



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

114

**RSA-984-2019 (O&M)
Date of decision : 30.07.2024**

The Cheeka Vikas House Building Society Limited Appellant

versus

Bant Ram and another Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajeev Sharma (Raju), Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and respondent No.1 as the plaintiff.

2. Plaintiff filed suit for permanent injunction seeking decree of restraint against the defendant from recovering amount of Rs.1,57,182.93 under the impugned notice dated 12.07.2010 by adopting coercive method including alienating the property which was under mortgage with defendant No.1. It was claimed that property already stands released on payment of total balance of Rs.38,000/- under OTS Scheme on 30.05.2003.

2. As per the case of the plaintiff, he raised loan of Rs.50,000/- from defendant-society by mortgaging plot and the house which was to be constructed utilizing the loan amount. While defendant was paying installments discharging his loan liability till 2002, society



came up with OTS scheme in the year 2003. Plaintiff availed the scheme and offered to settle his loan. Society accepted the offer of the plaintiff and an amount of Rs.38,000/- in lump sum was paid on 30.05.2003 against receipt to that effect in favour of the plaintiff of even date. However to the surprise of the plaintiff after 07 years on 12.07.2010, he received demand notice amounting to Rs.1,57,182.93 as due on 01.11.2009. Plaintiff filed the instant suit seeking perpetual injunction against the society from continuing with the recovery proceedings.

3. Defendant-appellant appeared and contested the suit. Defendant claimed that the jurisdiction of Civil Court is barred in terms of Section 102 of Haryana Cooperative Society Act, 1984 read with Section 128. It was however admitted that an amount of Rs.90,067.93 was paid by the plaintiff to defendant No.1. So far as payment of Rs.38,000/- is concerned, stand of the society was that Manoj Kumar, its Secretary did not deposit the amount in the account of the society and embezzled the same for which he was booked in FIR No.98 dated 25.04.2006, registered under Sections 409, 420, 467, 468 and 471 of IPC at Police Station Cheeka and even arbitral award amounting to Rs.81,163/- has been pronounced against the Secretary and in favour of the plaintiff-society in arbitration proceedings under the Act. On the basis of pleadings, Trial Court framed following issues:-

- “(1) Whether plaintiff is entitled to a decree for permanent injunction as sought? OPP
- (2) Whether the civil Court has got no jurisdiction to entertain and try the present suit? OPD
- (3) Whether suit of plaintiff is not maintainable? OPD



- (4) Whether plaintiff has got no cause of action to file the present suit? OPD
- (5) Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
- (6) Relief.”

4. After analyzing the evidence, Trial Court decided issue No.1 and 2 in favour of the plaintiff. Issue No.3, 4 and 5 were decided against the defendants for want of evidence. In appeal preferred by the defendants, the findings recorded by the Trial Court stand affirmed.

5. Counsel for the defendant-appellant while assailing the impugned judgment and decree has invoked Section 102 read with Section 128 of the 1984 Act to submit that once there was a dispute between the loanee as well as the cooperative society, the redressal has to be by way of arbitration and jurisdiction of Civil Court will be barred.

6. I have heard counsel for the defendant-appellant and have carefully gone through the records of the case.

7. In order to appreciate the arguments raised by counsel for the appellant, provision as contained under Sections 102 and 128 of the Haryana Cooperative Societies Act, 1984 need to be perused:-

“Section 102 - Disputes for arbitration-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society [other than a dispute of disciplinary action or dispute relating to service matters in respect of a paid servant of a society] rises -

- (a) among members, past members and persons claiming through a member, past member or deceased member; or



(b) between a member, past member or persons claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent or employee of the society; or

(d) between the society and any other society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society;

such disputes shall be referred to the arbitration of the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

[Provided that any proceedings pending or concluded under Section 101 shall not constitute a dispute touching the constitution, management or the business of the society.]

(2) For the purpose of sub section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely :-

(a) claim by the society for any debt or demand due to it from a member, or nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal



debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(4) No dispute arising in connection with the election of committee member or officer of the society shall be entertained by the Registrar unless it is referred to him within thirty days from the date of the declaration of the result of election.

Section 128 - Bar of jurisdiction of courts-

(1) Save as provided in this Act, no Civil Court, [or revenue court] shall have any jurisdiction in respect of—

(a) the registration of a co-operative society or its bye-laws or of an amendment of bye-laws;

(b) the removal of a committee;

(c) any dispute required under section 102 to be referred to the arbitration of the Registrar or any matter in which proceedings under section 104 have been initiated; or

(d) any matter concerning the winding up and dissolution of a co-operative society.

(2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or



instituted against the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act no order, decision or award, made under this act, shall be questioned in any court on any ground whatsoever.”

8. Section 128 provides expressly bars jurisdiction of civil courts in respect of the disputes enlisted under Section 128(1)(a)(2)(d). Section 102(1) provides arbitration as the remedy for redressal of disputes. The deemed disputes have been enlisted under Section 102(2). Admittedly, it seems that the present lis being a claim by the society for demand due to it would attract Sections 102 and 128. However on further scrutiny, it is evident that in the present case, the society offered for OTS regarding existing debts. The plaintiff being a debtor availed the same and cleared the entire arrears. Admittedly, the arrears were paid to Secretary of the Cooperative Society. Section 39 of 1984 Act provide for cooperative society(s) to be body corporate. The same is managed by its general body of members. General body of members further is empowered to act through officers of the society. Section 2(m) of 1984 Act defines officer. The same reads as under:-

“2(m) - officer” means the president, vice president, chairman, vice chairman, managing director, secretary, manager, member of committee, treasurer, liquidator, administrator and includes any other person empowered under the rules or the bye-laws to give directions in regard to the business of a cooperative society.”

9. The Secretary of the society was thus empowered under the rules to give directions in regard to the business of the cooperative society. Meaning thereby, he was competent to accept deposit on behalf of the society.

10. Society admits that so far as amount of Rs.38,000/- is concerned, the same was paid by the plaintiff against writing issued by the Secretary, but the stand taken is that Manoj Kumar-the Secretary who was to pay the amount on behalf of the society did not deposit the same further in the account of the society.

11. Considering the aforesaid facts and in view of the provision as contained in 1984 Act that the cooperative society acts through the Secretary only, this Court finds that dispute, if any, is between the Secretary and the Society and not between the loanee and the society and thus the arbitration proceedings were initiated against the Secretary and the arbitration award has been passed against him.

12. In view of aforesaid facts that there was no dispute between the society as well as the loanee, this Court finds that the society cannot be allowed to take refuge under Sections 102 and 128 of the 1984 Act and the Courts below have not committed any illegality in decreeing the suit.

13. Consequently, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

30.07.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No