

Shaidur Rahaman Khan Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Sept. 3, 1985

Acts Referred: Constitution of India, 1950 " Article 227
West Bengal Co-operative Societies Act, 1983 " Section 37(1)(c), 87

Citation: 90 CWN 303

Hon'ble Judges: M.M. Dutt, J; J.N. Chaudhuri, J

Bench: Division Bench

Advocate: Biswanath Bajpayee and S.K. Chattaraj, for the Appellant;K.D. Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutt, J.

This application under article 227 of the Constitution of India filed at the instance of the petitioner, Shaidur Rahaman Khan,

is directed against the order dated March 6, 1985 of the Appellate Tribunal passed in appeal No. 43 of 1984 modifying the award made by the

Arbitrator u/s 87 of the West Bengal Co-operative Societies Act, 1973, hereinafter referred to as "the Act". The dispute petition u/s 86(1) of the

Act was filed before the Assistant Registrar of Co-operative Societies, Midnapore by the Midnapore District Wholesale Consumers Cooperative

Society Ltd. hereinafter referred to as the Society for realization of a sum of Rs. 28,860,95 from the petitioner towards shortage of stock found on

physical verification. It was alleged that the petitioner, Shaidur Rahaman Khan, was the sales-in-charge of the Digha Branch of the Society from

29.4.1977 to 20.6.1978, and of the Midnapore Chhotobazar Branch from 30.5.1979 to 27.9.1980. It was alleged that during this period shortage

of goods of the aforesaid Branches took place and that was caused by the petitioner by not including the sales in the daily statement and not

depositing the sale proceeds in the Bank a further claim of Rs.1916.08 was made towards excess salary alleged to have been drawn by the

petitioner when he was at Egra Branch of the society.

2. It appears that an arbitrator was appointed by the Registrar of Co-operative Societies, West Bengal u/s 37(1) (c) of the Act. Shorn of all

details, it may be stated that the reference case came up for hearing before the learned Arbitrator on December 30, 1981. On that day, the Society

was absent and the learned Arbitrator dismissed the case for default. Thereafter, the Society filed an application for restoration of the case, but

there being no provision for such restoration, the learned Arbitrator rejected the application observing that the Society might start a fresh case.

3. A fresh reference was made by the Registrar at the instance of the Society. This time the learned Arbitrator made an award for the sum of Rs.

28,798.95 against the petitioner. Being aggrieved by the award, the petitioner preferred an appeal to the Appellate Tribunal. It was contended on

behalf of the petitioner that as the first reference case was dismissed for default, the second reference was not maintainable. The Appellate Tribunal

overruled the said contention and came to the finding that the petitioner was liable for the shortage of the goods. The Appellate Tribunal, however,

slightly modified the award made by the learned Arbitrator. In modification of the award, the Appellate Tribunal held that the petitioner was liable

for the sum of Rs. 27,622.20. The petitioner was directed to pay to the Society the said sum within six months from the date of the award. The

Society was granted liberty to take appropriate action for realisation of the said sum together with interest 2 1/2 per annum from the date of expiry

of the period of six months mentioned above.

4. Mr. Biswanath Bajpayee, the learned Advocate appearing on behalf of the petitioner, submits that the order by which the previous reference

case was dismissed for default by the learned Arbitrator is an award, and that after such an award the Arbitrator become functus officio and the

second award could not be made on the basis of the second reference. In support of his contention he has placed much reliance upon a Bench

decision of this Court in Nalini Mohan Choudhuri Vs. Malda Co-operative Urban Bank Ltd., . In that case, it has been laid down by the Bench

that on the making of an award by the Arbitrator on a reference to arbitration u/s 86 of the Bengal Co-operative Societies Act, 1940, the

Arbitrator becomes functus officio with regard to the disputes referred to. Further, it has been held that a second award made on a second

reference to arbitration of the identical disputes is without jurisdiction and is a nullity.

5. In our opinion, the above decision has no manner of application inasmuch as no award was passed by the learned arbitrator, by dismissing the

reference for default of appearance of the Society. We are also of the view that the order dismissing the reference for default cannot be held to be

an award. Section 87 of the Act provides" as follows:

On receipt of a reference u/s 86, the Registrar shall, subject to the rules-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person authorized by the State Government to exercise the powers of the Registrar in this behalf; or

(c) refer it for disposal to one or more arbitrators to be appointed by the Registrar.

6. Under clause (a) of section 87(1) the Arbitrator has to decide the dispute himself. There can be no doubt when the Arbitrator dismissed the

case for default, he did not decide the dispute between the parties. In our opinion, by no stretch of imagination can it be said that the order

dismissing the reference case for default is an award. We may also refer to Rule 133 of the West Bengal Co-operative Societies Rules, 1974

which, inter alia, provides that upon the evidence recorded by the Arbitrator and after consideration of any documentary evidence produced by

either party, the Arbitrator shall make an award in accordance with justice, equity and good conscience. Thus, unless there is a determination on

merits by the Arbitrator of the disputes between the parties no award comes into being.

7. It may that an appeal would have been maintainable against the order dismissing the case for default u/s 134 of the Act, but there is no provision

in the Act imposing a bar to a second reference like the provision of Order 9, rule 9 of the Code of Civil Procedure.

8. We do not, therefore, think that a second reference was barred or that the Arbitrator could not make an award on the second reference as

contended on behalf of the petitioner. No other point has been urged us in this revisional application on behalf of the petitioner. For the reason

aforesaid, the application is dismissed

There will however, be no order as to costs.

J.N. Chaudhuri, J.

I agree.