IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 382 of 2013
Date of Decision: January 22, 2015

Prem Chand

... Petitioner

Versus

Financial Commissioner, Cooperative, Punjab and others

... Respondents

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. G.S. Gandhi, Advocate,
for the petitioner.

Dr. Deepa Singh, Addl. A.G., Punjab.

Mr. N.S. Vashist, Advocate,
for respondent No.4.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing of order dated 11.02.2011 (Annexure P/20) passed by respondent no.3 – Additional Registrar (D), Cooperative Societies, Punjab and order dated 30.08.2012 (Annexure

P/21) passed by respondent no.1 – Financial Commissioner, Cooperation, Punjab, exercising the powers of State Government under Section 69 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the "Act") on the ground that the same are unjust, illegal, arbitrary, non-speaking, sketchy and the result of grudge nourished by respondent no.3 due to default of respondent no.4.

Brief facts of the case are that petitioner was posted as Manager with respondent No.4, which is cooperative society and advances cash/khad loan to its members as per their needs. The Managing Committee of the Society is elected by the members and the work is supervised by the Inspector, Cooperative Societies. Due to hail storm in village, rabi crops of the members of the respondent-society were damaged to the extent of 76% to 100% as per the report of the Patwari. A resolution dated 24.05.1993 (Annexure P/1) passed in the General Body meeting to convert the short term loan into medium term loan was forwarded to the Assistant Registrar, Cooperative Societies and consequently, short term loan was converted into medium term loan and the signatures of the members on the bonds were verified by the Secretary of respondent no.5 – Society. In order to effect recovery from the members of respondent no.5 – society, two Inspectors were appointed by respondent no.4 vide letter dated 28.02.1994 (Annexure P/4). Some of the members did not pay the loan and denied that they had taken any medium term loan and also denied their thumb impressions/signatures over various documents, as a result of which dispute arose and 26 cases were referred for arbitration in which they allegedly managed the decision in their favour. In order to safeguard the interest of respondent no.4 – The Patiala Central Cooperative Bank Ltd., Avtar Singh Bedi, Deputy Manager was appointed. However, Mr. Avtar Singh Bedi did not defend the case properly rather entire burden was put upon the petitioner, although he has little role to play. Thereafter, charge-sheet was served upon the petitioner with the allegations of negligence/carelessness, misuse of powers of making wrong/fictitious loan advances and violation of instructions issued by NARBARD/RCS/Bank to which the petitioner submitted his reply. Thereafter, respondent no.4 – Bank raised a reference under Section 55 of the Act against the petitioner before Deputy Registrar, Cooperative Societies, Sangrur. Upon notice, petitioner appeared and explained the entire matter taking legal pleas duly supported by the provisions of law. Besides the criminal proceedings, departmental proceedings were also initiated against the petitioner. After the reference, award was given by the Arbitrator against respondent No.6 – Jasvir Singh, Ex-Secretary of the Society and respondent No.4 – Bank. It needs to be noticed that Deputy Registrar considered the reference and thereafter, a reference was initiated against the petitioner before the Deputy Registrar. Deputy Registrar rejected the claim against the petitioner vide order dated 19.02.2003

(Annexure P/10). Thereafter, respondent No.4 – Bank preferred an appeal under Section 68 of the Act before the Joint Registrar (Planning) Cooperative Societies, Punjab. Vide order dated 10.06.2005 (Annexure P/13), Joint Registrar (Planning) set aside the award of the Arbitrator and held the petitioner liable for payment along with expenses and future interest. Against that, petitioner preferred a revision under Section 69 of the Act, which was allowed on 06.10.2006 (Annexure P/14) and the case was remanded to the Joint Registrar (Planning), Cooperative Societies, Punjab. Again, the Joint Registrar (Planning) vide order dated 28.08.2007 (Annexure P/15) set aside the award dated 19.02.2003 passed by the Deputy Registrar and remanded the case back to the Deputy Registrar. The petitioner again filed a revision petition under Section 69 of the Act before the Secretary, Cooperation (A), Punjab. Vide order dated 13.05.2008 (Annexure P/17), the Secretary Cooperation (A), Punjab set aside the order dated 28.08.2007 passed by the Joint Registrar (Planning) and remanded the case to him. Thereafter, vide order dated 16.10.2008 (Annexure P/18), the Joint Registrar (P) dismissed the appeal filed by respondent No.4 – Bank. Against that, respondent no.4 – Bank preferred a revision petition before the Secretary, Cooperation Punjab, exercising the powers of the Punjab Government, under Section 69 of the Act, who set aside the order of the Joint Registrar (P) dated 16.10.2008 and remanded the case to pass a speaking order on the following points vide order dated

26.05.2009 (Annexure P/19):-

> *"i) Whether cheque on the basis of which loan has been drawn was issued by the bank to the member or not in case the cheque has been issued from the cheque book issued by the bank then how the member shirks his liability assigned to him by the Registrar vide instructions dated 12.09.1994. When to keep the cheque book safe was the duty of member.*
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> *ii) As per instructions issued by Registrar dated 12.09.1994 the member himself is to present the cheque in the bank for obtaining cash and cashier of the bank has to get the signatures in his presence after identification and only after it the loan is given. In case the loanee member presents his cheque himself before the manager and the loan is obtained from the cashier after signature then on which ground the loanee member denies the loan. In case a bogus advancement is done how Sh. Prem Chand is responsible for this disbursed amount while the loan is given by the cashier after obtaining the signatures of the loanee member.*
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> *iii) Short Term Loan is converted into Medium Term Loan by the Bank on the written request of the loanee member. In case, ST loan has been converted into MT then whether the request of the loanee member to convert the loan is available with the bank.*
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> *iv) After examining the award of arbitrator it becomes clear that in case of Ronak Ram loan was advanced on 9.12.89 while respondent no.3 has joined this Branch on 13.3.1991. In arbitration case which has been raised against respondent no.3 by the Bank how he is held responsible for this amount.*

v) On examining the arbitration award in respect of Pal Singh son of Inder Singh and Bant Ram son of Sh. Ram Sarup it has been observed that the cheque on the basis of which loan has been given has not been passed by respondent no.3. The cheque has been passed by Sh. Kulbir Singh the then Cashier and the payment has been made by him. But the Bank has raised included this amount against respondent no.3 while raising the reference against him. Respondent no.3 has stated that recovery of the bank dues amounting to Rs. 42 lacs has been affected for the period 20.2.94 to 28.2.94. Whereas no cash recovery has been recorded in the bank. This amount was done by adopting the process of renewal of outstanding loan and the recovery has been entered in the books of the bank. In case loan are renewed by making entry in the books of the bank then how the question of bogus payment of loan arises."

Thereafter, appeal of respondent no.4 – Bank has been decided by the Additional Registrar (D), Cooperative Societies, Punjab vide order dated 11.02.2011 (Annexure P/20) and petitioner has been held liable to pay the amount. Thereafter, petitioner preferred a revision petition, which has also been dismissed by the Financial Commissioner, Cooperation, Punjab, exercising the powers of State Government, vide order dated 30.08.2012 (Annexure P/21). Hence, this writ petition.

In pursuance of notice of motion, respondent nos.1, 2, 3 and 4 filed their separate written statements and contested the claim. To reply filed by respondent no.4, petitioner filed replication along with Annexures

P/23 and P/24 wherein one of the accused Jasbir Singh is stated to have been acquitted.

It is one of the averments in the reply filed by respondent no.4 that the present writ petition is liable to be dismissed on the ground of mis-joinder of necessary parties. Respondent No.4 - Bank is a Cooperative Society registered under the provisions of the Act. The respondent – Bank was one of the parties and was represented by the petitioner. The petitioner was the Branch Manager of the Massingan Branch of the respondent – Bank and during his tenure, most of the loans were passed/cleared by the petitioner and he has himself admitted that he has passed these cheques of the members against whom the arbitration cases were prepared by the Society. Annexure R-4/1 is a circular dated 24.11.1994 issued by the Registrar, Cooperative Societies, containing instructions regarding providing consumption loan to agriculturist members of PACS – Implementation of Scheme. According to these instructions, the thumb impression of the illiterate person shall be attested by the Branch Incharge or in his absence, by person holding the charge of the branch; the Branch Manager shall get the thumb impression/signatures on the back of the cheque in his presence and cash subject to the margin in the limit; the cheque issued by the member on the limit shall be non-transferable and shall be honoured only if accompanied by passbook issued to him; branch of CCB shall maintain a specimen signatures register of members and sanction credit limit society-wise. Various other objections have been raised that earlier award was against the Bank, thereafter, bank made a reference against the petitioner. Petitioner is responsible for causing loss to the bank and embezzlement has been done. It is also one of the averments that petitioner vide Annexure R-4/4, submitted details of each loan wherein he has admitted that posting on the cheque was made by the clerk of the Bank and the petitioner passed the same and the payment was made by the Cashier of the Bank. Besides this, there are other admissions also with regard to the payments and the signatures were also not found to be on the cheques. It is also admitted by the petitioner that the cheque book was issued to the members by the Bank.

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

Learned counsel for the petitioner vehemently contended that the duty of the Secretary is to verify the signatures. Petitioner is not responsible for the same. Learned counsel relied upon instructions dated 12.09.1994 (Annexure P/24) to contend that it was the duty of the Secretary to receive cheques from the members. Secondly, the reference is barred by limitation. Appeal before the Joint Registrar (P) was time barred. No application for condoning the delay was filed along with appeal. Case was remanded to the Joint Registrar (Planning), but has been decided by the Additional Registrar (D). FIR has been lodged with a mala fide intention. FIR was wrongly registered in which one of the accused Jasbir Singh has been acquitted. Proceedings against the petitioner abated vide order dated 26.07.2013 as per Annexure P/23, as the petitioner had died before the date of order dated 26.07.2013. The decision of the Additional Registrar is a mala fide and with a motive. Learned counsel relied upon judgments of this Court in ***Krishan Kumar Sharma vs. Rajpur Sallapur Co-operative Agricultural Services Society Ltd. and others, 2001(2) PLJ, 210,*** judgments of Hon'ble Supreme Court in ***Damodaran Pillai and others vs. South Indian Bank Ltd., 2005(2) Apex Court Judgments 594 (SC), Ragho Singh vs. Mohan Singh and others, 2003(1) RCR (Civil) 40*** and Hon'ble Bombay High Court in ***Veetrag Investments and Finance Co. vs. M/s Premier Brass & Metal Works Pvt. Ltd. (Bombay), 2003(1) RCR (Civil) 41.***

Per contra, learned counsel for the respondents addressed joint arguments. However, learned counsel for respondent No.4 vehemently contended that there is categorical admission of the petitioner in para no.5 of Annexure R-4/4 that posting on the cheque was made by the Clerk of the Bank and the petitioner passed the same and the payment was made by the Cashier of the Bank and the cheque book was issued to the members by the earlier Manager. It has been vehemently contended that although the case was remanded to the Joint Registrar (Planning), but the post was subsequently abolished. Thereafter case was entrusted to the

Additional Registrar (D) who was in equivalent rank and thus, the case has been decided by the competent authority. It does not lie in the mouth of the petitioner that the Additional Registrar has wrongly decided the same specifically when the post of Joint Registrar (Planning) was abolished. Learned counsel for respondent No.4 further contended that question of appeal being time barred does not arise when on the revision of the petitioner, case was remanded. It was specifically directed that the Joint Registrar (Planning) should decide the appeal on merit. Petitioner never raised any objection nor this point was argued before the revisional authority. Otherwise also, the appeal was within time from the date of knowledge. Reference is a statutory reference and is not contractual obligation that in the case of ordinary arbitration proceedings, principle of limitation will not apply and otherwise also, this is a case of fraud whereby the signatures/thumb impressions of the members of the Society have been forged and fabricated. Where there is a fraud, question of limitation does not arise. Learned counsel further vehemently contended that as per instructions dated 24.11.1994 with regard to loan to agriculturist members of PACS, the passbook is issued by the Manager at the counter and Branch Manager shall get the thumb impression/signatures on the back of the cheque in his presence and encash it subject to the margin in the limit. It is also mentioned in the instructions that thumb impression of the illiterate person shall be attested by the Branch Incharge or in his absence, by person holding the charge of the branch. In this manner, Branch Manager is personally responsible for verifying the signatures on the cheques and availability of the passbook is necessary. It is also contended that vide order dated 26.05.2009, the Secretary Cooperation exercising the powers of the Punjab Government has remanded the case and had raised seven points for determination which has been dealt with minutely by the Additional Registrar with reference to the documentary evidence and instructions on record. Findings of fact have been recorded by the authorities which cannot be assailed in a writ jurisdiction. Petitioner has failed to point out any illegality or perversity in the impugned orders.

I have considered the contentions raised by learned counsel for the parties.

The seven points reproduced herein above, were raised by the Secretary Cooperation exercising the powers of the Punjab Government and the same have been dealt with by the Additional Registrar one by one and specific findings have been recorded that cheque books of the members were with the Secretary of the Society. Secretary and Branch Manager in connivance with each other have cheated the members. It is very much clear from the awards. There is categorical finding that amount has not been paid to the members but has been embezzled. All the cheques were passed by the petitioner. It was manager's duty to identify the member and he is responsible for that except one case of Ronak Ram, who was given loan on 09.12.1989 prior to the joining of the petitioner as Branch Manager because he joined this Branch on 31.03.1991, all the other loans have been advanced during the tenure of the petitioner. There is finding that book entries made in respect of the cheques have been attested by the petitioner. Annexure R-4/4 is document of the petitioner wherein in para no.5, it has been written that posting of the cheque was made by the clerk of the bank and petitioner passed the same and the payment was made by the cashier. For that reason, the petitioner is responsible for that. It is one of the arguments advanced before the Additional Registrar that the petitioner has urged that these loans were not issued. It is only paper transactions. Firstly, recovery was shown afterward advances were shown. Finding has been recorded that as per the bank record amount of recovery has not been shown as advances to those members, rather has been shown to have been advanced to other loanee members and the contention was rejected. After perusal of the record, appellate authority – Additional Registrar had found the petitioner to be responsible. The contention that Joint Registrar (Planning) should have decided his case, is fallacious as the post of Joint Registrar (Planning) was abolished and thereafter, Additional Registrar was entrusted the task which is competent authority under the provisions of the Act. The findings recorded by the Additional Registrar are based on the appreciation of evidence which have been affirmed by the Financial Commissioner, exercising the powers of State Government.

The judgments cited by learned counsel for the petitioner, are not applicable in the facts of the present case. Findings of fact have been recorded after appreciating the evidence.

Learned counsel for the petitioner has failed to point out any illegality or perversity in the impugned orders and the findings of fact recorded by the authorities. Even if it is presumed for the sake of arguments that provisions of Limitation Act are applicable even then everything was fraudulent, therefore, no limitation will apply when the act is based on fraud.

In view of above, instant writ petition is dismissed.

No order as to costs.

January 22, 2015 **[Paramjeet Singh]**
vkd **Judge**