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

L.P.A. No.828 of 2015(O&M)in
Civil Writ Petition No.382 of 2013
Reserved on : August 29, 2019
Date of decision: January 31, 2020

Prem Chand (deceased) through LRs ...Appellants

Versus

The Financial Commissioner, Cooperative
Department, Punjab and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. G.S.Gandhi, Advocate for the appellant.

Mr.Suveer Sheokand, Addl. A.G.,Punjab.

None for respondents No. 4 and 5.

Mr.N.S.Gill, Advocate and
Mr.Munish Gupta, Advocate for respondent No.6.

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HARINDER SINGH SIDHU, J.

1. This Letters Patent Appeal has been filed against the judgment dated 22.01.2015 in CWP No.382 of 2013 titled 'Prem Chand vs. Financial Commissioner, Cooperative, Punjab and others' whereby the writ petition filed by the appellant was dismissed.

2. The appellant had filed the writ petition for quashing of orders dated 11.02.2011 passed by the Additional Registrar (D), Cooperative Societies, Punjab and the order dated 30.08.2012 passed by respondent

No.1 – the Financial Commissioner, Cooperation, Punjab whereby he had been held liable for the loss caused to respondent No. 4 Bank.

3. The appellant Prem Chand (since deceased) was posted as Branch Manager at the Massingan Branch of respondent No.4 – the Patiala Central Cooperative Bank Limited which is a cooperative society which advances cash/ *khad* loans to its members as per their need. Due to hailstorm in the village, the Rabi crop of the members of the Society suffered extensive damage. The General Body of the Respondent No.5 - Tajalpur Cooperative Agricultural Service Society passed a resolution dated 24.05.1993 to request the respondent No. 4 to convert the short-term loan of its members into medium-term loan. After due approval of the competent authority the short term loan was converted to medium term loan. The signatures of the members on the bond were verified by the Secretary of Respondent No. 5-Society.

4. To effect recovery of the loan from the members of respondent No. 5-Society, two Inspectors were appointed by respondent No.4. Some of the Members did not repay the loan. They denied having taken any medium-term loan and also denied their thumb impressions/ signatures over various documents. Respondent No.5- Society filed 26 arbitration cases against the loanees, the Secretary of the Society and respondent No. 4 Bank. In these arbitration cases it was held that the conversion of the Short Term loan to Medium Term was bogus. The Secretary of the Respondent No. 5- Society and Respondent No. 4- Bank were held jointly responsible for the loan outstanding against those members, as the accounts had been

operated for long without associating those members. Appeal preferred by respondent No. 4 -Bank against this order was dismissed. Resultantly respondent No. 4- Bank had to pay respondent No.5-Society the amount for which it was held liable by the Arbitrators.

5. Respondent No.4- Bank made a reference under Section 55 of the Punjab Cooperative Societies Act, 1961 (herein for short 'the Act') against the appellant before the Deputy Registrar, Cooperative Societies, Sangrur, which was dismissed on 19.02.2003. It was the case of respondent No.4-Bank that the appellant while working as Branch Manager of Massingan Branch of Respondent No.4 had made wrong advancement of loan to the members of respondent No.5 because of which respondent No.4 had been held liable in arbitration proceedings and suffered a loss. The Bank preferred an appeal under Section 68 of the Act before the Joint Registrar (Planning), Cooperative Societies, Punjab, who vide order dated 10.06.2005 set aside the award of the Arbitrator and held the appellant liable for payment along with expenses and future interest. Thereafter, there were number of revisions by the appellant and respondent No.4 accordingly, as the order was against either of these parties. The material order is order dated 26.05.2009, whereby on a revision preferred by Respondent No.4 the Secretary, Cooperation Punjab exercising the powers of the State Government under Section 69 of the Act set aside the order of Joint Registrar (P) dated 16.10.2008 and remanded the case to the Joint Registrar (Planning) for passing a speaking order on the following points:-

"(i) Whether cheque on the basis of which loan has been

drawn was issued by the bank to the member or not in case the cheque has been issued from the cheque book issued by the bank then how the member shirks his liability assigned to him by the Registrar vide instructions dated 12.09.1994. When to keep the cheque book safe was the duty of member.

(ii) As per instructions issued by Registrar dated 12.09.1994 the member himself is to present the cheque in the bank for obtaining cash and cashier of the bank has to get the signatures in his presence after identification and only after it the loan is given. In case the loanee member presents his cheque himself before the manager and the loan is obtained from the cashier after signature then on which ground the loanee member denies the loan. In case a bogus advancement is done how Sh. Prem Chand is responsible for this disbursed amount while the loan is given by the cashier after obtaining the signatures of the loanee member.

(iii) Short Term Loan is converted into Medium Term Loan by the Bank on the written request of the loanee member. In case, ST loan has been converted into MT then whether the request of the loanee member to convert the loan is available with the bank.

(iv) After examining the award of arbitrator it becomes clear that in case of Ronak Ram loan was advanced on 9.12.89 while respondent no.3 has joined this Branch on 13.3.1991. In arbitration case which has been raised against respondent no.3 by the Bank how he is held responsible for this amount.

(v) On examining the arbitration award in respect of Pal Singh son of Inder Singh and Bant Ram son of Sh. Ram Sarup it has been observed that the cheque on the basis of which loan has been given has not been passed by respondent no.3. The cheque has been passed by Sh. Kulbir Singh the then Cashier and the payment has been made by him. But the Bank has

> *raised included this amount against respondent no.3 while raising the reference against him. Respondent no.3 has stated that recovery of the bank dues amounting to Rs. 42 lacs has been affected for the period 20.2.94 to 28.2.94. Whereas no cash recovery has been recorded in the bank. This amount was done by adopting the process of renewal of outstanding loan and the recovery has been entered in the books of the bank. In case loan are renewed by making entry in the books of the bank then how the question of bogus payment of loan arises."*

6. Pursuant to this order the appeal of respondent No. 4- Bank was decided by the Additional Registrar (D), Punjab vide order dated 11.02.2011 wherein, the appellant was held liable. The revision petition of the appellant was dismissed by the Financial Commissioner, Cooperation, Punjab, exercising the powers of the State Government vide order dated 30.08.2012. He preferred writ petition, which was dismissed by the impugned order.

7. The contention of the appellant before the Ld. Single Judge was that the appellant could not be held responsible in any way for causing loss to the Society. It was the duty of the Secretary to verify the signatures. As per the Instructions dated 12.09.1994, it was the Secretary who was to receive cheques from the Members. His other contentions were that the reference was barred by limitation. Appeal before the Joint Registrar (P) was also time barred. The case had been remanded by the Secretary (Cooperation) to Joint Registrar (Planning), but had been decided by the Additional Registrar (D).

8. The Ld. Single Judge rejected all the contentions. Ld. Single

Judge agreed with the arguments of the respondents that in various paragraphs of Annexure R-4/4 (written arguments submitted by the appellant before the Joint Registrar (P) Cooperative Societies, Punjab) the appellant had categorically admitted that the posting on the cheque was made by the Clerk of the Bank and the appellant had passed the same. Thereafter, the payment was made by the Cashier of the Bank and the Cheque-Book was issued to the Members by the previous Manager. Regarding the case being decided by Additional Registrar (D), Ld. Single Judge noticed that after the remand order, the post of Joint Registrar (Planning) was abolished. The Additional Registrar (D), who decided the case was of equivalent rank as the Joint Registrar (Planning). On the plea of limitation, Ld. Single Judge agreed with the contention of the respondents that the question of appeal being time-barred would not arise when the appellant did not raise such an objection before the Revisional Authority. Ld. Single Judge further held that the question of limitation would not apply as this was a case of fraud, where the signatures/thumb impressions of the Members of the Society had been forged and fabricated. Ld. Single Judge further agreed with the contention of the respondents that as per Instructions dated 24.11.1994 with regard to loan to agriculturist Members of Primary Agricultural Cooperative Societies, the passbook is issued by the Manager at the counter. The Branch Manager is required to get the thumb impressions/ signatures on the back of the cheque in his presence and encash it subject to the margin in the limit. The Instructions also require that the thumb impression of the illiterate person shall be attested by the Branch In-charge and in his absence by the person holding charge of the Branch. In the light of this, the learned Single Judge held that the Branch Manager is personally responsible for verifying the signatures on the cheques and availability of passbook is necessary.

9. The Ld. Single Judge also rejected the contention of the appellant that the seven points for determination as formulated by the Secretary, Cooperation in the remand order had not been dealt with in the orders impugned in the writ petition. Regarding these, the Ld. Single Judge observed as under:-

> *"The seven points reproduced herein above, were raised by the Secretary Cooperation exercising the powers of the Punjab Government and the same have been dealt with by the Additional Registrar one by one and specific findings have been recorded that cheque books of the members were with the Secretary of the Society. Secretary and Branch Manager in connivance with each other have cheated the members. It is very much clear from the awards. There is categorical finding that amount has not been paid to the members but has been embezzled. All the cheques were passed by the petitioner. It was manager's duty to identify the member and he is responsible for that except one case of Ronak Ram, who was given loan on 09.12.1989 prior to the joining of the petitioner as Branch Manager because he joined this Branch on 31.03.1991, all the other loans have been advanced during the tenure of the petitioner. There is finding that book entries made in respect of the cheques have been attested by the petitioner. Annexure R-4/4 is document of the petitioner wherein in para no.5, it has been written that posting of the cheque was made by the clerk of the bank and petitioner passed the same and the payment was made by the cashier. For that reason, the petitioner is responsible for that. It is one of the arguments advanced before the Additional Registrar that the petitioner has urged that these loans were not issued. It is only paper transactions. Firstly, recovery was shown afterward advances were shown. Finding has been recorded that as per the bank record amount of recovery has not been shown as advances to those members, rather has been shown to have been advanced to other loanee members and the contention was rejected. After perusal of the record, appellate*

> *authority – Additional Registrar had found the petitioner to be responsible. The contention that Joint Registrar (Planning) should have decided his case, is fallacious as the post of Joint Registrar (Planning) was abolished and thereafter, Additional Registrar was entrusted the task which is competent authority under the provisions of the Act. The findings recorded by the Additional Registrar are based on the appreciation of evidence which have been affirmed by the Financial Commissioner, exercising the powers of State Government."*

10. Ld. Single Judge held that findings of fact had been recorded by the authorities. There was no illegality or perversity therein. Accordingly the petition was dismissed.

11. We find no reason to differ with the view of the Ld. Single Judge.

12. Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 31, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No