

***Before Ajay Kumar Mittal & Manjari Nehru Kaul, JJ.***

**GURDISH SINGH AND ANOTHER—*Petitioners***

*versus*

**STATE OF PUNJAB AND OTHERS—*Respondents***

**CWP No. 15563 of 2018**

March 27, 2019

***Punjab Cooperative Societies Act, 1961—S. 22— Punjab Cooperative Agricultural Development Bank Rules, 1959—Rl. 17(2)— Recovery of loan amount from estate of deceased— Borrower of loan died on 27.12.2004— Recovery notice issued on 17.10.2011 was time barred—Resultant Award dated 10.09.2013 would be non-est—Recovery permissible from estate only within 2 years of death of borrower—Writ Allowed.***

*Held that*, it was submitted by the learned counsel for the petitioners that in view of decision of this Court in *The Rajpura Janta Cooperative House Building Society Ltd. v. State of Punjab and others* 2009(3) RCR (Civil) 278, the recovery of the loan amount could be made from the estate of the deceased within a period of two years from the date of the death of the borrower.

(Para 4)

*Further held that*, in view of the above, the debt which could not be enforced, therefore, even the arbitration award passed in respect of the same after nine years would be *non-est*. Accordingly, the present petition is allowed and the sale notice, Annexure P-2, is quashed.

(Paras 9)

Anupam Bhardwaj, Advocate  
*for the petitioners.*

Pankaj Gupta, Addtl. A.G., Punjab.

Ashwani Prashar, Advocate  
*for respondents No.2 and 4.*

**AJAY KUMAR MITTAL, J.**

(1) In this writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the sale notice, Annexure P-2.

(2) Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. In the year 1996, Shri Jagjit Singh took loan from respondent No.4-The Rama Primary Cooperative Agricultural Development Bank Ltd. (in short “the Bank”) against mortgaged property. Petitioner No.1 got married to Smt. Jaswinder Kaur daughter of Shri Jagjit Singh on 14.11.1996. Shri Jagjit Singh expired on 27.12.2004 as is clear from the death certificate dated 12.6.2018 (Annexure P-1). Smt. Jaswinder Kaur wife of petitioner No.1 had expired on 6.7.2007. Petitioner No.1 being son-in-law whereas petitioner No.2 being wife are the legal heir of deceased Shri Jagjit Singh and are in possession of 2/3<sup>rd</sup> and 1/3<sup>rd</sup> share respectively of the property of the deceased. In the year 1997, Government of Punjab acquired the land measuring 1995.82 acres including the land of the deceased situated in village Phulo Khari, Kanakwal, Ramsara and Rama for setting up of Refinery and Liquid Fuel based Power Plant. The compensation was paid to Late Shri Jagjit Singh. The deceased fell ill in the year 1998 and had not disclosed to the petitioners regarding the acquisition of land or taking of loan. A sale notice, Annexure P-2, was pasted at the residence of petitioner No.2 by the Bank showing outstanding amount of Rs.19,33,186/- (Rs.4,31,540/- as principal amount, Rs. 15,01,398/- as interest and Rs. 250/- as cost) as on 30.9.2017 against the deceased and put the property as mentioned in the notice to auction on 29.6.2018 at 11.00 AM. According to the petitioners, no notice under Rule 17(2) of the Punjab Cooperative Agricultural Development Bank Rules, 1959 (for brevity “the 1959 Rules”) in Form D had been served upon them. Hence, the present writ petition.

(3) Upon notice, respondents No.2 and 4 filed written statement by pleading that Late Shri Jagjit Singh obtained a loan of Rs. 4.30 lakhs on 6.11.1996 for grapes by executing the documents and mortgaged property in favour of respondent No.4 and as on 31.3.2018, a total amount of Rs. 20,10,615/- was outstanding. The mortgaged property was acquired and compensation was received by the deceased. The petitioners never informed the Bank regarding the death of Shri Jagjit Singh and the recovery notices dated 17.10.2011 and 11.4.2012 were issued in the name of the deceased. The sale of property could not be materialized due to influence of petitioner No.1. The Bank raised the dispute before the Arbitrator who passed the award dated 10.9.2013 (Annexure R-2/1) against petitioner No.2. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made.

(4) It was submitted by the learned counsel for the petitioners that in view of decision of this Court in *The Rajpura Janta Cooperative House Building Society Ltd. versus State of Punjab and others*<sup>1</sup>, the recovery of the loan amount could be made from the estate of the deceased within a period of two years from the date of the death of the borrower.

(5) On the other hand, learned counsel for respondents No.2 and 4 submitted that the sale notice, Annexure P-2, was rightly issued by the Bank as the petitioners had failed to repay the loan amount. Further, relying upon *Lalq Singh versus State of Punjab and others*<sup>2</sup>, it was urged that award dated 10.9.2013 had been passed against the principal borrower which was executable.

(6) We have heard learned counsel for the parties.

(7) Similar issue had arisen before this Court in *The Rajpura Janta Cooperative House Building Society Ltd's* case (supra), wherein keeping Section 22 of the Punjab Cooperative Societies Act, 1961 (in short “the Act”) in focus, it was held that where the death of the borrower had taken place on 17.6.1994, the reference to the Arbitrator sought in the year 1999 and the recovery in pursuance to the award passed thereto on 13.3.2000, was time barred.

(8) Adverting to the judgment of the learned counsel for respondents No.2 to 4 in *Lalq Singh's* case (supra), it may be noticed that the said case was not dealing with Section 22 of the Act and, thus, is distinguishable.

(9) In view of the above, the debt which could not be enforced, therefore, even the arbitration award passed in respect of the same after nine years would be *non-est*. Accordingly, the present petition is allowed and the sale notice, Annexure P-2, is quashed.

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*Dr. Sumati Jund*

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<sup>1</sup> 2009(3) RCR (Civil) 278

<sup>2</sup> 1997(1) PLJ 1