperative Agricultural Service Society Limited, Fatehgarh Korotana, Tehsil Moga, District Moga is taken on record.

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Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a direction to the respondents to

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release the land of petitioner from attachment and to refund the excess amount recovered from the petitioner beyond the amount awarded by the Arbitrator under the provisions of the Punjab Cooperative Societies Act, 1961 (in short, 'the Act').

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that vide award dated 22.09.1987 (Annexure P-2), the petitioner was directed to pay ₹ 1,65,062.65 along with interest @ 16.5% till the date of payment with costs of ₹ 250/-. However, the respondent-Society at its own calculated the due amount with compound interest @ 16.5% per annum w.e.f. 01.10.1987 till payment. Learned counsel further contended that if the award does not specifically mention from which date the interest will be paid, the same can only be calculated from the date of award on simple rate of interest, not on compound interest. The petitioner has already paid the excess amount than the due amount, therefore, he is entitled to refund of excess amount on the same rate of interest at which he had paid. Learned counsel further contended that the amount be got refunded from the Society with interest @ 16.5% per annum.

Per contra, learned State counsel and learned counsel for respondent no.8 vehemently contended that the amount is still due against the petitioner. The petitioner is bound to pay compound interest w.e.f. 01.10.1978 when the amount under reference became due. The

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Society has rightly calculated the amount due applying compound interest w.e.f 01.10.1978 and more amount is still payable by the petitioner.

I have given my anxious and thoughtful consideration to the rival contentions made by learned counsel for the parties.

In the light of arguments addressed by learned counsel for the parties, following question arises for consideration by this Court:

“Whether respondent-Society wrongly calculated the interest payable by the petitioner applying compound interest on the awarded amount from 01.10.1978?”

Before proceeding further, it would be apposite to reproduce Sections 55, 56 and 82 of the Act which read as under:

“55. Disputes which may be referred to arbitration :-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased

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agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;

such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of co-operative society, namely -

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not ;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not; and

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

56. Reference of disputes to arbitration :- *(1) The Registrar may, on receipt of the reference of dispute*

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under section 55.-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

82. Bar of jurisdiction of courts :-

(1) 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 of an amendment of a bye-law;

(b) the removal of a committee;

(c) any dispute required under section 55 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 such terms as he may impose.

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(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.”

Admittedly, the award (Annexure P-2) has been passed by the Arbitrator under the provisions of the Act. Section 55 of the Act refers to 'disputes which may be referred to arbitration', Section 56 of the Act refers to 'disputes to arbitration', and Section 82 of the Act refers to 'bar of jurisdiction of Courts'. Perusal of Sections 55, 56 and 82 of the Act reveals that award passed under the provisions of the Act is statutory in nature.

A Division Bench of this Court in ***Harchand Singh vs. The Khiala Kalan Agricultural Cooperative Service Society Ltd. and others*** 1982 P.L.J. 408 held as under:

“15. The answer to the question posed at the outset is, therefore, rendered in affirmative and it is held that the provisions of the Cooperative Societies Act, 1961, exclude the applicability of section 33 of the Indian Arbitration Act to a statutory Award under section 56 of the former Act.”

A relevant extract of the award dated 22.09.1987 (Annexure P-2) reads as under:

“As the first party has proved its case and the second party does not want to say anything in its defence, I hereby decide that the second party, Shri Amarjit Singh should pay Rs.1,65,062.65 principal, to the other party alongwith interest @ 16.5% till the date of payment and Rs.250/- as costs otherwise the first

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party will be entitled to recover the same by the sale of movable and immovable property of the first party or u/s 63 (c). The decision was announced in the presence of both the parties.”

Perusal of award (Annexure P-2) reveals that it is not mentioned as to how the interest is to be calculated; whether it will be compound interest or simple interest and from which date, it will be payable. Admittedly, the award (Annexure P-2) is silent about the same. The award (Annexure P-2) has become final. Now it is to be answered by this Court when the award or decree is silent about the nature of interest (simple or compound) payable and from which date, the interest will be payable. In that eventuality, it is settled proposition of law that the simple interest will be payable from the date of award till payment. In view of above, the respondent-Society wrongly calculated the interest w.e.f. 01.10.1978, rather it should be calculated from the date of passing the award on simple rate of interest till payment. The aforesaid question is answered accordingly.

Vide order dated 11.02.2015, respondent no.8-Society and Assistant, Registrar Cooperative Societies, Moga were directed to file affidavits calculating the due amount on the simple interest from the date of award. In pursuance of the same, Sh. Navkash Deep Singh, Assistant Registrar, Cooperative Societies, Moga has filed affidavit dated 16.02.2015 and Sh. Subhash Chander, Secretary, the Fatehgarh Korotana, Cooperative Agricultural Service Society Limited, Fatehgarh

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Korotana, Tehsil Moga, District Moga has filed affidavit dated 13.02.2015.

Perusal of award dated 22.09.1987 (Annexure P-2) reveals that the petitioner was ordered to pay the amount of ₹ 1,65,062.65 along with interest @ 16.5% till the date of payment and ₹ 250/- as costs. Fresh calculations were sought on the basis of simple interest @ 16.5% per annum from the date of award to resolve the dispute. Admittedly, the petitioner has deposited an amount of ₹ 3,72,360/- with Society, however, calculation has been submitted by respondent no.8 in his affidavit which comes to be ₹ 3,46,813/- (₹ 1,65,063/- as principal amount, ₹ 1,81,500/- as interest @ 16.5% from the date of award i.e. 22.09.1987 upto 19.05.1994 and ₹ 250/- as costs). Perusal of record reveals that against the amount of ₹ 3,46,813.35 (wrongly mentioned as ₹ 3,33,746/- in para no.9 of writ petition), an amount of ₹ 3,72,360/- has been paid, meaning thereby excess amount of ₹ 25,547/- has been paid by the petitioner. This fact has been admitted by the respondent-society in the affidavit dated 13.02.2015. However, in a guarded manner, the Assistant Registrar, Cooperative Societies, Moga has not depicted the true picture in his affidavit despite the fact that he is a govt. official and is bound to give true facts before the Court. The land of petitioner remained attached despite the fact that the petitioner had paid the amount in excess beyond the amount awarded by the Arbitrator.

In view of above, this Court deems it fit and proper that the petitioner has been harassed unnecessarily in spite of payment of amount

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more than the amount as required to be deposited by him. Resultantly, the land of the petitioner is ordered to be released from attachment forthwith, if not attached in any other case. The Society-respondent no.8 is also directed to refund the amount of ₹ 25,547/-, paid in excess, along with simple interest @ 16.5% per annum w.e.f 20.05.1994 till payment is made as the petitioner had paid the interest to the Society on the same rate. The refund of amount along with interest shall be made within one month from today failing which the petitioner will be at liberty to move appropriate application for non-compliance of order.

Disposed of in the aforementioned terms.

19.02.2015

parveen kumar

**(Paramjeet Singh)
Judge**