

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

C.W.P.No.983 of 2011 (O&M)

Date of Decision: March 03, 2017

Sham Lal

...Petitioner

Versus

The Assistant Registrar Cooperative Societies, Ambala & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mrs.Kiran Bala Jain, Advocate,
for the petitioner.

Mr.Sandeep Singh Mann, Sr.DAG, Haryana,
for the State.

Mr.Pardeep Solath, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the notice dated 20.12.2010 (Annexure P-2), whereby notice has been given for sale of House No.1784, Ward No.1, Balmiki Colony, near Hari Palace, Ambala City on account of non-payment of Rs.6,96,239/-, i.e., principal amount of Rs.1,00,000/-, interest Rs.5,95,239/- and expenses of Rs.1000/-.

Mrs.Kiran Bala Jain, learned counsel for the petitioner submits that the petitioner had availed the loan facility for construction of the house by raising loan of Rs.1,00,000/-, to be paid in 20 years in quarterly instalments. There was some default on behalf of the petitioner, much less O.T.S.Scheme was formulated by the Society. Petitioner could not avail such opportunity and on incorrect legal advise, filed a civil suit challenging

the notice and only on receipt of the letter, filed the present writ petition.

She further submits that during the course of the hearing, this Court, vide order dated 27.1.2015, with the consent of the parties, appointed Shri Sanjay Garg, Chartered Accountant as an expert to assess the outstanding dues with penal interest and without penal interest. As per the report of the Chartered Accountant, with the penal interest, amount comes to Rs.24,20,598/- and with simple interest is Rs.2,60,629/- as on 26.2.2015, which is reflected from Page 91 of the paper book. As of today, the petitioner has deposited a sum of Rs.4,50,660/- (Rs.2,60,000/- which was to be paid as per the report of the Chartered Accountant). The house constructed against the loan of Rs.1,00,000/- is on 65.43 sq.meters of land and, thus, urges this Court for setting-aside the impugned notice.

Mr.Pardeep Solath, learned counsel for respondent No.2 submits that there is alternative remedy of appeal against the aforementioned order. Having not availed the same, the present writ petition is not maintainable. On the contrary, he submits that the petitioner is not a poor person belonging to EWS as he owned four plots, out of which two have been sold. The prices of the plots are too high. Having failed to discharge the liability, the terms and conditions of the loan agreement cannot be deviated and, thus, urges this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

The fact remains that according to the petitioner, amount due was Rs.4,50,660/-, whereas according to the receipt, a sum of Rs.4,25,000/- has been paid against the loan. The report of the Chartered Accountant has

not been objected to by either of the side, in essence the petitioner has complied with the same. The Chartered Accountant was appointed with the consent of the parties vide order dated 27.1.2015 passed by this Court. The same reads thus:-

“Petitioner had sought a loan amounting to Rs.1,00,000/- from respondent-Society in the year 1992 for construction of house. He claims that he has paid the considerable amount according to calculations made by him. This fact is disputed by the Society, according to which, balance of approximately Rs.8,00,000/- is to be paid. There appears to be no policy for one time settlement. However, it may be necessary to examine rival contentions regarding the balance amount and method of calculating interest. For this purpose, expert opinion would be required.

Accordingly, Mr. Sanjay Garg, Chartered Accountant is appointed as expert on consolidated fee of Rs.20,000/- to be borne out by the respondent-Society. The Society shall forward a copy of the loan agreement and accounts statement to the expert. Petitioner shall also be at liberty to submit a calculation sheet. The Expert shall examine the record and submit his report within three weeks from today with suggestion, if any, for one time settlement.”

Since, the matter is pending since 2011, it would be total farcical exercise in relegating the petitioner to avail the alternative remedy.

As per Annexure-C appended along with the report of the Chartered Accountant, total outstanding balance is Rs.2,60,629/-, which the

petitioner has already deposited.

Resultantly, the notice dated 20.12.2010 (Annexure P-2)
illegally putting the house for sale is quashed.

Writ petition stands allowed.

March 03, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No