

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

Date of decision : 16.08.2018

1.

CR-4047-2017

The Bhateri Cooperative House Building Society Ltd.

... Petitioner

Versus

State of Punjab and others

... Respondents

2.

CR-4576-2017

The Bhateri Cooperative House Building Society Ltd.

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Ashwani Prashar, Advocate
for the petitioner.

Ms.Akshita Chauhan, AAG, Punjab.

Mr. Vikrampreet Arora, Advocate
for respondent no.5.

AMOL RATTAN SINGH, J.(ORAL)

CR-4047-2017

The petitioner society has challenged the order of the learned Civil Judge (Jr.Div.), Rajpura, January 06, 2017, by which the application filed by the petitioner-defendant in the suit filed by the respondent-plaintiff, under Order 7 Rule 11 CPC read with Sections 79 and 82 of the Punjab

rejected on the ground that even the issue of jurisdiction cannot be decided by that Court without evidence being led in that regard.

Mr.Prashar, learned counsel for the petitioner points to Sections 82 and 68 of the aforesaid Act which reads as under:-

“82. Bar of jurisdiction of courts :-

(1) Save as provided in this 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 an amendment of a bye-law;

(b) the removal of a committee;

(bb) any matter relating to service conditions of employees of co-operative societies;

(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.”

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“68. Appeals.

(1) An appeal shall lie under this section against-

(a) to (g) XXX XXX XXX

(h) any decision or award made under section 56;

(i) to (l) XXX XXX XXX

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date

of decision or order,

(a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;

(b) if the decision or order was made by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in this behalf;

(c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;

(d) if the decision or order was made by the Registrar, to the Government; and

(e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorized by the Registrar in this behalf.”

He next points to Section 79 which reads as follows:-

“79. Notice necessary in suits.

No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the business of the society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint, shall contain a statement that such notice has been so delivered or left.”

The contention is obviously therefore that before institution of any suit on the question touching business of a co-operative society, a notice is first statutorily required to be issued to the Registrar, Co-operative Societies to enable him to determine as to whether the matter can be resolved /adjudicated upon without resorting to the remedy of a civil suit.

That apart, there being an express bar on the jurisdiction of a civil Court on a challenge to an Award made by an arbitrator appointed under Section 56 of the said Act, he submits that jurisdiction of the civil Court is wholly ousted, with the remedy of appeal lying with any person aggrieved of the Award, as per Section 68 aforesaid.

In the civil suit the respondent-plaintiff has challenged the Award of the arbitrator appointed under Section 56, the said Award being dated July 29, 2008, passed against the father of the respondent-plaintiff, i.e. the late Sh.Gurnam Singh.

Mr.Prashar also relies upon the following judgments of co-ordinate Benches of this Court in support of his arguments:-

1. ***Ram Murti & others vs. The Registrar, Co-operative Societies, Haryana & others, 2009(1) RCR (Civil) 662;***
2. ***Om Parkash Conductor vs. Presiding Officer, Industrial Tribunal, Haryana, 2003(4) SCT, 359;***
3. ***Satnam Singh vs. The Tarn Taran Primary Land Mortgage Bank Ltd. Tarn Tarn, 1984 PLR 134;***
4. ***Rajpal Grover vs. The Guru Nanak Joint Co-op. Farming Society Ltd. situated at Village Gumthala Garhu, 1982 PLR 277;***
5. ***Lohani Co-op. Credit & Services Society Ltd., Lohani vs. Bhagwanpuri; 1984 PLJ 179;***
6. ***Shamshad Shafi vs. Sale Officer, 1992(2) RCR (Civil) 314;***
7. ***The Palwan Cooperative Credit and Service Society Ltd., Palwan vs. Rami, 2002(1) CurLJ 665.***

Per contra, learned counsel for contesting respondent no.5 first refers to a judgment of the Supreme Court in ***Hindustan Copper Limited vs.***

M/s. Nicco Corporation Ltd., 2009(3) RCR (Civil) 525, from which he

points to paragraphs 10 & 13, that read as follows:-

“10. The said application under Section 34 is to be filed before a court which is empowered and has jurisdiction to entertain and decide such objection filed under Section 34 of the Act. The expression 'Court' is defined under the provision of Section 2(1) (e) of the Act, meaning the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration.

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13. Being faced with the aforesaid situation, the counsel appearing for the appellant states that he would not like to delay the proceeding and rather would desire that the proceedings are expedited. In terms of his statement and prayer and also in view of the submission of the counsel appearing for the respondent who has submitted that the matter requires urgent attention of the court, we remit the matter and the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the appellant to the civil court competent to hear and decide the same as envisaged under Section 2 (1) (e) of the Act.”

He therefore submits that despite the bar contained in Section 82 of the Act of 1961, jurisdiction of a civil Court is not ousted.

He further relies upon a judgment of a Division Bench of this Court in ***The Rajpura Janta Cooperative House Building Society Ltd. vs. State of Punjab and others, 2009(3) RCR (Civil) 278***, wherein it was held that upon the death of a member of a society, the society can recover a loan amount within two years thereof from the estate of the deceased.

The contention of learned counsel on that aspect is that the

father of the respondent-plaintiff having died on 12.06.2003 and the arbitration proceedings having been initiated more than two years thereafter (as contended), in any case no recovery can be made from the respondent-plaintiff.

Having considered the aforesaid arguments, I agree with learned counsel for the petitioner, inasmuch as there being a statutory bar contained in Section 82 on challenging an Award made by an arbitrator appointed in terms of Section 56 of the Punjab Cooperative Societies Act 1961, no civil suit to challenge the Award would be maintainable with the only remedy being that of an appeal in terms of Section 68 of the said Act.

Whether or not the recovery sought to be made by the cooperative society was initiated within time as per the judgment of the Division Bench in *The Rajpura Janta's case (supra)*, would be a matter to be considered in appropriate proceedings to be initiated (if any), by the petitioner, in terms of Section 68 of the said Act.

Consequently, this petition is allowed with the impugned order set aside and the suit filed by the respondent-plaintiff ordered to be dismissed by the trial court by accepting the application of the petitioner-defendant filed under Order 7 Rule 11 of the CPC, the jurisdiction of a civil Court being expressly barred in terms of Section 82. Naturally, the respondent-plaintiff would be at liberty to file an appropriate appeal against the Award of the arbitrator, which appeal would be dealt with wholly on its own merits only, if it is filed.

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The issue even in this petition is identical to that in CR no.4047 of 2017, except for the fact that the Award passed in this case is not against

the father of the respondent-plaintiff, but against the plaintiff himself and consequently even the judgment of the Division Bench of this Court in ***The Rajpura Janta's case (supra)*** relied upon by learned counsel for the respondent-plaintiff, would not be applicable.

Otherwise, for the reasons already given hereinabove as regards the bar on the jurisdiction of a civil Court, this petition is allowed, the impugned order is set aside and the suit of the plaintiff ordered to be dismissed by the trial court, with the same liberty granted to the petitioner as granted in the other case.

(AMOL RATTAN SINGH)
JUDGE

August 16, 2018.

D.K./dinesh

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No