

(2001) 07 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 10467 of 2000

Sujjon Cooperative Agricultural
Service Society Ltd., Teh. and
Distt. Nawanshahar

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: July 6, 2001

Acts Referred:

- Punjab Co-operative Societies Act, 1961 - Section 54

Citation: (2002) 2 RCR(Civil) 115

Hon'ble Judges: Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: S.S. Saron, for the Appellant; M.C. Berry, D.A.G. Punjab, for the Respondent Nos. 1 to 4 and Mr. M.S. Bedi, for the Respondent Nos. 6, 8 and 9, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.

Has the Respondent State of Punjab erred in holding that Respondent Nos. 6 to 9 were not liable to repay the amount which was due from Respondent No. 5? This is the short question that arises for consideration in this case.

2. A few facts, as relevant for the decision, may be briefly noticed.

Shingara Ram, Respondent No. 5, was working as a Secretary of the Petitioner-Society. Proceedings for recovery of different amounts, which had allegedly been misappropriated by him, were initiated. Ultimately, on June 26, 1995 the Assistant Registrar, who had been appointed as arbitrator, held that an amount of Rs. 30,000/- along with interest at the rate of 14-1/2% per annum was to be recovered from Shingara Ram. While giving this award, he further ordered that if the amount is not recovered from Shingara Ram, it shall be recovered from the members of the Managing Committee, viz., Respondent Nos. 6 to 9. Similarly, in

another case, a separate award had been given. Copies of the two are at Annexure P3 and P4 with the writ petition. This order was challenged by the members of the Managing Committee. It was pleaded that they could not be punished for the sins of Shingara Ram, especially when they had taken every step for the recovery of the money. Ultimately, vide order dated September 9, 1997, the revision petition filed by them was accepted, and it was ordered that the amount be recovered from the surety, if any. A copy of this order is at Annexure P2. The relevant findings, as recorded by the Deputy Secretary, who heard the revision petition, is in the following terms:

I have gone through the contents of the orders of the appellate authority as well as the arbitration. I have heard the counsel of both the parties. The impugned arbitration and appellate orders though hold the ex-secretary responsible for the embezzlement, yet the Petitioners have been made liable for the recovery. It is a fact that Petitioners as responsible members of the managing committee had taken sufficient precautions and have made all efforts to make the recovery and also dismissed the ex-secretary from the services of the society by following due prescribed procedure. The reference has also been made by the Petitioners u/s 55 of the Act. The extraneous pressure on the officers of the Cooperation Department cannot be ruled out.

Keeping in view of the above facts, it is apparent that the ex-secretary is responsible for the embezzlement and if the recovery is not possible from him the same may be recovered from his surety, if any. Accordingly, I accept the revision petition and case is disposed of." The Petitioner-Society filed an application for review of this order. The matter was considered by the Additional Secretary, Cooperation, Punjab. Vide order dated January 20, 2000, it was held that the application was not maintainable. Resultantly, the review petition was dismissed. A copy of this order is at Annexure P1. Aggrieved by the two orders, the Petitioner has approached this Court with the prayer that these be quashed. Notice of motion was issued.

3. Mr. M.C. Berry, Senior Deputy Advocate General, Punjab, appears for Respondent Nos. 1 to 4. Mr. M.S. Bedi has put in appearance on behalf of Respondent Nos. 6,8 and 9. No one has appeared on behalf of Respondent No. 5 despite service.

4. Counsel for the parties have been heard.

5. Mr. S.S. Saron, who appears for the Petitioner, contends that Respondent Nos. 6 to 9 were negligent in the performance of their duties. As a result, the money, which had been entrusted to Shingara Ram, was not recovered. They had not even taken care to have a surety. As a result, the Society has suffered the loss. It is further pointed out that the negligence of Respondent Nos. 6 to 9 is clearly established by a decision of this Court in Civil Writ Petition No. 6550 of 1996 (Surinder Singh and Ors. v. The Registrar, Cooperative Societies, Punjab, and others), whereby the petition filed by them had been dismissed by this Court. The claim made on behalf of the

Petitioner has been controverted by Mr. Bedi, who has appeared for some of the private Respondents.

6. The short question that arises for consideration is:

Are Respondent Nos. 6 to 9 liable to pay

the amount, which was found due from

Shingara Ram, Respondent No. 5 ?

7. Admittedly, arbitration proceedings had been initiated against Respondent No. 5. It was the claim of the Society that Shingara Ram had misappropriated the funds. Still further, even an F.I.R. had been lodged against him. He had also been dismissed from the service. In this situation, it cannot be said that Respondent Nos. 6 to 9 were, in any way, negligent in the performance of their duties.

Mr. Saron contends that a specific averment has been made by the Petitioner in paragraph 5 that "the former members of the Petitioner-Society ... took no effective steps to recover the amount due from Shingara Ram to the Society and there was lapse and complete inaction on the part of the then members of the Managing Committee.."The allegation should be deemed to be admitted as no reply has been filed.

The contention cannot be accepted. It is not disputed that the Committee which was entrusted with the task of managing the affairs of the society had lodged an F.I.R. against Respondent No. 5. It had initiated proceedings for recovery and also disciplinary action. Learned Counsel for the Petitioner is unable to point out as to what more could have been done by the Respondents. It being the admitted position that departmental, arbitration and criminal proceedings were initiated, we cannot accept the contention that the Respondents were negligent. In fact, no evidence has been placed on the file which may even remotely suggest that so far as the present case is concerned, the Respondents were negligent.

Mr. Saron submits that the negligence on the part of Respondent Nos. 6 to 9 is proved by a decision of this Court in C.W.P. No. 6550 of 1996 (supra).

8. Admittedly, the petition related to the validity of a different order. If in certain proceedings the members of the Society had failed to perform their functions, the claim of the Society was upheld and the challenge made by Respondent Nos. 6 to 9 against the order of the authority was negated by this Court. However, negligence in one case cannot lead to the assumption of negligence in another case. In fact, in the present case it has been categorically founded by the competent authority that the members of the Managing Committee "had taken sufficient precautions and have made all efforts to make the recovery..." In view of this firm finding recorded by the authority and no evidence to the contrary having been placed on the file, we find no infirmity in the order.

9. There is another aspect of the matter. Section 54 of the Punjab Co-operative Societies Act, 1961, contemplates that in a case where a person, who is entrusted with the management of a society, acts in a manner which results in loss, the Registrar may initiate proceedings for recovery from the defaulter. It is the admitted position that no such proceedings were ever initiated against the Respondents. Yet, the orders for recovery were passed against them. This was unfair and has been rightly annulled.

10. No other point has been raised.

11. In view of the above, we find no merit in this petition. It is, consequently, dismissed. In the circumstances of the case, we make no order as to costs.

Sd/- Ashutosh Mohunta, J.