

Sr.No.225

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-26390-2013(O&M)

Decided on: 09.02.2016

Gurmail Singh and anotherPetitioners

vs.

State of Haryana and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. Vineet Chaudhary, Advocate for the petitioners.

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

Mr. A.K.Jain, Advocate for respondent no.6.

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Mahesh Grover, J

CM-1625-2016

Allowed, as prayed for.

Main Case

Briefly stated facts are that Navyug Cooperative Non-Agriculture Thrift and Agricultural Credit Society Limited, Ambala (hereinafter called as 'society') was facing winding up proceedings under Section 105 of The Haryana Cooperative Society Act, 1984 (hereinafter called as 'the Act') before the competent authority. An Official Liquidator had been appointed to take over the charge of the society. The society was revived in 2007 and a board of Administrators was appointed consisting of one Kuldip Singh SI, petitioner Dr. Gurmail Singh and one Pritam Singh to take over the charge of the society as also its records. One hundred and eight cases were filed before the Assistant Registrar Co-operative Society (hereinafter called as 'ARCS') for effecting recovery of the borrowed amount from the borrowers. In the process permission was also granted to lodge FIRs and some officers of the society were also arrested.

The present petitioner along with one Ravinder Kaur, who were also depositors of the society filed a petition under Sections 102/103 of the Act claiming that Sh.Sudhir Bansal, the present respondent no.6 received an amount in question under the name and style of the society. In short misappropriation and embezzlement were the charges against the said respondent no.6. A prayer was made that award be passed directing him to refund the fixed deposits along with interests. Proceedings were initiated before the Arbitrator who passed an award on 12.06.2009 for an amount of Rs.18,50,000/- as principle along with interest @ 18% per annum to be paid by Sh.Sudhir Bansal in favour of Sh.Gurmail Singh and Smt. Ravinder Kaur. A direction was issued to the ARCS Ambala to execute award under Section 110 of the Act.

The present respondent no.6 moved an application before the Registrar Cooperative Societies, Haryana (hereinafter called as 'RCSH) for setting aside the exparte award dated 12.06.2009 stating that he was in custody and was released on bail in February 2010. The RCSH vide its order dated 31.03.2011 ordered the Chief Auditor to decide the matter afresh after granting adequate opportunity of being heard to respondent no.6. The case was heard by Auditor on various dates. In this proceeding, the petitioner moved an application before the RCSH who took up the matter again on 03.11.2011 and recalled his earlier order dated 31.03.2011. Despite this an order dated 07.12.2011 was passed seeking to attach 1/3rd salary of Sh.Sudhir Bansal.

Respondent no.6 then filed a revision petition under Section 115 of the Act challenging the orders dated 24.08.2007; 27.08.2007, 27.08.2008 and 3.11.2011.

It would be relevant to extract some portions of the zimni orders passed during the course of hearing resulting into the grievances raised by respondent no.6 before the Arbitrator eventually culminating in the order of the

Additional Chief Secretary to Government of Haryana impugned herein:-

“Present: Sh.Gurmail Singh in person.

Sh.S.K.Aggarwal counsel for Sudhir Bansal has not come present. Next date is fixed for 21.04.2009 at 03:00 p.m. Summon be given by hand to Sh.Gurmail Singh for Sh.Bansalo.

Sd/-

Addl.R/C.A. 24.3.09

21.4.09

Present Sh.Gurmail Singh in person.

Sh.Aggarwal has not come present.

Inspite of sending him regd. summon. Hence next date is fixed for 12.5.09 at 03:00 p.m.

Sd/-21.4.09

Addl.R/C.A

12.5.09

Present: Sh.Gurmail Singh in person.

Arguments heard. The judgment is kept reserved.

Sd/-

Addl.R/C.A

12.5.09”

It is pertinent to mention here that respondent no.6 was in custody w.e.f 18.09.2008 to 13.02.2010 and he was never initiated about the process even though the petitioner served an intimation on his counsel.

This is one of the grievances of the respondent no.6 as noticed in the impugned order that service of the proceedings had to be effected in terms of the **Punjab Prisoners (Attendance In Courts) Rules, 1969**, paras 5 and 6 of the Rules are extracted herebelow:-

5. How a process is to be served on a prisoner

[Section 9(2)(d)] When any process directed to

any person confined in any prison is issued from any criminal or civil court, it may be served by exhibiting to the Superintendent of Prison the original of the process and depositing with him a copy thereof.

6. Process served to be transmitted at prisoners' request. [Section 9(2)(d)]- (1)

Every Superintendent of Prison upon whom service is made under rule 5 shall be as soon as may be, cause a copy of the process deposited with him to be shown and explained to the person to whom it is directed and shall thereupon make an endorsement on the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under the charge and that he has been shown and explained the contents of the process.

On 31.03.2011 an order was passed by the RCSH accepting the prayer of the respondent no.6 regarding a hearing keeping in view the proceedings against him wherein he was never served. The RCSH vide this order remanded the matter back to the Chief Auditor. Subsequently the same officer once again took up the matter on the very same application which stood concluded vide order dated 31.03.2011 and by virtue of this order dated 03.11.2011 noticed that since respondent no.6 Sudhir Bansal was represented by his counsel Sh.S.K.Aggarwal, his default was intentional. He, thus, dismissed the application. It is against this order that the respondent no.6 preferred a revision petition before the Additional Chief Secretary who accepted the same by holding that the RCSH had no authority in law to review his own order once having commented upon it in favour of respondent no.6 to remand the matter back to the Chief Auditor for hearing afresh after giving adequate opportunity of being heard.

The Additional Chief Secretary vide its order dated 08.10.2013 accepted the plea by negating order dated 03.11.2011 passed by the RCS and

restoring the earlier order with the further direction to the parties to appear before Registrar Cooperative Societies on 17.10.2013.

This is the cause of the grievances of the petitioner.

On due consideration of the matter, I am of the view that the impugned order is perfectly justified and the petition sans any merit to deserve dismissal.

When the facts are seen in their totality, respondent no.6 was completely deprived of an opportunity to contest his case since he was in custody and thus oblivious of the proceedings. The RCS remitted the matter back to Chief Auditor for decision afresh with a direction to grant hearing to respondent no.6. This was in complete conformity with the principles of **Audi alteram partem** warranting the adherence to principles of natural justice. It is, thereafter, the RCS fell in grave error by reviewing its own order and deciding the same application which already stood determined. This was totally impermissible in law. If any of the parties had any grievance against the order of the RCS passed earlier on 31.3.2011 remanding the matter for a fresh decision, the same could have been challenged before the appropriate authority in accordance with law but under no circumstances could the same have been reviewed by the very same officer on the same application which already stood determined. The order being patently erroneous was rightly set aside by the Additional Chief Secretary.

For the aforesaid reasons, I do not find any reason much less or sustainable also to interfere in the impugned order.

The petition is, therefore, dismissed.

09.02.2016

mamta

(MAHESH GROVER)

JUDGE