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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-33420-2018
Date of decision: 13.02.2023

AJIT SINGH

...Petitioner

VERSUS

THE DEPUTY REGISTRAR, COOPERATIVE SOCIETIES,
JALANDHAR AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D. V. Sharma, Senior Advocate with
Mr. Arshdeep, Advocate
for the petitioner.

Ms. Ishma Randhawa, Addl. A. G., Punjab.

Mr. R. S. Bajaj, Advocate
for respondent No.3.

JAISHREE THAKUR, J. (Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India, seeking to challenge the award as passed by the Arbitrator dated 19.01.2018 (Annexure P-7) as well as the order as passed by the Appellate Authority dated 24.08.2018 (Annexure P-9), upholding the award of the Arbitrator.

Learned Senior Advocate appearing on behalf of the petitioner would *inter alia* contend that a loan of Rs.13,00,000/- was availed by the petitioner from respondent No.3-Bank after due sanction for running a dairy farming and also for a dhaba. The loan was to be paid back by depositing an

amount of Rs.30,000/- per month. However, on account of a business lump, the same could not be paid back within the time schedule specified. Consequent to the default, an arbitration petition was filed by respondent No.3-Bank, which led to an arbitration award being passed against the petitioner herein. He would submit that an appeal was filed, however, the grounds as taken in the appeal were not dealt with properly, which has led to the filing of the instant writ petition. He would further argue that no due resolution has been passed, authorizing the institution of arbitration proceedings apart from the fact that the petitioner was not given due opportunity of cross-examining the relevant witness. It is pointed out that evidence by way of an affidavit was filed on 06.12.2017 and the matter was posted for cross-examination on 13.12.2017, on which date the matter could not be taken up on account of election duty of the Arbitrator. The matter was then posted for 20.12.2017, on which date the matter was heard and reserved. It is submitted that perusal of the zimni orders itself would reflect that the petitioner herein was given no due opportunity of cross-examination, which is against the settled principles of law.

Learned counsel for respondent No.3 would submit that the matter was taken up in appeal and the argument as noted that the Arbitrator did not grant any opportunity of hearing, was taken note of and dealt with. The contention, as raised by the learned counsel appearing on behalf of the appellant therein was also taken note of, wherein it was stated that the appeal had been filed only to get the claim of two cheques rejected.

I have heard learned counsel for the parties and, with their able assistance, have gone through the pleadings of the case.

The instant writ petition was filed and listed for hearing on 18.12.2018, when the contention for learned counsel for the petitioner that the petitioner does not dispute the award as such except for amount of Rs.70,000/- and Rs.3,00,000/- relatable to cheques No.131605 and 131604 dated 27.01.2016 were in question had been noticed while passing an interim stay order. The said order also took note to the fact that the Arbitrator had not given any opportunity to the petitioner to lead evidence or cross-examine the witness.

The order dated 18.12.2018 is reproduced as under :-

“It is the contention of learned counsel for the petitioner that petitioner does not dispute the award as such, except for an amount of Rs.70,000/- and Rs.3,00,000/- relatable to cheques No.131605 and 131604 dated 27.01.2016. He contends that except these Rs.3,70,000/-, the petitioner accepts his liability and would be making payment as per the award. He further contends that the Arbitrator did not give any opportunity to the petitioner to lead any evidence after the evidence of the respondent-Bank was closed despite an opportunity having been sought. To substantiate this contention, he intends to place on record the order passed by the Arbitrator during the arbitration proceedings.

Hearing of the case is deferred to 11.01.2019.

Recovery of Rs.3,70,000/- qua cheques No.131605 and 131604 dated 27.01.2016 shall remain stayed till the next date of hearing.”

A perusal of the said order would reveal that the matter had been posted for cross-examination, however, due opportunity had been denied to the petitioner herein. This argument has substance even though learned counsel for respondent No.3 would argue that the petitioner had ample opportunity to move an application for leading evidence since the matter had been reserved for pronouncement on 20.12.2017 and was eventually pronounced on 19.01.2018. However, this argument would not be sustainable because in the opinion of the Court before the matter could be reserved, due opportunity to cross-examine ought to have been given to the petitioner.

Learned Senior Advocate appearing on behalf of the petitioner has also raised an argument that there is no resolution by the Board of Directors authorizing the filing of an arbitration petition by the CEO and, therefore, he may be permitted to raise this objection at the time of arguments.

On consideration of the entire pleadings, the order dated 18.12.2018 and the impugned order of the Arbitrator closing evidence without due opportunity, this Court *prima facie* is of the opinion that the award of the Arbitrator deserves to be set aside to the limited extent of the two cheques in question i.e. cheques No.131605 and 131604 dated 27.01.2016 for an amount of Rs.70,000/- and Rs.3,00,000/-. This is in view of the fact that even in the appeal, the appellant (petitioner herein) had sought to challenge the award of the Arbitrator only qua these two cheques, as has been noted in order dated 18.12.2018 by this Court. Once the petitioner has accepted his liability regarding making payment qua rest of the amount, he cannot turn around and now state that he is not liable to do so.

Consequently, the instant writ petition is allowed to the limited extent of setting aside the award of the Arbitrator dated 19.01.2018 (Annexure P-7) except for the admitted amount. The matter is remanded back to the Registrar, Cooperative Societies, Punjab for appointment of an Arbitrator to settle the dispute afresh in terms of Section 56(1) of the Punjab Cooperative Societies Act, 1961.

13.02.2023
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No