

(2010) 02 MP CK 0008
Madhya Pradesh High Court
Case No: Writ Petition No. 743 of 2009

Jansahyog Grih Nirman Sahkari
Sanstha Maryadit

APPELLANT

Vs

Deputy Registrar and Another

RESPONDENT

Date of Decision: Feb. 1, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 20
- Madhya Pradesh Co-operative Societies Act, 1960 - Section 69, 69(3)
- Madhya Pradesh Co-operative Societies Rules, 1962 - Rule 75, 75(3)

Citation: (2011) ILR (MP) 912 : (2010) 4 MPHT 54 : (2010) 3 MPJR 36

Hon'ble Judges: Ravi Shankar Jha, J; K.K. Lahoti, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

This petition is directed against an order dated 25.11.2008 passed by the M.P. State Cooperative Tribunal, Bhopal in Second Appeal No. 82/08, Annexure P/1, by which the second appeal preferred by the Petitioner against the order of the Joint Registrar, Cooperative Society, Bhopal in First Appeal No. 78-107/07 dated 14.2.2008 was dismissed.

To proceed in the case, it would be appropriate to state some facts of the case.

Petitioner is a Co-operative Society registered under the provisions of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to as "the Act"). A show cause notice was issued to the Petitioner to show cause why Petitioner society be not wound up. Initially, aforesaid notice was issued by registered A.D. mode which remained unserved and the registered envelope returned back to the Registrar with an endorsement that the office of the Petitioner society was found closed and notice could not be served. Thereafter, on 29.8.2007, the Deputy Registrar directed for

issuance of the fresh notice. Aforesaid notice was sent through process-server who found that the office of the Petitioner society was closed, so notice was affixed on the office of the Petitioner society. Thereafter, the matter was proceeded exparte. On 29.9.2007, the Deputy Registrar found that no reply of show cause notice was filed, so aforesaid allegations may be treated as admitted. Petitioner society was not working in the interest of the members of the society and u/s 69 of the Act, the society be wound up and Shri Sudhakar Pandey, Respondent No. 2 was appointed as Liquidator of the society.

An order Annexure P/2 was served on the Petitioner society. Against this order, Petitioner herein filed a first appeal before the Joint Registrar, Cooperative Society which was registered as First Appeal No. 78-107/07 and by order Annexure P/4 dated 14.2.2008, first appeal was dismissed. Against order Annexure P/4, the Petitioner filed second appeal before the M.P. State Cooperative Tribunal, Bhopal which was registered as Second Appeal No. 82/08 and vide impugned order dated 25.11.2008, this appeal was dismissed.

Before the Tribunal, Petitioner raised following contentions:

That, no notice was served on the Petitioner society as required u/s 69 of the Act and in absence of which, such penal order ought not to have been passed against the Petitioner society.

The Tribunal found that the registered notice was tried to be served on the Petitioner society, but because the office of the Petitioner society was closed, so subsequent notice was affixed on the office of the Petitioner society and the provisions of Order 5 Rule 20 CPC are applicable in the matter. As ordinary service was not possible, so the substituted service by affixture was effected and the Petitioner was rightly proceeded exparte.

This order is under challenge in this petition.

Learned Counsel for Petitioner submitted:

(a) That there was no proper service to the Petitioner and before passing an order u/s 69 of the Act, a due opportunity of hearing ought to have been extended to the Petitioner to defend its case before the Deputy Registrar.

(b) That, procedure for service of notice is envisaged under Rule 75 of the M.P. Cooperative Societies Rules, 1962 (hereinafter referred to as "the Rules") which provides mode of service of summons, but the procedure envisaged in Sub-rule (3) of Rule 75 of the Rules was not followed. Aforesaid provision specifically provides that the notice may be affected by giving or tendering it in person; or if such person is not found, by leaving it at his last known place of abode, or business or by giving or tending it to some adult member of his family; or if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post with acknowledgment due; or if none of the means aforesaid is

available, by affixing it in some conspicuous part of his last known place of abode or business. But the Deputy Registrar has not followed the aforesaid procedure as envisaged under Rule 75, so the Tribunal, the Joint Registrar and the Deputy Registrar erred in treating the aforesaid service as valid.

(c) It is further submitted by Shri Mishra that there was no order of the Deputy Registrar for affecting the service by affixture in some conspicuous part of last known place of abode or business. So no notice could have been affixed in the office of the Petitioner society.

Shri Deepak Awasthy, learned Government Advocate supported the order who submitted that the procedure as envisaged under Rule 75 was followed and after service of due notice to the Petitioner society by affixture, the order was passed.

Shri Vipin Yadav, learned Counsel for Respondent No. 2 also supported the action in the matter. He submitted that there were serious allegations against the Petitioner society and the President of the Society, who sold the property for personal gain and looking to the allegations against the Petitioner society, the order was rightly passed.

In this case, the sole question for consideration by this Court is whether the service affected on the Petitioner society was in accordance with the rules or not.

section 69(3) of the Act reads thus:

69(3) No order under Sub-section (1) or Sub-section (2) shall be passed unless the society concerned has been given a reasonable opportunity of showing cause against the proposed order and representation, if any made by it is considered.

section 69(3) of the Act provides that no order under Sub-section (1) or Sub-section (2) for winding up of the society shall be passed unless the society has been given a reasonable opportunity of showing cause against the proposed order and representation, if any made by it is considered. Meaning thereby that before passing an order of winding up the society under Sub-section (1) or (2) of section 69 of the Act, it was mandatory on the part of the Registrar to issue a show cause notice.

Rule 75 of the Rules provides mode of service of summons. For ready reference, Sub-rule (3) of Rule 75 is quoted which reads as under:

(3) The service of summons under the Act or these rules on any person, may be affected in any of the following ways:

(a) by giving or tendering it in person; or

(b) if such person is not found, by leaving it at his last known place of abode, or business or by giving or tending it to some adult member of his family; or

(c) if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post with acknowledgment due; or

(d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business, or at some place of public resort, in such place. (emphasis supplied)

Sub-rule (3) provides that a notice is to be affected in any of the following ways; by giving or tendering it in person or if such person is not found, by leaving it at his last known place of abode, or business or by giving or tending it to some adult member of his family or if the address of such person is known to the Registrar or other authorised person, by sending it to him by registered post with acknowledgment due. Sub-rule (3) further provides that if none of the means aforesaid is available, then notice could be served by affixing it in some conspicuous part of the last known place of abode or business.

In this case, order-sheets of the Deputy Registrar in the proceedings u/s 69 of the Act are on record as Annexure R/2. The order-sheets relevant for the purpose of decision of this case are at page 16. On 27.7.2007, it was decided by the Deputy Registrar to issue a show cause notice for winding up the Petitioner society. Accordingly, a show cause notice was prepared and was placed before the Deputy Registrar for signature. On 7.8.2007, the Deputy Registrar directed that the notice be issued for 21.8.2007 and signed the notice. On 21.8.2007, the notice was not returned served or unserved. The Deputy Registrar directed that the acknowledgement be awaited and after receiving the acknowledgement, the case be placed before him.

On 29.8.2007, it was recorded that the registered notice sent to the Petitioner society was returned with an endorsement that at the time of the distribution of the registered notice, the addressee was not found. On the aforesaid date, the Deputy Registrar directed that the notice be served in the office and the case was fixed for 12.9.2007. On 12.9.2007, it was recorded that for service, one Shivnarayan Khare was authorised. He intimated the office that inspite of his various visits to the office of the society, nobody could be contacted, so he affixed the notice at the office of the society. The order-sheet further reveals that on the fixed date, on 12.9.2007, nobody appears for the society and the matter was sent to the Deputy Registrar for orders. Thereafter on 29.9.2007, the impugned order was passed.

Rule 75 of the Rules specifically provides that at the first instance, notice shall be issued for service in person or notice can be issued in the manner as provided in Clauses (b) or (c). However, in the case, the notice was issued by registered post to the Petitioner society which was returned unserved. When the notice issued by the registered post was not served on the Petitioner society, the Deputy Registrar before issuance of the another notice ought to have specifically directed the process-server that in case of non-availability of the Petitioner or its authorised

person for receiving the notice or in case of finding the office closed, then the notice could be affixed in some conspicuous place of business and before recording such finding, he ought to have recorded a specific finding that modes for service as enumerated in Clauses (a), (b) and (c) of Sub-rule (3) were not available, only then such recourse could have been adopted by the Deputy Registrar. But from the perusal of the order-sheets Annexure R/2, we do not find that before affixture of the notice at the office of the Petitioner society, the Deputy Registrar passed such an order. In absence of any specific order in this regard, the process server was not authorised to decide to serve the notice by affixture. Before affixture of the notice, he ought to have obtained an order from the Deputy Registrar and on a specific order of the Deputy Registrar, he was entitled to serve the notice by affixture. But in this case in absence of any order by the Deputy Registrar after recording due satisfaction that the modes enumerated in Clauses (a), (b), (c) of Sub-rule (3) were not available and only mode was available by affixture of service, notice served on the Petitioner society by affixture was not valid.

An order of winding up of a society is penal in nature having civil consequences. Before taking such an action, principles of natural justice ought to have been followed. The legislation in its wisdom has provided a specific procedure for service of summons which ought to have been followed by the Deputy Registrar. By not serving the society in accordance with the procedure, a serious prejudice has been caused to the society, who has suffered an order of winding up.

Petitioner herein has placed reliance to a judgment of the Apex Court in *Sushil Kumar Sabharwal v. Gurpreet Singh* AIR 2002 SC 2370 and submitted that process-server before affixture of the summons had not tried to serve the summons to the addressee and there is no material on record showing that in fact any effort was made by the process-server for service of summon to the addressee and only thereafter, the notice could have been served by affixture. The copy of notice issued to the Petitioner herein is not on record to verify the aforesaid fact but from the perusal of the order passed by the Deputy Registrar, it does not reveal whether any such effort was made by the process-server before affixing the notice at the office of the Petitioner society. As aforesaid copy of notice is not on record, the contention made by the Petitioner on the basis of *Sushil Kumar Sabharwal* (supra) cannot be decided. Apart from this, special procedure under Rule 75 is provided in the Rules, so it is not necessary for this Court to consider the provision of Order 5 Rule 20 CPC in the case and this case is decided on the basis of non-compliance of Rule 75 of the Rules which provides complete procedure for service of summons under the Act.

In view of the aforesaid, we find that notice was not served to the Petitioner society in accordance with Rule 75 of the Rules and the entire proceedings thereafter are bad in law and accordingly, we set aside the impugned orders Annexure P/2, Annexure P/4 and Annexure P/1 passed by the Deputy Registrar, the Joint Registrar and the M.P. State Co-operative Tribunal, Bhopal and remand the matter to the

Deputy Registrar to extend an opportunity of hearing to the Petitioner society to show cause.

As show-cause notice has already been placed on record, so the Petitioner on the basis of show cause notice shall submit a reply to the Deputy Registrar, Co-operative Societies, Bhopal within a period of 30 days from today and after filing of the reply, the Deputy Registrar, Co-operative Societies, Bhopal shall proceed in the matter in accordance with law.

The parties present herein are directed to remain present before the Deputy Registrar, Co-operative Societies, Bhopal on 8.3.2010 for which date no fresh notice shall be necessary to the parties. The Deputy Registrar, Co-operative Societies, Bhopal shall restore the file and decide the matter after extending due opportunity of hearing, in accordance with law, expeditiously as far as possible within a period of three months from the aforesaid date. As order of winding up passed by the Deputy Registrar has been set aside, the Petitioner society shall be entitled to function, but the society shall not be entitled to sell, mortgage or alienate any property of the society. The President of the society shall not be entitled to deal with the funds/finances of the society or create any third party interest in the property of the society, till the decision by the Deputy Registrar.

No order as to costs.