

IN THE COURT OF SACHIN SHARMA, ADDL. DISTRICT
JUDGE, FEROZEPUR.



CNR No.PBFZ0100-4309-2017

Arb. Case No. 07 of 31.08.2017

CIS No. Arb.22 of 2017.

Date of Decision: 14.05.2019

Gurwant Singh aged 33 years son of Gurdeep Singh, resident of village
Peer Muhammad, Tehsil Zira, District Ferozepur. Adhar Card
no.252669708826.

... Petitioner.

Versus

1. The Zira Primary Co-operative Agriculture Development Bank
Limited, Zira through its Manager.
2. Jasbir Singh, Inspector, The Co-operative Societies, Behak Gujran,
Tehsil Zira, District Ferozepur.

... Respondents.

Petition under section 34 of Arbitration and Conciliation
Act, 1996 for setting aside the award dated 28.11.2015
passed by Arbitrator Jasbir Singh, Inspector, respondent
no.2.

Present: Ms. DPK Sodhi, Adv. Counsel for the petitioner.
Sh. G.S. Bawa, Adv. Counsel for respondent no.1.
Respondent no.2 Jasbir Singh in person.

J U D G M E N T

1. The instant petition has been filed by petitioner Gurwant Singh under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside Award dated 28.11.2015 passed by the respondent No.2 arbitrator in Arbitration case titled as 'The Zira Primary Co-operative Agriculture Development Bank Limited Vs. Gurwant Singh'.

2. Upon notice, respondent no.1 filed reply to the petition by taking *preliminary objections* that petition is not maintainable on the grounds: (a) as per Section 82(3) the Punjab Cooperative Societies Act, 1961, no order, decision or award made under this Act, shall be questioned in any court on any ground whatsoever; (b) as per section 82(1) the Punjab Cooperative Societies Act, 1961 no civil or revenue court shall have the jurisdiction in respect of any dispute required under section 55 to be referred to the Registrar; (c) the award dated 28.11.2015 is not under Arbitration and Conciliation Act because as per Section 68 of the Punjab Cooperative Societies Act, 1961, the appellate

jurisdiction against the award passed under the Act is with Deputy Registrar. It is further submitted that if the award was passed under Arbitration Act then the present petition would be maintainable. But in the present case, the petitioner could have filed appeal before Deputy Registrar of the Punjab Cooperative Societies Act, 1961.

3. ***On merits***, it has been submitted that Section 55 of the the Punjab Cooperative Societies Act, 1961 provides jurisdiction to respondent no.1 to refer the dispute to arbitration. It is further submitted that award dated 28.11.2015 has been passed after providing proper opportunity to the petitioner and recital regarding the service of petitioner has also been mentioned in the award by the arbitrator. It has been further submitted that the petitioner was fully aware of passing of the Award. It was only when auction notice of JDs agricultural land issued by the court reached in his village, then he came to the court and filed the present petition. Denying the remaining averments of the petitioner, the respondent no.1 finally prayed for dismissal of the petition.

4. I have heard learned counsel for the parties and have gone through the record very carefully.

5. While taking into consideration the arguments raised by the learned counsel for the respondent qua maintainability of the present petition under section 34 of the Arbitration and Conciliation Act 1996 (herein referred as the A& C Act, 1996), in view of the specific remedy available to the petitioner to file an appeal against the impugned award, as per section 68 of the Punjab Co-operative Societies Act, 1961 ; alongwith the bar of jurisdiction of the Court under section 82 of the Punjab Co-operative Societies Act, 1961, this court is of the view that at this juncture, there is no need to discuss in detail the averment made by the learned counsel for the petitioner as stated in his petition.

6. In the background of the aforesaid factual position, the learned counsel for the petitioner has developed two fold arguments as follows:

- i) That he is not the member of the society and merely a loanee, therefore, not being a member of the society; provision of Punjab Co-operative Society Act, 1961, will not apply to him.
- ii) That the alleged reference to the Arbitrator was made without his consent, which is totally illegal and violation of the

provisions of Arbitration and Conciliation Act, 1996.

7. However, before deciding the aforesaid arguments, it is better to reiterate the relevant provisions of **Punjab Co-operative Societies Act, 1961** as follows:.

“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 a co-operative society arises;-

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

(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 any 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 liquidator 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 proceedings in respect of such dispute.

(2) For the purpose of sub section (1), the following shall be deemed to be

disputes touching the constitution, management or the business of the 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) 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; and

(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 a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

56. Reference of disputes to arbitration.

(1) The Registrar may, on receipt of the reference of dispute under section 55,-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of Sub-Section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or another person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

68. Appeals:-

(1) an appeal shall lie under this section against-

(a) to (g) XXX XXX XXX

(h) any decision or award made under section 56.

(i) to (l) XXX XXX XXX

(2) An appeal against any decision or order under sub section (1) shall be made within sixty days from the date of decision or order:

(a) If the decision or order was made by the Assistant Registrar to the Deputy Registrar.

(b) if the decision or order was made by the Deputy Registrar to the Registrar or such

Additional Registrar or Joint Registrar as may be authorized by the Registrar on this behalf;

(c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;

(d) if the decision or order was made by the Registrar, to the Government and

(e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorized by the Registrar in this behalf.*

82. Bars of jurisdiction of courts:-

(1) Save as provided in this Act, no civil 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 a bye law;

(b) the removal of a committee

(bb) any matter relating to service conditions of employees of co-operative societies

(c) any dispute required under section 55 to be referred to the Registrar; and

(d) any matter concerning the winding up and the 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 the leave of the Registrar and subject to such terms as he may impose.

3. Saved 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. Perusal of the aforesaid provision shows that Punjab Co-operative Societies Act, 1961 is a complete code in itself confirming jurisdiction upon the hierarchy of Officers to pass an order in accordance with the jurisdiction and power conferred upon them.

9. At the same time, statutory clause, by virtue of **section 68 and 82 of the Punjab Co-operative Societies Act 1961**, specifically oust the jurisdiction of Civil Court or any other court except given in the Act itself.

10. Now coming to the first argument, admittedly, Section 55 explain that what kind of dispute may be referred for Arbitration. More so, **section 55 (2) (a) the Punjab Co-operative Societies Act 1961**, Society can claim for any debt and aforesaid matter shall be deemed to be touching the constitution and management or the business of the Co-operative Society.

11. Besides the aforesaid fact, any dispute made under section 55 of the Act, is again barred the jurisdiction of the courts by virtue of Section 82 (1) (c) of the Act. Perusal of the record shows that the

aforesaid dispute was also referred specifically under section 55 of the Act.

12. At the same time, no document has been shown by the petitioner that loan can also be issued to non member by the respondent Bank, which further falsify the stand taken by him.

13. Moreover, as per **Section 55 (3) of the Act**, 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 the Co-operative Society, the decision thereon of the Registrar shall be final and shall not be called in question in any court, further close the door of the petitioner qua the aforesaid argument as well. Therefore, while taking into consideration the aforesaid provisions, I do not find any substance in the first argument raised by the petitioner.

14. Now coming to the second argument. Let us examine Section 56 of the Act, which says that Registrar or Officer exercising the power as envisaged with the sole discretion to decide whether he himself should enter upon adjudication or same should be referred to any person, who will act as an arbitrator. In other words, aforesaid Act

does not give any choice to either of the parties to the dispute in the matter of selection of an Arbitrator and the provisions of section 56 of the Act make a clear departure of the provisions from Arbitration and Conciliation Act, 1996 in the matter of adjudication of dispute or Arbitration and the same cannot be said to be without jurisdiction merely because the concerned authority did not hear the petitioner before referring the dispute to an Arbitrator.

15. Further perusal of the record shows that Arbitrator was also appointed under section 56 of the Act as per prescribed provisions. Therefore, in view of the aforesaid factual position, I also do not find any substance in the next argument raised as well.

16. Besides the aforesaid fact, further reliance can be placed upon Recent Judgment passed by Hon'ble High Court of Punjab and Haryana in **CR No.4047-2017 case titled as "The Bhateri Co-operative House Building Society Ltd. Versus State of Punjab and others"**, wherein it has been specifically held that:-

“ Having considered the aforesaid arguments, I agree with the learned counsel for the petitioner, in as much as there being a statutory bar contained in Section 82 on

challenging an Award made by an arbitrator appointed in terms of Section 56 of the Punjab Co-operative Societies Act, 1961, no civil suit to challenge the Award would be maintainable with the only remedy being that of an appeal in terms of Section 68 of the said Act.”

17. Further more, as per **Section 82 (3) of the Act**, no order, decision or **award** made under this court shall be questioned in any court on any ground whatsoever, save as provided in this Act. In other words, exception has been carved out in the aforesaid provision to challenge the order, decision or award only under this Act.

18. For the sake of clarification, it is hereby reiterated again that when by virtue of Section 68 of the Act, the person has been given the remedy to file an appeal under **section 68 (1) (h) of the Act against the award** before the concerned authority then no petition under section 34 of the Arbitration and Conciliation Act, 1996 is maintainable before this court as well.

19. Therefore, in view of the aforesaid fact and circumstances of the present case alongwith relevant provisions of Punjab Co-operative Societies Act i.e. **Sections 55, 56, 68 and 82 of the Act**

etc., this court is of the view that present petition under section 34 of the Arbitration and Conciliation Act, 1996, filed by the petitioner is hereby dismissed as the same being not maintainable, with liberty to file appropriate appeal against award of the arbitrator as provided under the Act by virtue of Section 68 of the Act, if the same has not been filed. Memo of costs be prepared and the file be consigned to the record room..

Pronounced in open Court.
Dated: 14.05.2019
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Sd/- (Sachin Sharma)
Addl.District Judge,
Ferozepur
UID No.PB0519