

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

RSA No. 2392 of 1993

DATE OF DECISION :- April 11, 2023

Pritam Singh

...Appellant

Versus

The Deputy Registrar, Co-operative Societies, Patiala

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Ashish Gupta, Advocate for the appellant.

1. Briefly stated the facts of the case are that plaintiff Pritam Singh son of Parma Nand resident of village Naulakha, Tehsil Fatehgarh Sahib, District Patiala had filed a suit against defendants The Deputy Registrar, Co-operative Societies, Patiala, exercising the powers of Recovery Officer Co-operative Societies, Patiala as well as The Chanarthal Kalan Agricultural Co-operative Service Society, Chanarthal Kalan, Tehsil Sirhind, seeking a declaration that writ of demand dated 14.5.1988 issued by defendant No. 1 under Rule 72 of the Punjab Co-operative Societies Rules for recovery of Rs.40,490/- from the plaintiff and the decision/award/order dated 28.8.1987 passed by Gurcharan Singh in execution of which the said writ of demand is issued are illegal, null and void and without jurisdiction, in addition to that craving for grant of permanent injunction restraining the defendants and persons claiming under them, from recovering Rs.40,490/- or any other amount from the plaintiff.

2. As per version of the plaintiff, neither any notice was served upon him nor any opportunity of hearing was provided to him before passing of the Award by Sh. Gurcharan Singh, who had no jurisdiction or authority to do so. While passing the Award rules/regulations were not followed leaving the plaintiff aggrieved and he has brought the suit in question.

3. Defendant No. 1 had not appeared despite service as such he was proceeded against ex-parte. On being given notice, only defendant No. 2 had put in appearance to offer a contest. In the written statement filed by such defendant, material assertions in the plaint were denied and it was contended that plaintiff did not appear despite service of notice through registered A.D. Post before the Arbitrator and Civil Court had no jurisdiction to try the suit. Further more the suit was liable to be dismissed on account of want of service of notice under Section 79 of the Punjab Cooperative Societies Act and the suit was barred by the provisions of Order 23 Rule 1 and 2 CPC and Section 11 CPC. Further more the suit was bad for non-joinder of the Registrar, Cooperative Society, Punjab. Such defendant prayed for dismissal of the suit.

4. On pleadings of the parties following issues were framed :-

- 1) Whether the notice of the recovery in dispute is illegal, null and void?OPP
- 2) Whether this Court has not got jurisdiction to try the suit?OPD
- 3) Whether the suit is bad for want of notice under Section 79 of the Punjab Cooperative Societies Act?OPD
- 4) Whether the suit is not maintainable in this form?OPD
- 5) Whether the suit is barred by the provisions of CPC?OPD
- 6) Relief.

5. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Additional Senior Sub Judge, Fatehgarh Sahib in terms of judgment and decree dated 16.10.1991 decided issue No. 1 in favour of the plaintiff, issue No. 2 was decided in favour of defendants, issue no. 3 was decided against defendants, issue no. 4 was decided against defendant and issue no. 5 was decided in favour of defendants. In view of findings on issues No. 2 and 5, the suit was dismissed with costs.

7. Feeling aggrieved, the plaintiff had preferred an appeal before District Judge, Patiala which was assigned to Additional District Judge, Patiala, who vide judgment and decree dated 23.7.1993 affirmed the findings of the trial Court. The judgment and decree passed by the trial Court were upheld and resultantly the appeal was dismissed.

8. Still feeling dissatisfied the plaintiff had knocked at the door of this Court by way of filing Regular Second Appeal, notice of which was given to respondents. Respondent No. 1 who did not appear despite service as such was proceeded against ex-parte whereas respondent No. 2 had earlier put in appearance through counsel but subsequently absented from the proceedings.

9. I have learned counsel for the appellant besides going through record.

10. I find that the appeal lacks merit and is liable to be dismissed. Both the Courts in light of the pleadings of the parties as well as the evidence brought on file by them, besides considering the legal position had found that the Civil Court has no jurisdiction to entertain and try the suit and suit is barred by provisions of CPC. The trial Court by placing reliance upon a Division Bench judgment of this Court 'Sunder Singh and another vs. The Central Co-operative Bank Ltd. 1973' PLJ, 433, had observed that jurisdiction of the Civil Court was barred under Section 82(3) of the Act and if the surety has got any objection with regard to the arbitration proceedings including the objection that

the arbitration Award was passed at his back or the Arbitrator was appointed without any notice to him then he should go in appeal against that Award under Section 68 (1) (h) of the Punjab Cooperative Societies Act and jurisdiction of Civil Court is barred under Section 82 (3) of the Act. This very view was taken by the First Appellate Court of Additional District Judge, Patiala also.

11. Although learned counsel for the appellant has referred to judgment 'Lok Sewak Co-operative Marketing-cum-Processing Society Faridkot versus Janga Singh' 1974 PLJ 5, wherein a Division Bench of this Court had observed that Section 82 (3) of the Punjab Cooperative Societies Act, 1961 merely provides for ousting the jurisdiction of the Civil Courts where there is a valid award and in case of an invalid award, the ordinary remedy to get it set aside by suit in a Civil Court is not taken away.

12. I find that under the circumstances, the Division Bench judgment relied upon by the Courts below in the case of 'Sunder Singh and another vs. The Central Co-operative Bank Ltd.' (supra) was applicable since facts of the case were not much different from the facts of the present case wherein it is not so with regard to judgment 'Lok Sewak Co-operative 'Marketing-cum-Processing Society Faridkot versus Janga Singh' 1974 PLJ 5 now referred to by learned counsel for the appellant. As a matter of fact this judgment was not cited before the Courts below and the judgment relied upon by the counsel for the plaintiff was 'Om Parkash vs. Dodewala Co-operative Agricultural Service Society and another' 1982 P.L.J. 477 which was a by a Single Judge and the Courts below relied upon judgment by a larger Bench. Therefore, no fault can be found with such approach of the Courts below and I do not see any reason to upset the finding of issue No. 2 returned by the trial Court which was duly affirmed by the First Appellate Court of Additional District Judge, Patiala.

13. Now coming to the second ground with regard to verdict on issue No. 5 that suit is barred under Order 2 Rule 2 and Order 23 Rule 1 and 2 C.P.C. The trial Court while adjudicating Issue No. 5 has observed that the plaintiff had filed a suit regarding the same subject matter earlier which was dismissed as withdrawn on 25.2.1989 by the Court of Sub Judge Ist Class, Fatehgarh Sahib. The suit having been withdrawn without seeking permission to file a fresh one on same cause of action obviously attracted bar of Order 2 Rule 2 and Order 23 Rule 1 and 2 C.P.C. The cause of action in the earlier suit and the suit filed later on was the same. There is no reason to disagree with the Courts below in that regard. The judgments by the Courts below rejecting the claim of the plaintiff in view of findings on issues No. 2 and 5 do not suffer from any illegality or infirmity. There is no ground to interfere with such judgment by accepting this Regular Second Appeal. No substantial question of law arises.

14. The appeal is found to be without merit and is dismissed accordingly.

(H.S. MADAN)
JUDGE

April 11, 2023
p.singh

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