

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

CWP No.18192 of 2015 (O&M)

Date of Decision: May 02, 2017

Mohan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. M.S. Kang, Advocate
for the petitioner.

Mr. L.S. Virk, AAG Punjab.

JAISHREE THAKUR, J. (Oral)

The petitioner herein seeks to challenge the action of the respondents and to quash the notices Annexures P1 to P6 dated 07.07.21015 and Annexures P14 to P19 dated 06.08.2015 being ultra vires the procedure prescribed.

2. In brief, the facts are that the petitioner joined services of the Nawanshahr Central Co-operative Bank Limited, Nawanshahr, in the year 1979 and worked for the Bank over 28 years. He was dismissed from services on the basis of an ex parte enquiry, on the account that he remained absent from the Bank since 15.11.2005. The petitioner while working in the bank had taken six loans, such as, house building loan, loan against salary,

scooter loan, wheat loan etc. from the Bank and the repayment of the said loans was being made from his salary every month. The repayment of the loans was stopped, since he was not paid salary from October, 2005. It is contended that the Bank never demanded repayment of the same and there was no refusal on the part of the petitioner. However, the petitioner was issued six notices dated 07.07.2015, summoning him as a defaulter under Section 68 of the Act, asking him to appear before respondent No.2 on 27.07.2015. On enquiry, he came to know about passing of six ex parte awards dated 18.12.2009 against him, in respect of the six loans. It is contended that the ex parte arbitration proceedings are not maintainable against him, since the ex parte awards have been passed, without following the procedure prescribed. It is further contended that since the awards are ex parte orders, no recovery proceedings could be effected against him by ordering arrest and detention. Moreover, there is absolute non-compliance of Section 63 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act'), which provides for execution of the award. Before notices of arrest and detention could be issued, the Registrar has to resort to other remedies available. At the time of filing of the writ petition, the petitioner had filed an appeal, which was pending consideration, however, on account of the orders of arrest issued in compliance of Section 63 of the Act, the petitioner had no other remedy, but to file the instant writ petition.

3. Mr. M.S. Kang, learned counsel appearing on behalf of the petitioner contends that after the arbitrator is appointed, Rule 53 of the Punjab Co-operative Societies Rules, 1961 (hereinafter referred to as 'the Rules') provides for communication of date, time and place of hearing. It is

vehemently contended that the petitioner was never made aware of the proceedings. Further, reliance has been placed upon Rule 74 of the Rules, which provides for mode of summons and as per the said Rule, summons can be effected either by tendering it to the person or tendering it to an adult member of the family or by sending the same by registered post. If there is non-compliance of the same, the proceedings itself is vitiated and the arbitration award is liable to be set aside.

4. Per contra, Mr. L.S. Virk, learned AAG Punjab, appearing on behalf of the respondents-State urges that the petitioner was duly informed about the proceedings pending before the Arbitrator. In this regard, notices were sent by UPC, but despite that, the petitioner did not appear. It is also urged that against the six loans availed of by the petitioner, each loan had a guarantor. After the petitioner defaulted in repayment of the loan amount, notices were served not only on the petitioner, but also on all the six guarantors, who appeared before the Arbitrator. Therefore, it cannot be said that the petitioner was not aware of the proceedings, pending before the Arbitrator and as such, the petitioner is entitled to invoke the writ jurisdiction of this Court.

5. I have heard learned counsel for the parties and with their assistance, minutely perused the record of the case.

6. The petitioner had availed of six different loans from his employer-Bank and admittedly, was a defaulter thereof, which led to the arbitration proceedings being initiated against him. As per Rule 53 of the Rules, after arbitration proceedings have been initiated, the arbitrator, as the case may be '**shall**' communicate the date, time and place of hearing the

dispute to all the parties concerned. Rule 53 of the Rules reads as under:-

“53. Communication of date, time and place of hearing:-[Section 85(2) (xviii)]-In an arbitration proceeding, the Registrar, or the Arbitrator, as the case may be, shall communicate the date, time and place of hearing the dispute to all the parties concerned.”

The use of word '**shall**' in the aforesaid Rule, makes it mandatory for the Registrar or the Arbitrator, in any proceedings that have been initiated, to communicate the date, time and place of the hearing of the dispute to all the parties concerned, which would be inclusive of the person invoking the arbitration proceedings and the opposite party. In this regard, the law is well settled by the Full Bench of this court in **“*Ran Singh vs. The Gandhar Agricultural Cooperative Service Society, Gandhar*”**, 1975 P.L.J 162(F.B.).

7. On the asking of the court, a short affidavit has been filed in this court by Mr. Jagjit Singh, Assistant Registrar, Co-operative Societies, Nawanshahar, which would reflect that the Registrar has gone through the arbitration files *“but has not been able to find any notice mentioning the date of hearing before the arbitrator.”* A reading of the said affidavit would lead one to conclude that there are no such notices available on the record.

8. The argument of learned counsel appearing on behalf of the respondents-State that the petitioner in active connivance and while being hand in glove with the other employees, had been able to remove the notices, would not be sustainable, since there is nothing on record to

substantiate such an argument. Furthermore, the only thing that is available on the record is that UPC notices were sent, which is not sufficient to establish that the UPC carried the communication/notices in terms of Rule 53 of the Rules. Even otherwise, Rule 74 of the Rules, provides for mode of service of summons under the Act on any person. Sub-Rule 3 of Rule 74 reads as under:-

“(3) The service of summons under the Act on any person may be effected in any of the following ways:-

- (a) by giving or tendering it to such person; or
- (b) if such person is not found by leaving it at his last known place of abode or business or by giving or tendering it to some adult member of his family; or
- (c) if the address of such person is known to the Registrar or other authorized person, by sending it to him by Registered post; or
- (d) if none of the means aforesaid is available by affixing it at some conspicuous part of his last known place of abode or business.”

9. In the instant case, admittedly, the notices have been sent by UPC, which is not prescribed under the said Rule. Therefore, this court is of the opinion that there was non-compliance of Rule 53, insofar as, making the petitioner aware of the arbitration proceedings that had been initiated against him and giving him an opportunity to appear and defend himself.

10. An argument has been raised that guarantors had appeared and were aware of the proceedings, which would necessarily mean that the petitioner herein was aware of the proceedings pending against him, but this argument does not have much legs to stand upon. As per Rule 53 of the Rules, the communication has to be addressed, specifying the date, time and

place of hearing of the dispute, to all the parties concerned, which is not borne out from the record.

11. Apart from this, the appeal of the petitioner has been rejected on the ground that there was a delay in filing the same and the petitioner had not appeared before it. However, in view of the fact that the petitioner was not served in the arbitration proceedings itself, this court deems it appropriate to set aside the impugned notices and the arbitration award and remand the matter back for re-consideration.

12. In view of the above, the impugned notices and the arbitration award itself, are hereby set aside and the matter is remanded back to the respondents-State with the directions to appoint a new arbitrator/arbitrators in the matter within a period of two weeks from the date of receipt of certified copy of this order. The petitioner herein is to be served with the copy of the claim petitions and given an opportunity to defend his case. Let the arbitration proceedings be started *de novo* and concluded as expeditiously as possible within a period of eight months thereafter.

13. The writ petition stands allowed accordingly.

May 02, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No