IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10611 of 1992
Date of decision: 11.1.2016

Swarn Chand … Petitioner

Versus

State of Punjab & ors. … Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashwinie Kumar Bansal, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl.A.G., Punjab.

Mr. Kuldeep Singh Saini, Advocate,
for respondent No.5.

Mr. Harit Sharma, Advocate,
for respondent No.6.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. Challenge in this petition is to the Punjab Government order dated July 23, 1992 (Annexure P-5) and the order of the Additional Registrar (C) Cooperative Societies dated August 7, 1991 (Annexure P-4). The relevant facts necessary to decide the *lis* are that at the relevant time the petitioner worked as a Secretary with the Jatpur Cooperative Agricultural Service Society Limited, Tehsil Anandpur Sahib, District Ropar. Respondent No.6-Dilbagh Singh was a salesman of the society. It was the duty of Dilbagh Singh to purchase essential commodities on behalf of the cooperative Bank required for daily use such as sugar, ghee,

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flour, pulses etc. He had authority to purchase the goods from the market independently and to sell the same onward without any approval. The sale proceeds were required to be deposited with the Secretary of the Bank. However, Dilbagh Singh failed to deposit the sale proceeds either with the Secretary or with the Bank and thus a sum of Rs.37,388.09 became recoverable from him. The said amount remained due in essential commodities register maintained by him. On January 16, 1986 Dilbagh Singh admitted his liability in writing before the Inspector Cooperative Societies, Dunewal. A copy of the letter of admission has been placed at Annexure P-1. The petitioner has signed the document on even date and has put his signatures on the document on the same day. The translated copy of the admission reads as follows:-

> "It is submitted that the notice has been issued by you on 8.12.85 for depositing Rs.32,388.09. Regarding the same I request that the said amount has been correctly worked out against me but I will deposit the amount within a month after understanding the calculation thereof. If, I fail to deposit the said amount, legal action may be taken against me. As such it is submitted that I will deposit my security amount also within one month in favour of the society. As such it is requested that no further action be taken against me before the expiry of one month."

2. In order to recover its money, the society raised an arbitration dispute against Dilbagh Singh and the present petitioner including respondents No.7 to 13 who were either ex-President or Vice-President or ex-members of the Committee of the Cooperative Society. The Arbitrator, who was the Assistant Registrar, Cooperative Societies,

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asked the petitioner and Dilbagh Singh to show cause as to what amounts are due from each of owed them to the society. While Dilbagh Singh admitted to a sum of Rs.5600/-. The petitioner owed up to Rs.5820/- as reimbursable in favour of the society-Bank. An award was passed on January 19, 1987 to the effect that the difference between the admitted value as against Rs.37,388.09 was the liability of only the petitioner to make good and not the 6th respondent.

3. Aggrieved by the award, the petitioner filed an appeal before the Deputy Registrar, Cooperative Societies, Ropar. By the appellate order dated November 10, 1988 the award was set aside. The liability was reversed to read against Dilbagh Singh. The petitioner urged that the society owed money to him which were deposits of sums of money returnable, that is, a sum of Rs.1200/- and another sum of Rs.2100/-, the latter due towards his salary account and he was prepared to deposit the remaining amount subtracted from the admitted amount. This also the position reflected in the audit report dated June 30, 1985. The other vital fact asserted is that the admitted amount of Rs.5820/- has nothing to do with the sale proceeds of buying and selling essential commodities for the society. Thus, the liability was fastened on the 6th respondent.

4. Aggrieved by the appellate order Dilbagh Singh filed a revision before the Registrar Cooperative Societies, Punjab under Section 69 of the Punjab State Cooperative Societies Act, 1961. The revision was marked to the Additional Registrar (Credit) Cooperative Societies, Punjab. Dilbagh Singh succeeded in his revision and the appellate order was set aside vide order dated August 7, 1991 which restored the order of

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the Assistant Registrar Cooperative Societies, Anandpur Sahib of January 9, 1987.

5. Dissatisfied with the order of the Additional Registrar, the petitioner who then became aggrieved party filed a revision petition before the State Government, the 1st respondent, that is, before the Commissioner (Appeals) Jalandhar Division, Jalandhar who vide his order dated July 23, 1992 dismissed the revision petition holding that second revision petition is not maintainable. Consequently, merits of the case were entered upon.

6. Against the impugned order rejecting the revision petition for want of maintainability, the petitioner has approached this Court in the present petition. He relies on a Division Bench judgment of the Madhya Pradesh High Court at Jabalpur delivered in **Nathu Ram v. District Cooperative Bank,** 1971-72 Cooperative Law Journal-40, to contend that Section 72 of the Madhya Pradesh Cooperative Societies Act, 1960 and Section 69 of the Punjab State Cooperative Societies Act, 1961 are in pari materia. The Madhya Pradesh High Court held that the Registrar and the State Government exercise concurrent jurisdiction and when one of them has exercised power then the other one is not denuded to exercise the power of revision in an appropriate case. The Court held that no doubt the principle applies when the two tribunals are of coordinate rank but it has no application when one is the superior authority and the other of an inferior rank. The fact that the Registrar had already revised the order did not stand in the way of the State Government entertaining a further application for revision against the

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Registrar's order. Besides, the petitioner has cited in the petition two instances in his favour where such authority has been exercised in Punjab. For instance, the Commissioner (Appeals) Jalandhar Division, Jalandhar exercised revisional jurisdiction in two cases, namely, **Tara Singh v. Registrar Cooperative Societies, Punjab** and **Gurdial Singh vs. Registrar Cooperative Societies,** where the Commissioner, Jalandhar Division held that a second revision petition is maintainable before the State Government against the revisional order passed by the Registrar Cooperative Societies, Punjab or his delegate. Section 69 of the Act lays down that the State Government and the Registrar may, suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal under Section 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar as the case may be, may, after giving person affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit.

7. Learned counsel Mr. Ashwinie Kumar Bansal appearing for the petitioner argues that a second revision petition before the State Government is competent and maintainable and rejection of the second revision on point of maintainability was erroneous exercise of jurisdiction and this gives rise to an error apparent on the face of record. I would agree with the legal proposition propounded by the learned counsel for

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more than one reason including on account of demands of justice would require the State Government to take a look once again at the issue in dispute on merits, which results in evil civil consequences if explored in some detail.

8. In **Brij Lal v. State of Punjab and others,** 1973 PLJ 462, it was held that the appellate authority will not exercise the revisional power against its own orders passed in appeal, but an authority higher than the appellate authority is competent to exercise the revisional powers even in the case where the first appeal has been provided under Sub-Section (1) of Section 68 of the Act. If an appeal is preferred Under Section 68 of the Act to the State Government, the State Government will have no revisional power under Section 69 of the Act against the order passed in appeal, and in case an order in appeal under Section 68 of the Act has been passed by the Registrar, the Registrar has no power of revision against the order passed in appeal. As per Section 69 of the Punjab Act before the revisional powers are exercised, either by the State Government or the Registrar, the first question that will be determined is if an appeal lies under Section 68 against that particular decision or order. If the reply is in the affirmative, then the person, who is desirous of invoking the revisional powers, will be directed to file an appeal against that decision or order to the authorities specified in Section 68 (2) of the Act. If no such appeal is competent, then the Registrar or the State Government will exercise their revisional powers. If on appeal the decision has been taken or the order has been passed by the Registrar or his delegate then the revision will lie to the State Government. If, on the

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other hand, the order has been made by any of the authorities subordinate to the Registrar, then in that case the Registrar will possesses revisional powers.

9. On facts, Mr. Bansal contends that the Additional Registrar ignored the fact that the amount in question i.e. a sum of Rs.32,690.99 was on account of sale proceeds of essential commodities. For this, only Dilbagh Singh, salesman was accountable which burden is fortified by his admission in writing owning up to Rs.32,388.09/-. There are some variations in the amounts but those have not any material bearing on the result of the litigation. The petitioner could not be saddled with financial liability incurred by Dilbagh Singh as it was not his responsibility to deposit the sale proceeds of the essential commodities with the Cooperative Bank. It is not the case that Dilbagh Singh handed over the sale proceeds to the petitioner for deposit and there was a failure by the petitioner to make further deposit. Moreover, an amount of Rs.5820/- found due from the petitioner to the society in the audit report dated June 30, 1985 has nothing to do with the dispute which relates to the sale of essential commodities. In this manner, Mr. Bansal contends and I think rightly so, that the well reasoned order passed by the Deputy Registrar deserves to be restored. There is still another reason canvassed for the petitioner to demolish the impugned order, which is, the revision petition No.4 of 1990 was entrusted by Registrar Cooperative Societies, Punjab to the Assistant Registrar (D) Cooperative Societies on January 4, 1990. The case was heard on June 4, 1991 and orders were reserved. Thereafter, Sh. Sulekh Chand was transferred from the post of Additional Registrar

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(D) to the post of Additional Registrar (C) on July 24, 1991. There is no order of the Registrar Cooperative Societies, Punjab transferring file of revision petition No.4 of 1990 from Additional Registrar (D) to Additional Registrar (C). It is contended that an order of transfer could be passed only after notice to both the parties. No such notice was issued to the petitioner by the Registrar even if it be assumed that the case was transferred by the RCS from Additional Registrar\(D) to Additional Registrar (C) even then an order transferring a file is not to be passed without hearing a party. No notice of transfer makes the subsequent order passed by the transferee authority a nullity. Mr. Harit Sharma, appearing for 6th respondent Dilbagh Singh has not been able to show that a second revision is not maintainable. He would then faced with the situation canvass for the 6th respondent that if a second revision is maintainable even then the impugned order can be set aside and the case remanded for passing of a fresh order on merits in accordance with law. In the written statement filed by the society the issue of maintainability had been addressed in para 14 in the following manner:-

> "14. That under Section 69 of the Punjab Cooperative Societies Act, 1961 only one revision is competent. The position of law is in case the appellate orders under Section 68 of the Punjab Cooperative Societies Act, 1961 is passed by the Registrar or by an authorized Registrar the revision petition will be competent before the State Government. But in case the appellate order has been passed by the authority other than the Registrar or the authorized Registrar than in that case the revision petition can be filed before the Registrar as well as before the State

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> Government as both these authorities has concurrent jurisdiction. In the present case, the arbitration award dated 19.1.1987 has been passed by the Assistant Registrar, Cooperative Societies, Anandpur Sahib in exercising the powers of the Registrar, Cooperative Societies, Punjab. As per Section 3(5) of the Punjab Cooperative Societies Act, 1961 the order passed or decision made by such person shall, for the purpose of appeal, be deemed to be the order or decision of that person and not of the Registrar. It is stated that arbitration award Annexure P-2 shall be considered the award given by the Assistant Registrar. Under Section 68(2)a the appeal against the decision or order made by the Assistant Registrar will lie to the Deputy Registrar and not to the Registrar, so the appellate order will be of the Deputy Registrar. In the present case Annexure P-3 i.e. the appellate order has been passed by the Deputy Registrar, Cooperative Societies, Ropar. Against Annexure P-3 the revision petition can be filed before the Registrar, Cooperative Societies, Punjab as well as before the State Government. Revision was heard and disposed of by the Additional Registrar under orders of the Registrar, Cooperative Societies, Punjab. After availing the remedy of revision before the Additional Registrar, no 2nd revision petition is competent before the State Government."

10. A reading of the order passed by the Additional Registrar (Credit) exercising power of Registrar Cooperative Societies, Punjab shows complete lack of due consideration with respect to the admission made by Dilbagh Singh on January 16, 1986, as quoted above. Mr. Bansal submits that such a vital piece of incriminating evidence was not paid due regard to by the Assistant Registrar (Credit) Cooperative

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Societies, Punjab, while accepting the revision petition filed by Dilbagh Singh is a fatal flaw in the proceeding. He is right when he makes this submission since the admission was a relevant fact, which has not being considered. I would, therefore, not accept plea raised for the remand of the case to the State Government after 24 years.

11. For the foregoing reasons, this petition is allowed. A writ of certiorari is issued invalidating both the impugned orders dated August 7, 1991 and of July 23, 1992. If the amount admitted by the petitioner in a sum of Rs. 5820/- has not been deposited so far by the petitioner it would be deposited with the respondent society within one month from the date of receipt of a certified copy of this order. Needless to say, the balance amount remaining in terms of declarations in this order will be deposited by the party liable or else remain recoverable with interest as fixed on bank deposits from year to year from the due dates.

(RAJIV NARAIN RAINA)
JUDGE

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