

(2011) 05 P&H CK 0306

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4325 of 2009

Jagsir Singh

APPELLANT

Vs

Assistant Registrar, Co-operative
Societies, Faridkot and Others

RESPONDENT

Date of Decision: May 23, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60
- Punjab Co-operative Societies Act, 1961 - Section 53(1), 55, 82, 82(1)

Citation: (2011) 163 PLR 280

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Plaintiff-Jagsir Singh having Med in both the courts below has filed the instant second appeal. In the suit, plaintiff challenged arbitration award dated 29.05.2000 made by the Arbitrator appointed u/s 55 of the Punjab Cooperative Societies Act, 1961 (in short, the "Act") and the consequential attachment of residential house of the plaintiff in execution of the said award. The plaintiff alleged that the attached residential house is exempted from attachment u/s 60 of the CPC (in short, "CPC"). It was also alleged that award dated 29.05.2000 was passed without notice and without affording opportunity of hearing to the plaintiff. It was also pleaded that the award is not registered. It was also pleaded mat the plaintiff had not taken any loan from defendant No. 4 Cooperative Society.

2. Defendants contested the suit and defended the arbitration award and consequential execution proceedings thereof. It was pleaded that plaintiff had taken loan of Rs. 1,42,000/- from defendant No. 4 Society for construction of house and had executed mortgage deed of the plot in question over which the house was

constructed by the plaintiff from the loan amount. The plaintiff defaulted in repayment of the loan and, therefore, the matter was referred to Arbitrator u/s 55 of the Act. The Arbitrator made award dated 29.05.2000 after giving notice to the plaintiff. Loan amount as per award is recoverable from the mortgaged property. Jurisdiction of Civil Court to try the suit is barred u/s 82 of the Act. Grounds to challenge the award were controverted.

3. Learned Civil Judge (Senior Division), Faridkot vide judgment and decree dated 28.07.2007 dismissed the plaintiff's suit. First appeal preferred by the plaintiff has been dismissed by learned Additional District Judge, Faridkot vide judgment and decree dated 09.05.2009. Feeling aggrieved, plaintiff has filed the instant second appeal.

4. I have heard learned counsel for the parties and perused the case file.

5. Learned counsel for the appellant vehemently contended that the plaintiff was behind the bars since 22.03.1999 till 01.07.2000 in a criminal case and, therefore, the impugned award was passed behind the back of the plaintiff. The contention cannot be accepted because the plea of plaintiff being behind the bars during the aforesaid period was not even raised in the plaint. On the contrary, perusal of the impugned arbitration award dated 29.05.2000 reveals that the award was passed after issuing notice to the plaintiff. In addition to the aforesaid, the plaintiff preferred appeal against the said award which was pending when the suit was filed. But the plaintiff concealed the factum of the said appeal in the plaint. Moreover, the plaintiff simultaneously could not avail of both the remedies.

6. Plaintiff alleged that the residential house could not be attached in view of Section 60 CPC. The contention cannot be accepted because the said property was mortgaged and, therefore, the loan amount under the award can be recovered by attachment and sale of the mortgaged property.

7. The plaintiff also alleged that the arbitration award has not been registered. However, no provision of law has been brought to notice of this court under which arbitration award is required to be registered. The plea of plaintiff that he had not taken any loan cannot be accepted in view of the award passed against the plaintiff. In addition to the aforesaid, jurisdiction of Civil Court to try the suit is barred by Section 82(IXc) of the Act. In the instant case, dispute between plaintiff and defendant No. 4 (member and Cooperative society respectively) was required to be referred to arbitrator u/s 53(1) of the Act. Section 82(1)(c) of the Act provides that no Civil Court shall have jurisdiction in respect of any dispute required u/s 55 to be referred to the Arbitrator.

Accordingly jurisdiction of Civil Court is also barred. For the reasons aforesaid, I find no merit in the instant second appeal. Concurrent finding recorded by the courts below non-suiting the plaintiff is justified by the evidence on record and does not suffer from any illegality or perversity nor it is based on misreading or

mis-appreciation of evidence. Consequently, the said finding does not call for interference in exercise of second appellate jurisdiction. No question of law, much less substantial question of law, arises for determination in this second appeal. The appeal being merit less is hereby dismissed.