

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P.No.21054 of 2018 (O&M)

Date of Decision: August 31, 2018

The Hindu Cooperative Bank Ltd. & others

...Petitioners

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. R.K. Sharma, Advocate,
for the petitioners.

AMIT RAWAL, J.

CM No.12737 of 2018

Prayer in the present application is for placing on record order dated 07.05.2015 as Annexure P-6. Taken on record subject to all just exceptions.

Application stands disposed of.

CWP No.21054 of 2018

Challenge laid in the present writ petition is to the order dated 01.05.2018 (Annexure P-5) of respondent No.3- Joint Registrar Cooperative Societies, Jalandhar Division, Jalandhar, whereby the petition preferred under Section 69 of the Punjab Co-operative Societies Act, 1961 (for short, 1961 Act) against the order dated 02.09.2015 passed by the Deputy Registrar Co-operative Societies, Pathankot, has been dismissed.

Mr. R.K. Sharma, learned counsel representing the petitioners

submitted that respondent Nos.5 and 6 M/s Vaishno Educational Society, Pathankot, through its President and General Secretary, on 10.03.2010 applied for a term loan of ₹ 60,00,000/- for the purpose of construction of building. On 07.04.2010, loan of ₹ 60,00,000/- was sanctioned to respondent No.5 Society and ₹ 50,00,000/- was disbursed on 15.12.2010. The term loan was repayable in 84 monthly instalments of ₹ 1,23,500/-. It contained the element of interest @ 12% per annum with monthly rests and in case of default, respondent Nos.5 to 8 agreed to pay penal interest over and above the agreed rate of interest.

Respondent Nos.5 to 8 became defaulters and in this regard, the bank issued a demand notice dated 14.07.2014 calling upon respondent No.5 to repay the amount of ₹ 55,69,604/- as due on 25.04.2014. Respondent Nos.5 and 6, on receipt of the notice, approached the Deputy Registrar Co-operative Societies, Pathankot- respondent No.4 and submitted a complaint against the petitioners with a prayer for restraining the bank from initiating proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, SARFAESI Act). An application under Sections 55/56 of 1961 Act (Annexure P-2) for settling the loan recovery dispute was submitted, but the petitioners bank had issued a notice dated 17.04.2015 under Section 13(4) of the SARFAESI Act. The Deputy Registrar Co-operative Societies, Pathankot exceeded jurisdiction by passing the award/order dated 02.09.2015 (Annexure P-3), whereby the alleged dispute for repayment of the loan was settled. The order aforementioned is illegal and arbitrary as terms and conditions with regard to the rate of interest from 12% per annum with monthly rests to 14% simple interest cannot be changed. Deputy

Registrar Co-operative Societies, Pathankot failed to notice the fact that respondent No.5 had challenged the notice under Section 13(4) of the SARFAESI Act in this Court vide CWP No.8941 of 2015. This Court, vide order dated 11.07.2016 (Annexure P-4) by noticing the fact that since as per arbitration decision dated 02.09.2015 the amount has been settled, disposed of the writ petition as infructuous.

The Bank filed a petition under Section 69 of the 1961 Act, but the same was dismissed on the ground of maintainability. The orders are not sustainable in the eyes of law, for, the arbitrator had no jurisdiction to change the rate of interest. Once the order is without jurisdiction, the revisional power can always be exercised despite the fact that the award/order dated 02.09.2015 was appealable under sub-section (h) of sub-section (1) of Section 68 of 1961 Act.

We have heard the learned counsel for the petitioners, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioners, for, the aforementioned provisions, i.e., sub-section (h) of sub-section (1) of Section 68 of 1961 Act provide, that an appeal shall lie against any decision or award made under Section 56 of 1961 Act. Concededly, the order dated 02.09.2015 has been passed under Section 55/56 of 1961 Act and the limitation to file the appeal is 60 days from the date of decision. However, no explanation has come forth in not availing the remedy. Instead a remedy of revision under Section 69 of 1961 Act was availed by filing a petition bearing No.24 of 2016.

The writ petition is bereft of any particulars of the date when petition under Section 69 of 1961 was filed. From the impugned order dated

01.05.2018, it reveals that respondent No.3 had converted the petition under Section 69 of 1961 Act as appeal, but dismissed the same as it was beyond period of limitation. The case, as set up in the writ petition, does not fall within the realm of judicial review. No ground for interference in the impugned orders is made out.

Writ petition stands dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

August 31, 2018
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No