IN THE COURT OF DINESH KUMAR,

ADDITIONAL DISTRICT JUDGE, MANSA.

(UID No.:PB0445)

Arbitration Case No.	05 dated 18.09.2018
Registration No.	ARB/31/2018
CNR No.	PBMN01-003060-2018
Date of Decision	28.10.2021

1. Jagmail Singh age about 57 years;
2. Bara Singh age about 56 year legal heir of deceased Gurdev Singh son of Diwan Singh, both residents of village Tahlian, Tehsil Budhlada, District Mansa.
3. Kulwinder Singh age about 51 year, legal heir of deceased Gurdev Singh resident of village Tahlian now wife of Karam Singh son of Jeet Singh resident of village Phaphre Bhaike Tehsil and District Mansa.

....Applicants/Petitioners

Versus

1. The Mansa Central Co-operative Bank Ltd. Branch office village Bareh, Tehsil Budhlada, District Mansa through its Branch Manager.
2. Darshan Singh, Branch Manager, The Mansa Central Co-operative Bank Ltd. Branch Office Village Bareh, District Mansa, son of Gurdev Singh, resident of village Tahlian, Tehsil Budhlada, District Mansa.

...Respondents

3. Jethu Singh, PCS-II (Retired) Assistant Registrar, Co-operative Societies, Budhlada, District Mansa.

...Arbitrator.

Application/objection petition under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated 24.12.2010, passed by Learned Arbitrator/respondent no.3 for an amount of Rs.4,48,797/-.

Present: Sh.L.K.Arora, Learned Advocate for applicant.
Sh.S.S.Mander, Learned Advocate for respondent no.1
Sh.G.S.Mann, Learned Advocate for respondent no.2

JUDGMENT :

1. The applicants/objectors are legal heirs of deceased Gurdev Singh and they have filed the objections under section 34 of the Arbitraion and Conciliation Act 1996 (hereinafter called as Act) assailing the arbitration award dated 24.12.2010, passed by sole Arbitrator/respondent no.3 Shri Jethu Singh, PCS-II (Retired) Assistant Registrar Co-operative Societies Budhlada District Mansa.

2. The brief facts of the case which led to the filing of the present objections are that deceased Gurdev Singh was an account holder of Mansa Central Co-operative Bank Ltd. Branch Office Village Bareh, Tehsil Budhlada, District Mansa. He was having sanctioned RCC limit of Rs.2,00,000/-/ in his bank account no.54. It was case of the bank that respondent no.2 Darshan Singh, Branch Manager son of Gurdev Singh in collusion with his father Gurdev Singh misappropriated the amount of the bank. Allegedly, respondent no.2 Darshan Singh sanctioned the loan to his father Gurdev Singh exceeding the sanctioned loan limits. Neither deceased Gurdev Singh nor Darshan Singh returned the aforesaid amount to the bank. In view of the provisions of section 55/56-A of the Punjab

Co-operative Societies Act 1961, respondent no.3 was deputed as sole arbitrator and he passed the impugned award dated 24.12.2010 against respondent No.2 Darshan Singh Branch Manager and deceased Gurdev Singh holding them responsible for the misappropriation of the amount of bank.

3. Aggrieved from the aforesaid impugned award, applicants have filed the present objections under section 34 of the Arbitration and Conciliation Act 1996.

4. Notice of the application was given to the respondents. Sh.SS Mander Advocate has appeared to contest the aforesaid petition on behalf of respondent no.1. Sh.G.S.Mann, learned counsel for respondent no.2 has appeared and supported the case of the applicants. Record has been requisitioned.

5. Sh.L.K.Arora, learned counsel for the applicants has argued that deceased Gurdev Singh had obtained a loan limit from respondent no.1 bank by mortgaging his land measuring two acre in the year 2005. The aforesaid Gurdev Singh never exceeded his loan limit during his life time. Deceased Gurdev Singh expired on 18.10.2011 and applicants alongwith respondent no.2 are his legal heirs. They had received movable and immovable property of Gurdev Singh by way of inheritance. Therefore, applicants are entitled to challenge the award passed by respondent no.3 against deceased Gurdev Singh as impugned award affects the rights of the applicants. Arguing on the point of limitation,

learned counsel has submitted that impugned award is purported to have been pronounced by Arbitrator on 24.12.2010, however Arbitrator did not supply the original copy of the impugned award to deceased Gurdev Singh. He further argued that it was mandatory for the Arbitrator to deliver the certified copy/signed copy of the award to the parties and the point of limitation commenced from the date of receipt of certified/signed copy from the arbitrator. There is no material on the record to suggest that any copy of the award was supplied to deceased Gurdev Singh or to his LRs. Applicants applied for the copy of the award on 30.08.2018 and on receipt of certified copy of award, present objection petition has been filed within 90 days from the date of receipt of the copy of award. As such, petition under section 34 of the Act is within the limitation period. He placed reliance upon the judgment **Benarsi Krishna Committee and Ors Vs. Karmyogi Shelters Pvt Ltd, 2012 (4) RCR (Civil) 585.** He further argued that impugned award is liable to be set aside as respondent no.3 was a biased officer and he was not fit or capable to act as an arbitrator. He openly sided with respondent no.1 and misconducted the proceedings which has caused immense prejudice to deceased Gurdev Singh and his successors. He further argued that impugned award is non-est in the eyes of law as it suffers from jurisdictional error. The award in question suffers from various short coming all of which are covered under various heads mentioned by section 34 of the Arbitration and Conciliation Act. He further argued that reference was made under section 55 and 56 of the Punjab Co-Operative

Societies Act, 1961 whereas no such reference was maintainable. A reference could be made only if dispute touches the institution, management, or business of the co-operative societies. However, in the instant case, the reference was purportedly made on the allegations of misappropriations of funds on the part of respondent no.2 Branch Manager and deceased Gurdev Singh. Such dispute/claim is either a criminal offence or a civil matter of recovery but the same has no concern with the constitution, management or business of the society. As such it was not within the purview of the Registrar to refer the matter to the Arbitrator and resultant award is manifestly without jurisdiction. The respondent no.1 bank has already got registered a criminal case FIR No.67 dated 17.08.2009 under sections 420, 409, 467, 468, 120-B IPC, PS Boha District Mansa which is pending against the accused of the case. Therefore, matter in dipsute was not within the jurisdiction of the Arbitrator and the Arbitral Award is invalid as it deals with dispute not contemplated by arbitral provisions/clause. Deceased Gurdev Singh and his successors are not employees of respondent no.1 bank rather deceased Gurdev Singh was only an account holder and as such no arbitration proceedings could have been initiated against deceased Gurdev Singh.

6. It is further argued that deceased Gurdev Singh was not afforded proper opportunity of being heard and thus unable to present her case properly before the Arbitrator. The Arbitrator did not inform deceased Gurdev Singh anything and kept the proceedings without any date and announced the award in the absence of the parties on

24.12.2010. A bare perusal of the award shows that statements of the parties were recorded and deceased Gurdev Singh has categorically stated that he had obtained the limit from bank to the tune of Rs.2,00,000/- and never got extended the limit account. The excess amount used in the said limit account of deceased Gurdev Singh was not withdrawn by him. Deceased Gurdev Singh was not having any knowledge regarding the withdrawal of amount from his account. On the other hand respondent no.2 Darshan Singh Branch Manager gave the statement before the Arbitrator that deceased Gurdev Singh had no concern with the amount of over draft nor he appended his thumb impression and he deposited the said amount in the current account no.19 of Anil Kumar son of Bhishambar Dial, resident of Budhlada. From the said statement, it has been proved that deceased Gurdev Singh was nothing to do with the embezzlement of the alleged amount rather respondent no.2 is liable for alleged embezzlement.

7. It is further argued that Arbitrator/respondent no.3 misconducted the proceedings. Respondent No.3 passed the award in absence of deceased Gurdev Singh without any evidence or statement produced by the claimant/respondent no.1. No documentary evidence was produced before the Arbitrator regarding the alleged embezzlement of the amount of respondent no.1 bank and impugned award has been passed against the petitioner by respondent no.1 by wrongly observing that deceased Gurdev Singh had handed over the cheque book to the respondent no.2. He further argued that even if the alleged contention of

the respondent no.3/Arbitrator is admitted even then the liability of the deceased Gurdev Singh is limited upto Rs.2,00,000/-only and respondent no.2 is responsible for amount exceeding Rs.2,00,000/-.The charge of the misappropriation of money is a grave charge required to be proved to the hilt beyond shadow of doubt as in a criminal case but the Arbitrator passed the award without seeking any documentary proof regarding misappropriation. In absence of any record and without taking any expert evidence regarding alleged thumb impression of the deceased Gurdev Singh, no award could have been passed against him and there is violation of section 24 (3) of the Arbitration and Conciliation Act, 1996 as no copy of the statements of the witnesses examined by the claimant were supplied to deceased Gurdev Singh or his successors.

8. It is further argued that deceased was not afforded any opportunity to cross-examine the witnesses of the claimant/respondent no.1. The learned Arbitrator has also completely ignored the confession of respondent no.2 who admitted that deceased Gurdev Singh has no concern with the alleged embezzlement amount nor deceased Gurdev Singh appended any thumb impression or signature. The impugned award is against the principles of natural justice. He further argued that impugned award is unfair, unjust and against the public policy. Arbitrator though not bound by strict provisions of Evidence Act is nevertheless bound to proceed in a fair manner and treat the parties even handedly. Moreover, deceased Gurdev Singh has not been intimated about the dates of hearing and the entire proceedings have been conducted at the back of

deceased Gurdev Singh which is grossly unjust and arbitrary. In support of his arguments, he placed reliance upon the judgments titled **Vijay Kumar Vs. Bathinda Central Cooperative Bank and others, 2014 (1) RCR (Civil) 87, Oil and Natrual Gas Corporation Ltd Vs. SAW pipes Ltd 2003 (2) RCR (Civil) 554, Food Corporation of India Vs. Ram Lubhaya, 2007 (2) Recent Civil Reports 479, Shankerbag Co-operative Housing Society Ltd vs. Kumari Sarojben Maganbhai AIR 1991 Gujarat 147, Fuljit Kaur Vs. State of Punjab, 2010 (3) RCR (Civil) 323 and Rakesh Bhatnagar Vs. Union of India & Ors 2013 (3) Civil Court Cases 282 (SC**). On the aforesaid pleas, learned counsel has requested to set aside the impugned award.

9. On the other hand, Shri SS Mander, learned counsel for respondent no.1 bank has argued that there is no legal or factual error in the award passed by learned Arbitrator. Deceased Gurdev Singh was having knowledge of the proceedings against him and he appeared before the learned Arbitrator. During the pendency of the proceedings, he suffered statement showing his ignorance about the withdrawal of the amount. Learned Arbitrator has rightly taken into consideration the conduct of the deceased as he handed over his cheque book to respondent no.2 Darshan Singh Branch Manager. The collusion between the deceased and respondent no.2 is evident from the fact that respondent no.2 Darshan Singh Branch Manager is the son of deceased Gurdev Singh and he has succeeded the inheritance of deceased Gurdev Singh. He further argued that Arbitrator conducted the proceedings in a fair manner and the

objections raised by the petitioner do not fall within the purview of section 34 of the Act. The award passed by the Arbitrator does not suffer from any jurisdictional error. He further argued that applicants have filed the objections challenging the award beyond the period of limitation. The award was passed in the year 2010 and copy of the same was delivered to the deceased. However, award has been challenged in the year 2018 after gap of 08 years. Hence,. Petition under section 34 of the Act is liable to be dismissed. With these arguments, he prayed for dismissal of the present petition filled by the applicants/petitions under section 34 of the Act.

10. Shri G.S. Mann, learned counsel for respondent no.2 has argued that there was no misappropriation on part of respondent no.2 Darshan Singh Branch Manager and he transferred the funds as per the direction of the higher officials. He further argued that award passed by the Arbitrator/respondent no.3 is not sustainable.

11. After hearing both sides, following points arise for consideration:

1) Whether petition under section 34 of the Act is beyond the period of limitation?
2) Whether the reference made by the Registrar was beyond the scope of Punjab Co-operative Societies Act?
3) Whether award dated 24.12.2010 is liable to be set aside?

Point No.1:

12. Admittedly, in the present case, award was passed on 24.12.2010 and objection under section 34 of the Act was filed on

18.09.2018 i.e. after the gap of 08 years. The first contention of learned counsel for the respondent no.1 is that objections filed by the applicants are time barred. On the contrary, it is the argument of learned counsel for the applicants that signed copy of the award was not delivered to the party and therefore, period of limitation as envisaged under Act was not commenced.

13. In **Benarsi Krishna Committee and Ors Vs. Karmyogi Shelters Pvt Ltd (Supra)** referred by counsel counsel for the applicants, a signed copy of the award was not delivered to the party and party obtained the same on 15.12.2004 and petition under section 34 of the Act was filed on 03.02.2005, it was held that petition was filed within the stipulated period of three months as contemplated under section 34 (3) of the Act. It is further held that the aforesaid provisions clearly indicate that a signed copy of the award has to be delivered to the party. Accordingly, when copy of the signed award is not delivered to the party himself it would not amount to compliance with the provisions of section 31 (5) of the Act. In the present case, there is no reference in the record that Arbitrator complied with the provisions of section 31 (5) of the Act and he delivered the copy of the award to deceased Gurdev Singh. In absence of any order or receipt on the record of arbitration, this court cannot presume that signed copy was delivered to the party. A perusal of the record goes to show that applicants, who are successors of deceased, moved an application for obtaining the certified copy on 30.08.2018. Thereafter, they filed the present objections on 18.09.2018 i.e. within 90

days on the receipt of certified copy. Accordingly, point of determination of No.1 is answered in favour of the petitioners/applicants and it is held that petition is within the limitation period.

Point No.2:

14. The contention of learned counsel for the applicants is that Registrar was not having any jurisdiction or authority to refer the dispute to the Arbitrator as it is beyond the scope of section 55 of the Punjab Co-operative Societies Act. It is the argument of learned counsel for the applicants that neither deceased Gurdev Singh nor his successors were the employees of respondent no.1 bank and therefore, there was no occasion for the Registrar to depute respondent no.3 as Arbitrator. The aforesaid argument of learned counsel for the applicants is devoid of merits. Section 55 of the Punjab State Co-operative Societies Act is reproduced for reference:

> "55.Disputes which may be referred to 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 co-operative society arises:
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> (a) among members, past members and persons claiming through members, past members and deceased members, or
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> (b) between a member, past member or person 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 ny past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society between a society and liquidated of another society or between the liquidator of one society and the liquidator of another society.

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

15. Sub section (2) of section 55 explains the scope of the dispute touching the constitution, management or the business of a co-operative society.

16. The relevant portion of sub section (2) goes as under:

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

(b) XXXX

(c) XXXX

17. Sub Part (3) of section 55 of the Societies Act provides that if any question arises whether a dispute referred to the Registrar under the section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

18. Section 82 of the Societies Act further provides that no civil or revenue Court shall have any jurisdiction in respect of any dispute required under section 55 to be referred to the Registrar. The conjoint reading of section 55 and 82 of the Societies Act clearly postulates that a claim by the society for any debt from its member or legal representative of a deceased member is a dispute touching the constitution, management or the business of a co-operative society. In the present case, it is not in dispute that respondent no.1 co-operative bank is in the business of advancing loan to its account holders/members. Respondent no.1 co-operative bank referred the claim to the Registrar alleging that respondent no.2 Darshan Singh, Branch Manager, in collusion with account holder deceased Gurdev Singh embezzled the amount of bank. Allegedly,

deceased Gurdev Singh was having sanctioned loan limit of Rs.2,00,000/- however respondent no.2 sanctioned the loan of Rs.3,90,000/-exceeding the credit limit granted to deceased Gurdev Singh. The aforesaid amount was not returned and therefore, society was having a claim for the debt against its member and employee. Thus, the controversy raised by respondent no.1 falls in the purview of section 55 of the Society Act as Deceased Gurdev Singh was member of the society and dispute pertains to the business of the co-operative society. The judgment titled **Shankarbhag Co-operative Housing Society Ltd Vs. Sarojben Maganbhai (Supra)** is distinguishable from the facts of the present case as in the aforesaid judgment the Hon'ble Gujarat High Court held that act of accepting loan or receiving deposits from non-members by the society is not referable to the business of society, however, in the present case, the loan was advanced by the co-operative society to its member which is the core business of the co-operative bank. Therefore, aforesaid point for determination is answered against the petitioners/applicants and in favour of respondent no.1 bank.

Point no.3:

19. The applicants/objectors have taken the objections that Arbitrator conducted the proceedings in biased manner and no opportunity of being heard was given to deceased Gurdev Singh. The aforesaid contention is against the record of the Arbitrator. Admittedly, notice of the arbitration proceedings was given to Gurdev Singh (since

deceased) and he personally appeared before the learned Arbitrator and suffered his statement before him. Therefore, there is no force in the argument of learned counsel for the applicants that principles of natural justice were violated and Gurdev Singh was not afforded any opportunity to defend him. As per case of the claimant, deceased Gurdev Singh was entitled for the credit limit of Rs.2,00,000/- however the amount of Rs.3,90,000/- was withdrawn on 01.09.2008 through cheque bearing no.168597 from his saving account. Deceased Gurdev Singh in his statement before the Arbitrator showed his ignorance about the withdrawal of amount from his account. However, he failed to offer any explanation how his cheque book was used in the aforesaid transaction. The evasive denial by deceased Gurdev Singh does not come to his rescue he could not evade from his liability. The learned Arbitrator had taken into consideration the conduct of the deceased Gurdev Singh and held him responsible for misappropriation of the bank funds along with his son respondent no.2 Darshan Singh Branch Manager. The statement given by the respondent no.2 is not a confessional statement rather it has been made to avoid the liability of his father. As per the version of responent no.2, he deposited the amount in the account of one Anil Kumr however, he did not produce any documentary evidence in support of his assertion. Therefore, statement given by respondent no.2 does not come to the rescue of deceased Gurdev Singh and his successors. There is no material on the record to suggest that respondent no.3 was biased in any manner and he proceeded on the basis of record. The amount was withdrawn from the bank through cheque book of deceased Gurdev Singh and therefore, he along with his son Darshan Singh was held liable for the loss caused to the bank. The collusion between deceased Gurdev Singh and Darshan Singh, Branch Manager/respondent no.2 is evident as objectors have admitted in their objections that respondent no.2 is legal heir of deceased Gurdev Singh. The mere fact that the witnesses were not cross examined is no ground to set aside the impugned award. Section 18 of the Act provides that parties shall be treated with equality and each party shall be given a full opportunity to present his case. Section 19 (1) of the Act further mentions that Arbitral Tribunal shall not be bound by the Code of Civil Procedure 1908 or the Indian Evidence Act. The parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings. Failing any agreement referred to in sub section (2), the Arbitral Tribunal may, subject to this part conduct the proceedings in the manner it considers appropriate. In the present case, there is no material on the record to infer that equal treatment was not given to th parties. Parties appeared before the Arbitrator in person which is evident from the statements given by them. The learned Arbitrator gave the findings on the basis of documentary evidence produced by the then Branch Manager of the Co-operative Bank. Deceased Gurdev Singh and Darshan Singh did not produce any documentary evidence to show that they were not responsible in withdrawing the amount from the bank. The judgments cited by learned counsel for the applicants are distinguishable from the facts of the present case. In **Vijay Kumar Vs. Bathinda**

Central Co-operative Bank (Supra), the Arbitrator did not comply the provision of section 24 of the Act and he reserved the order on the day of fling of the written statement by the objectors. In the present case, hearings were given to the parties and they appeared in person before the learned Arbitrator. In **Oil Natural and Gas Corporation Ltd Vs. SAW Pipes Ltd (Supra)** the Hon'ble Supreme court held that if the award is non-speaking and is in violation of section 31 (3), the court can interfere which such an award under section 34 of the Act. In the present case, award is speaking one and factual controversy has been decided by the Arbitrator on the basis of record. In **Food Corporation of India Vs. Ram Lubaya (Supra)**,the documents were not produced in accordance with law in evidence by the witness, the Hon'ble High Court held that such documents cannot be taken into consideration. In the present case, respondent no.2 has admitted about the withdrawal of the amount from the account of deceased Gurdev Singh and therefore, his admission is the best evidence and therefore, aforesaid said judgment is distinguishable. **Fuljit Kaur Vs. State of Punjab (Supra)** is also not applicable to the facts of the present case as no malafide has been extended against the respondent. **Rakesh Bhatnagar Vs.Union of Injdia (Supra)** is distinguishable as there is no violation of natural justice in the present case. Hence, there is no illegality or infirmity in the arbitration award. The objections fled by the applicants/objectors sans merits. Accordingly, this point is answered in favour of respondents No.1 and 3 and against the applicants.

20. In view of my aforesaid discussion, the award of the Learned Arbitrator is hereby upheld and there is no merit in the objection petition and same is hereby dismissed with costs. Memo of costs be prepared. File be consigned to Record Room and record of the arbitrator be sent back.

Pronounced in open Court (Dinesh Kumar),
28.10.2021 Additional District Judge, Mansa,
(UID:PB0445)

Raj/SG-1

RAJ KUMAR Digitally signed by RAJ KUMAR Date: 2021.11.09 09:37:14 +0530