

CWP-2707 of 1999 (O&M)

2024:PHHC:11960/



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

CWP-2707 of 1999 (O&M)

Reserved on: 27.08.2024

Pronounced on: 10.09.2024

Malkiat Singh

.....Petitioner

Versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Tahaf Bains, Advocate,
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Manbir Singh, Advocate,
for respondent No.6.

NAMIT KUMAR, J.

1. This petition has been filed under Articles 226 and 227 of the Constitution of India for setting aside the orders dated 20.06.1997 (Annexure P-3), passed by the Assistant Registrar, Cooperative Societies, Malerkotla, whereby notices were issued to the petitioner for sale of his land under Rule 72(11) of the Punjab Cooperative Societies Rules, 1963 on account of failure to deposit the amount mentioned in the notices within 30 days of receipt of the notices and order dated 07.04.1998 (Annexure P-4), passed by the Deputy Secretary Cooperative (Appeals), Punjab, whereby revision filed by the petitioner against the orders dated 20.06.1997 has been dismissed.

2. Brief facts of the case, as have been pleaded in the petition are that petitioner was working as a Cashier in respondent No.6 – The



Jalwana, Cooperative Agriculture Service Society Limited, Jalwana, Tehsil Malerkotla, District Sangrur (hereinafter referred to as 'the Society'). On 12.03.1979 an *ex parte* award was passed by the Arbitrator for a sum of Rs.25,797/- along with interest @ 15.5% against the petitioner on account of sale price of the fertilizer. On 09.12.1980, another *ex parte* award was passed against the petitioner by Assistant Registrar, Cooperative Societies, Malerkotla (acting as Arbitrator) for a sum of Rs.57,042/- along with interest @ 13% on account of cash in hand. Against the aforesaid awards, petitioner filed separate appeals, which were dismissed by the appellate authority in the year 1984. Aggrieved against the orders of the appellate authority, petitioner filed separate revision petitions before the State Government under Section 69 of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as 'the 1961 Act'), which were dismissed by the Commissioner (Appeals), Jalandhar Division, exercising the powers of the State Government under the 1961 Act, vide order dated 02.12.1987. During the pendency of the revision petitions filed by the petitioner, the Society came under liquidation and Liquidator was appointed to manage the affairs of the Society. After the decision of the revision petitions by the revisional authority on 02.12.1987, Liquidator approached the petitioner asking him to make the payment. The Liquidator agreed to charge interest at the rate of 6% on the amount due on account of cash in hand and it was further agreed that no interest would be charged from the petitioner if he deposits the amount due from him on account of sale price of the fertilizer in a short period and



the petitioner agreed to deposit the amount due from him to the Society in three instalments. As such, Liquidator passed a resolution dated 02.06.1988 to this effect. Petitioner complied with the resolution and deposited the whole amount before 31.08.1988. Thereafter, the Society was revived and the Managing Committee of the Society started functioning. On 24.04.1997, Assistant Registrar, Cooperative Societies, Malerkotla, directed the Society to annul the resolution dated 02.06.1988, passed by the Liquidator with regard to recovery of interest @ 6% instead of 13.5% from the petitioner and fresh resolution for recovery of the amount in accordance with the awards be passed. Thereafter, two notices dated 20.06.1997 (Annexures P-3 and P-4) were issued to the petitioner according to which land of the petitioner was to be auctioned on 25.07.1997 if the requisite amount is not paid by the petitioner. Petitioner filed a revision petition before the State Government against the orders dated 20.06.1997 (Annexure P-3 and P-4). The said revision petition was dismissed by the Deputy Secretary, Cooperation, Punjab, vide order dated 07.04.1998 (Annexure P-5). Thereafter, Sale Officer issued two notices to the petitioner dated 21.01.1999 requiring the petitioner to deposit the amount mentioned in the notices along with 13.5% interest, failing which his land shall be auctioned on 26.02.1999. Hence, this writ petition.

3. Respondents No.1 to 5 and respondent No.6 have filed written statements contesting the claim of the petitioner. It has been averred that the Liquidator had no powers to write off any debt due from the petitioner and the exercise of powers of the Liquidator was



subject to the control of the Registrar and, therefore, the resolution passed by the Liquidator has rightly been annulled.

4. Learned counsel for the petitioner contended that resolution passed by the Liquidator has wrongly been annulled by the Assistant Registrar. He further contended that under Section 59 of the 1961 Act, Liquidator has been empowered to make any compromise or arrangement with the creditors. He further contended that order/resolution of the Liquidator could only be set aside by way of appeal by the Registrar whereas the Society or its managing committee is stopped from re-opening the case and even the Assistant Registrar, Cooperative Societies has no power to direct the Society to cancel the resolution passed by the Liquidator. In support of his contentions, learned counsel placed reliance upon the judgments of this Court in ***Jamiatpur Dheru Co-operative Farming Society v. State of Punjab, 1983 PLJ 467; Major Singh and Sakinder Singh v. State of Punjab, 1976 PLJ 195 and K.C. Mittal v. Joint Registrar, Cooperative Societies, U.T. Chandigarh and others, 2012(34) R.C.R. (Civil) 898.***

5. *Per contra*, learned State counsel and learned counsel for respondent No.6 contended that the Liquidator had no jurisdiction to write off the debt of judgment-debtors and the power is with the Registrar under Rule 38 of the Rules, therefore, no question of any compromise or arrangement with any debtor arises. Learned counsel(s) relied upon the judgment of this Court in ***Harpal Singh v. Assistant Registrar, Co-operative Societies, Rupar and others, 1974 PLJ 113.***



6. I have heard learned counsel for the parties and perused the record.

7. Vide orders dated 26.02.1999, it was directed that the auction of the property of the petitioner, if already taken place, be not confirmed. Thereafter, the petitioner has died and his legal representatives have been brought on record vide orders dated 22.12.1999 and the recovery proceedings were stayed.

8. Relevant provisions of Section 59 of the 1961 Act read as under: -

“59. Powers of Liquidator :- (1) *Subject to any rules made in this behalf, the whole of the assets of a co-operative society, in respect of which an order for winding up has been made, shall vest in the liquidator appointed under section 58 from the date on which the order takes effect and the liquidator shall have power to realise such assets by sale or otherwise.*

(2) *Such liquidator shall also have power, subject to the control of the Registrar,-*

x x x x

(i) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable;

(j) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute to arbitration;”

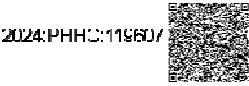
9. Perusal of the above provisions shows that the Liquidator has been empowered to make any compromise or arrangement with the creditors. In consonance with the aforesaid provisions of Section 59 of



passed the resolution dated 02.06.1988, whereby compromise was entered into with the petitioner and he was directed to deposit the amount outstanding against him along with interest @ 6% per annum instead of interest of 13.5% per annum. In compliance of the agreement/compromise with the Liquidator, petitioner had already deposited the entire amount of Rs.1,13,300/- in three instalments. Thereafter, after about nine years of the compromise, Assistant Registrar, Co-operative Societies, annulled the resolution dated 02.06.1988 in the year 1997 and directed the Society to charge interest @ 13.5% per annum, which is not sustainable in the eyes of law as Assistant Registrar, Co-operative Societies has no power to annul the compromise entered into between the petitioner and the Liquidator that too after a delay of nine years. The orders of the Liquidator are to be approved by the Registrar. Hence, the order of the Liquidator is the order of the Registrar, Co-operative Societies. Against the orders of the Registrar, the appeal lies to the State Government under Section 68(2) of the 1961 Act. Further, the petitioner has died way back in year 1997 and his legal representatives cannot be saddled with the liability proposed at this stage i.e. on expiry of period of 27 years particularly when the amount has already been deposited by the deceased petitioner as per resolution before his death, in order to balance the equities between the parties.

10. In view of the above, present petition is allowed. Orders dated 20.06.1997, passed by Assistant Registrar, Co-operative

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Societies, Malerkotla, and 07.04.1998 passed by the Deputy Secretary, Co-operative (Appeals), Punjab, are quashed and set aside.

11. Pending application(s), if any, also stand disposed of.

10.09.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No