

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 189 of 2011

Chhattisgarh Rajya Sahkari Awas Sangh, through Managing Director,
Chhattisgarh Rajya Sahkari Awas Sangh, Office-C 191 First Floor, Taigore
Nagar, Raipur (C.G.).

---- Petitioner

Versus

1. Himmat Lal Tamrakar, Through : Shri Ashok Tamrakar, R/o. Near Water Tank, Mukut Nagar, Raipur (C.G.).
2. Sundar Nagar Grih Nirman Sahkari Samiti Maryadit, Raipur.
3. Smt. Archana Tiwari, President Sunder Nagar Grih Nirman Sahkari Samiti Maryadit, Raipur.
4. Subhash Sharma, Ex-President Sunder Nagar Grih Nirman Sahkari Samiti Maryadit, Raipur (C.G.)

-----Respondents

For Petitioner : Mr. Raj Kumar Pali, Advocate

For Respondent No.1 : Mr. S.N. Nande, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

03/01/2020

1. This petition has been filed being aggrieved by the order dated 17.08.2010, passed in Revision Case No.78/39/2010, passed by the Court of Chhattisgarh State Cooperative Department by which the order passed by the Court of Registrar, Cooperative Societies in Revision Case No.154/09 dated 30.03.2010 was upheld.
2. It is submitted by the learned counsel for the petitioner that the respondent No.1 is the member of society of respondent No.2. A

loan was obtained by the respondent No.1 through the respondent No.2 from the petitioner and in that loan transaction a mortgage deed was executed by the respondent No.1 and 2 in favour of the petitioner. Respondent No.1 and 2 have failed to make repayment of the loan and then they have filed a dispute under Section 64 of the C.G. Cooperative Societies Act, 1960 (in short "the Act, 1960") before the Joint Registrar, Cooperative Societies, Raipur seeking directions for respondent No.2 to deposit the loan amount and receive back the original sale deed under mortgage. The Joint Registrar, Cooperative Societies without appreciating that the respondent No.1 has not made any repayment of loan and also that the respondent No.2 has also not repaid the loan amount has ordered for returning of the documents by order dated 07.09.2009. The petitioner then preferred an appeal before the Registrar, Cooperative Societies and that appeal has also been dismissed. The petitioner then preferred a revision petition before the State Government through State Cooperative Department and the revision petition has again been dismissed by the impugned order.

3. It is submitted that the orders passed by the authorities below are totally illegal and arbitrary. When a dispute is referred to the Registrar, Cooperative Society under Section 64 of the Act, 1960, Registrar or his nominee are bound to follow the procedure, which is laid down under sub-section 2 and 3 of the Section 67 of the Act, 1960. In this case before passing the order dated 07.09.2009, no issues were framed regarding the dispute raised by the respondent No.1 and no evidence was recorded of any of the parties, therefore,

passing of the order by the Joint Registrar, Cooperative Societies was totally illegal, which has been upheld by the Appellate Authority and Revisional Authority. It is submitted that the Joint Registrar and other authorities have committed error, therefore, orders passed and the impugned order are not sustainable. Therefore, interference is prayed for.

4. Counsel for the respondent No.1 submits that respondent No.1 had obtained a loan from the petitioner society on 29.05.1982 for the purpose of construction of house by depositing of title deed of the plot concerned. The respondent No.1 has made repayment of loan to the respondent No.2, for which, he has obtained receipts and complete loan has been repaid. When the respondent No.1 could not get title deed back, he filed an application before the Joint Registrar, Cooperative Societies, Raipur raising dispute. It is submitted that the respondent No.2 had not forwarded the amount to the petitioner, therefore, respondent No.2 has committed default, for which, respondent No.1 is not responsible, which has been taken into consideration in the impugned order. Reliance has been placed on the judgment of Supreme Court in case of ***Harbans Vs. Om Prakash and others***, reported in ***(2006) 1 SCC 129***.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. On perusal of the documents presented in the record of the proceeding and in the record of this petition, it is found that the respondent No.1 had earlier filed a writ petition No.1695 of 2005, before this Court, in which by order dated 16.01.2009, it was

observed that the petition involves disputed facts, which were to be examined by the Registrar, Cooperative Societies after affording opportunity of hearing to all the concerned parties before passing any order in accordance with the law. The Joint Registrar, Cooperative Society issued notices to the parties concerned and after their appearance, arguments of the parties appearing were heard and on the basis of the arguments only, the order dated 07.09.2009 was passed.

7. On perusal of the record of the proceeding before the Joint Registrar, Cooperative Societies, Raipur it is observed that averments in the application filed by the respondent No.1 was disputed by the non-applicant No.1, who is the petitioner in this case and also by the non-applicant No.2, who is respondent No.2 in this case. The respondent No.1 had placed his reliance on the copy of the documents, which is the loan account of the petitioner department, which has not been admitted by the petitioner or by the respondent No.2. Therefore, the dispute raised regarding the repayment of loan made by the respondent No.1 to respondent No.2, which was to be forwarded to the petitioner was a subject matter for determination and for that purpose it was necessary that the issue should have been framed and the parties should have been afforded opportunity for producing evidence in support of their claims.
8. Section 67 (3) of the Co-operative Societies Act, 1960 provided as under :-

“67. Procedure for settlement of disputes and power of Registrar, his nominee or board of nominees.-

(1) X X X X X

(2) X X X X X

(3) The Registrar or his nominee, as the case may be, shall record a note in Hindi of the evidence of the parties and witnesses who attend and upon the evidence so recorded and after consideration of any documentary evidence produced by either side, shall give a decision or award, as the case may be, which shall be reduced in writing. If the applicant duly summoned is absent, the case may be dismissed in default. If the non-applicant is absent, the case can be decided *ex party*. In cases, where three nominees are appointed, the majority shall prevail:

Provided that where a dispute has been decided against any party, in default and if such party satisfies the Registrar within thirty days from the date of such default, that there was sufficient cause for its non-appearance, the Registrar shall make an order setting aside the decision and shall appoint a date for proceeding with case.”

9. Therefore, it is mandate in the provisions mentioned hereinabove, which has not been followed, before passing the orders by the authorities deciding the dispute at the first stage. Further while disposing of the application and dispute raised by the respondent No.1, the Joint Registrar, Cooperative Societies, Raipur has not taken care to comply with the direction issued by this Court in W.P. No. 1695 of 2005 dated 16.01.2009. Therefore, the order passed by the Joint Registrar, Cooperative Societies, Raipur, which has been

up-held by the Registrar, Cooperative Societies by order dated 30.03.2010 and by the Court of Chhattisgarh State, Cooperative Department vide impugned order dated 17.08.2010, passed in Revision Case No.78/39/2010 suffers from serious infirmity as the procedure provided under law has not been followed. Hence, the impugned order and the orders of other authorities are liable to be and are hereby set-aside. The matter is remanded back to the Joint Registrar, Cooperative Societies, Raipur with a direction to reconsider on the dispute raised by the respondent No.1 and proceed in accordance with the provision under Section 67 (3) of the Act, 1960 and also in compliance with the direction of this Court in W.P. No. 1695 of 2005 dated 16.01.2009.

10. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge