

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

**RSA No. 2083-2013(O&M)
Date of decision : 15.11.2016**

Baldev Singh and another

..... Appellants

versus

**Registrar Co-operative Societies and
others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rahul Sharma, Advocate and
Mr. N.S.Dadwal, Advocate for the appellants.

Mr.Vikas Singh, Advocate for respondents No.2 and 3.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs are aggrieved of the judgment and decree rendered by learned trial Court dismissing their suit seeking declaration to the effect that attachment order of their land measuring 26K-6M and 2K-2M is illegal, null and void and that rapat No. 341 dated 12.4.2006 and rapat No.342 dated 12.4.2006 entered in their revenue record are also liable to be set aside. The appeal preferred against the said order has also been dismissed.

Learned counsel appearing on behalf of the appellants submits that the declaration has been sought on the premise that plaintiffs stood surety for Shamsher Singh son of Mastan Singh r/o village Cheema, Tehsil Jagraon who was working as Secretary in the Cheema Agricultural Society Limited, Cheema vide affidavit dated 22.4.2004. It was included in the said affidavit that plaintiffs were not responsible for any fraud or embezzlement

committed by Shamsher Singh. One Banta Singh son of Hoshiar Singh vide affidavit dated 12.9.2003 stood surety for aforesaid Shamsher Singh for any receipt whose payment has not been made after the date of execution of affidavit dated 12.9.2003. The authorities, attached the aforementioned property of the plaintiffs on the ground that Shamsher Singh had committed certain embezzlement as some amount was outstanding. He submits that aforesaid attachment order has been passed on the basis of some previous proceedings between Shamsher Singh and the society. The trial Court much less the lower Appellate Court has misconceived and misconstrued the provisions of Section 82 of the Punjab Cooperative Societies Act, 1961(hereinafter referred to as 'the Act' for short) by holding that the jurisdiction of the civil court was expressly barred. He submits that Section 82 of the Act would not apply to the facts and circumstances of the case as it only deals with the proceedings held between the members and the society. He submits that had the embezzlement been made after 22.04.2004, the plaintiffs would have been certainly liable but not liable for the transactions which had taken place prior to date i.e. 22.4.2004. In support of his contention he relies upon **Central Bank of India v. Virudhunagar Steel Rolling Mills Ltd. and others** reported as **2016(3) CCC 305(S.C.)**.

On the other hand learned counsel for the respondents submits that as per the provisions of Section 82 of the Act the jurisdiction of the civil court is barred as mandatory notice under Section 79 of the Act was liable to be served upon the defendant-respondents which was not done. He does not dispute the contents of the affidavit vide which the appellant-plaintiffs stood surety for the acts and conduct of Shamsher Singh post 22.4.2004. He submits that both the Courts below rightly declined to interfere into the

controversy owing to the jurisdictional error.

I have heard learned counsel for the parties and gone through the record of the case.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others, 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of

Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]
cannot be sustained and is thus overruled." [at paras 27 – 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the

Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

I am of the view that the provisions of Section 82 of the Act would not apply to the facts and circumstances of the case as it pertains to the matter between the members of the society. Section 82 reads as under:-

“82. Bar of jurisdiction of Court:- (1) Save as provided in the 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 any 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 .
- (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.”

The facts noticed above would reveal that the appellants stood surety for

Shamsher Singh post 22.4.2004. The courts below have culled out from the pleadings in the written statement that the embezzlement was prior to the period 22.4.2004. The aforementioned view of mine is also fortified from the ratio decidendi in the case of Central Bank of India (supra) where it has been specifically held that guarantor would not be liable for prosecution for the liabilities which had been incurred in past. In my view since the suit was also maintainable and liability is prior to the date of the suit, therefore, the attachment order was totally erroneous. Even otherwise no opportunity of hearing was given to the appellant-plaintiffs before issuing attachment order.

These facts have not been noticed by the Courts below in the judgments rendered by them and there is a gross illegality and perversity in the same. In the circumstances the appeal is allowed and the judgment and decree of both the Courts below is set aside and the suit of the plaintiff-appellants is decreed. Decree sheet is ordered to be prepared accordingly.

(AMIT RAWAL)
JUDGE

November 15, 2016
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No