

(2011) 03 P&H CK 0825

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 57 of 2010

Gurdeep Singh

APPELLANT

Vs

The Upkar Co-operative
(Non-Agriculture) Thrift and
Credit Society Ltd. and Others

RESPONDENT

Date of Decision: March 3, 2011

Acts Referred:

- Haryana Co-operative Societies Act, 1984 - Section 102, 102(1), 104, 128, 128(1)

Citation: (2011) 163 PLR 435

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

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

This is second appeal by defendant No.1-Gur-deep Singh having failed in both the courts below.

2. Respondent No. 1-plaintiff (a Co-operative Society) filed suit against defendant No. 1-appellant and proforma respondents No. 2 to 4 as defendant Nos.2 to 4. The plaintiffs case is that the plaintiff granted loan of Rs. 27,000/- (Rupees twenty seven thousand) to defendant No.1 on the guarantee of defendants No. 2 and 3 and on recommendation of defendants No. 3 and 4. Defendants failed to repay the loan amount and interest. Accordingly, plaintiff sought recovery of Rs. 34,905/- (Rupees thirty four thousand nine hundred and five) which includes principal and interest amount.

3. Defendants inter alia pleaded that defendant No.1 had raised loan of Rs. 20,000/-(Rupees twenty thousand) only from the plaintiff-Society and the same has been repaid along with interest and the accounts were adjusted on 25.11.1999. It was denied that defendant Nos.2 and 3 stood guarantors. Rate of interest of 24%

per annum claimed by the plaintiff was also disputed and it was pleaded that rate of interest was 6% per annum or at the most 9% per annum. Various other pleas were also raised.

4. Learned Civil Judge (Junior Division), Hisar vide judgment and decree dated 03.03.2009 decreed the plaintiffs suit against defendants No.1 to 3 only and dismissed the suit qua defendant No. 4. First appeal preferred by defendants No.1 to 3 has been dismissed by Additional District Judge, Hisar vide judgment and decree dated 30.09.2009. Feeling aggrieved/defendant No. 1 has preferred the instant second appeal.

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

6. Learned counsel for defendant No.1-appellant contended that admittedly defendant No.1-appellant is member of respondent No.1-plaintiff (Cooperative Society) and the loan was advanced to defendant No.1 as member of the society. It is contended that in view thereof, the dispute was required to be referred to the arbitration of the Registrar in view of Section 102 of the Haryana Cooperative Societies Act, 1984 (in short the "Act"), and jurisdiction of Civil Court to try the suit is, therefore, barred by Section 102(1) as well as by Section 128(IXc) of the Act. Reliance in support of this contention has been placed on judgment of Hon"ble Supreme Court in the case of Balwant Singh v. State of Haryana and others (1999) 122 P.L.R. 527 (S.C.).

7. On the other hand learned counsel for respondent No.1-plaintiff contended that in view of Full Bench judgment of this Court in the case of Ran Singh v. The Gandhar Agricultural Cooperative Service Society, Gandhar 1975 P.L.J. 163 jurisdiction of Civil Court is not barred.

8. Learned counsel for respondent No.1-plaintiff also contended that no plea relating to bar of jurisdiction of Civil Court was raised by the defendants in the written statement nor any issue relating to the same was framed and therefore, this plea cannot be raised in second appeal. Per contra, learned counsel for appellant contended that plea of bar of jurisdiction of Civil Court was raised even before the lower appellate court and therefore, it could be raised in the second appeal also. It was also contended that the plea relating to bar of jurisdiction of Civil Court being purely legal plea based on facts pleaded in the plaint, can be raised even for the first time in the High Court in second appeal. In support of this contention, reliance has been placed on judgment of Hon"ble Supreme Court in the case of [Mohd. Laiquiddin and Another Vs. Kamala Devi Misra \(Dead\) by L.Rs. and Others](#), .

9. I have carefully considered the rival contentions. It is correct that in the written statement, defendants did not specifically raise the issue of bar of jurisdiction of Civil Court nor any issue to this effect was framed. However, in the lower appellate court, this argument was raised but was repelled by the lower appellate court. It is pleaded by the plaintiff-society itself that defendant No.1 was granted membership of the

plaintiff-society and was advanced loan as member of the society. Plaintiff's documents Bond Exhibit P-3 and agreement Exhibit P-4 also depict that defendant No.1 was granted loan as member of the plaintiff-society. Consequently, dispute between the parties related to management and business of the society and the dispute was between the plaintiff-society and its member defendant No.1. Accordingly, the dispute is covered by Section 102(1) of the Act which is reproduced hereunder:

102. Disputes for arbitration: (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, establishment, management or the business of a cooperative society arises:

(a) among members, past members and persons claiming through a members, 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 or 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 arbitration of the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

10. The dispute being between member and the Society was, therefore, required to be referred to arbitration of the Registrar for decision in view of aforesaid mandatory provision, which further stipulates that no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Consequently, jurisdiction of Civil Court to try the dispute is barred by this unambiguous mandatory provision. Bar of jurisdiction of the Civil Court to decide this dispute is further reiterated in Section 128(1)(c) of the Act. Section 128(1) of the Act is reproduced hereunder:

128. Bar of jurisdiction of courts: (1) Save as provided in this Act, no civil court, revenue court, industrial tribunal or labour 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-law;

(b) the removal of a committee;

(c) any dispute required u/s 102 to be referred to the arbitration of the Registrar or any matter in which proceeding u/s 104 have been initiated; or

(d) any matter concerning the winding up and dissolution of a cooperative society.

11. It is thus manifest from Section 102(1) of the Act as well as Section 128(IXc) of the Act that jurisdiction of Civil Court to try the suit is barred. This view finds support from judgment of Hon"ble Supreme Court in the case of Balwant Singh (supra). Judgment of Full Bench of this Court in the case of Ran Singh (supra) relied on by respondent No.1-plaintiff is not applicable because in that case, award passed by the Arbitrator under the provisions of the Punjab Cooperative Societies Act, 1961 was sought to be executed as decree of the Civil Court. It was held by the Full Bench that Civil Court has jurisdiction to execute the award as a decree of Civil Court for which jurisdiction of the Civil Court has been saved by the provisions of the Punjab Cooperative Societies Act. Thus in that case, the dispute had already been adjudicated upon by the Arbitrator and only award of the Arbitrator was sought to be executed as decree of the Civil Court. Jurisdiction of Civil Court to execute the award as decree of Civil Court was held to be not barred. In the instant case, however, the dispute itself is to be adjudicated upon in the suit. Jurisdiction of the Civil Court to adjudicate upon the dispute is clearly barred by Section 102(1) and Section 128(1)(c) of the Act.

12. As regards the contention that plea of bar of jurisdiction of Civil Court was not raised in the written statement; the said plea being purely legal plea can be allowed to be raised in second appeal in view of judgment of Hon"ble Supreme Court in the case of Mohd Laiquiddin (supra). Consequently, contention relating to bar of jurisdiction of Civil Court can be raised in first appeal as well as in second appeal, the said plea being purely based on question of law arising from own pleadings of the plaintiff.

13. For the reasons aforesaid, I find that following substantial questions of law arise for determination in the instant second appeal:

1. Whether jurisdiction of Civil Court to try the suit is barred?

2. Whether this plea can be raised by the appellant although not raised in the written statement?

14. In view of the discussion already made, both the aforesaid substantial questions of law are answered in affirmative i.e. in favour of defendant No. 1-appellant. As a necessary upshot thereof, the instant second appeal is allowed. Judgments and decrees of both the courts below are set aside. Since jurisdiction of Civil Court to try the suit is barred, the suit is ordered to be returned to respondent No. 1-plaintiff for presentation before court of competent jurisdiction. Records of the courts below be sent back at once. Respondent No. 1-plaintiff is directed to appear in the trial Court on 04.04.2011 to receive back the suit.