

FULL BENCH

Before S. S. Sandhawalia, C.J., D. S. Tewatia & S. P. Goyal, JJ.

MAM RAJ,—Petitioner.

versus

THE STATE OF HARYANA and others,—Respondents.

Civil Writ Petition No. 2332 of 1981

January 27, 1982

Punjab Co-operative Societies Act (XXV of 1961)—Section 55—Co-operative Society doing business through its member another co-operative society—Members Society employing a salesman and sharing commission of the business with him—Dispute between the co-operative society and the salesman of the member society—Whether referable to arbitration under section 55 (1) (b)—Salesman—Whether could be said to be a 'person claiming through a member'—Section 55—Object of—Stated.

Held, (per majority S. S. Sandhawalia, C.J. & D. S. Tewatia, J., S. P. Goyal J., *contra*) that it is obvious that so far as the disputes betwixt a society and its past members are concerned they are plainly within the net of statutory arbitration. The legislature, however, deliberately extended the same when it employed the phrase 'claiming through a member, past member or deceased member' to bring non-members also within its ambit. The qualification or limitation expressly placed is that such a non-member must be either claiming through a member, past member or deceased member and as a necessary corollary be liable through them because if one claims through someone the inevitable legal consequences are that he would be equally answerable through him. The words 'claiming through a member, past member or deceased member' should not be confined only to cases of devolution of interest and they cannot consequently be restricted to include only successors-in-interest, heirs or legal representatives. Such an artificial and constricted interpretation to the phrase would run counter to the larger purpose of the statute. Clause (c) of subsection (1) of section 55 in terms talks of nominees, heirs or legal representatives. The legislature was thus actely conscious of this phraseology and if it was intended that a claim must be through only a nominee, heir or legal representative, etc., then surely the same terminology would have been employed in clause (b) as well. These terms are well-known terms of art and the legislature has deliberately chosen to use the words 'claim' and 'through' and, therefore, couched it in language of wide general amplitude. There

is no rationale in cutting down the plain and ordinary 'meaning of these words to the far constricted and limited concepts of a devolution of interest or successors-in-interest and legal representatives, etc., of such a member or past member. There can be no doubt that a dispute between a Co-operative Society and its member society plainly falls within section 55(1) (b) since it arises between a society and its member. Once that is so, the claim of the Co-operative society against the salesman of its member society as its agent or partner would be a claim through a member. It seems but logical that once the statutory reference is competent betwixt a co-operative society and its member society, then the connected claims like commission or other liability rooted through the member society should also be within the ambit of clause (b) of section 55(1). Thus, a dispute between a Co-operative society on the one hand and the employee, agent or member of another Co-operative society would be within the ambit of the arbitration under section 55(1) (b) where the claim made is rooted through a person or a society which in turn is a member of the claimant-society.

(Paras 13, 14, 15 and 25)

Inderjit Singh v. The State of Haryana.

Civil Writ No. 414 of 1981, decided on 23rd March, 1981.

Over-ruled.

Held (per S P. Goyal, J., *contra*) that the words "person claiming through a member" mean a person who claims right or title through such a member. Where a Co-operative Society carries on business through a member co-operative society who in turn employs a salesman on payment of commission to be earned on the sales, a dispute between the co-operative society and such salesman would not be covered by clause (b) of section 55(1) of the Act. The member society by its agreement with the salesman never transferred any of its rights or liabilities under the agreement with the Co-operative society. By virtue of his agreement with the member society, the salesman acquired no right or liability under the contract between the two societies and he was thus neither liable to render accounts to the Co-operative society for the sale proceeds nor entitled to claim his share of the commission from it. He was just to act as authorised agent and was to be rewarded for the service rendered by the member society. For any dereliction of duty or malpractice or misfeasance on his part, he was only answerable to its employer or the principal, i.e., the member society. As he could not claim anything under the agreement between the two societies he cannot be said to be a "person claiming through a member" and, therefore, would not be covered by clause (b) of sub-section (1) of section 55 of the Act.

(Paras 31 & 33).

Mam Raj 'v. The State of Haryana and others
(S. S. Sandhwalia, C.J.)

Held (per S. S. Sandhwalia C.J., & D. S. Tewatia, J.) that the underlying object of the legislature in enacting section 55 of the Act is that once a dispute touches the constitution, management or the business of a Co-operative society then such a co-operative society, its members, past members and persons claiming through them as also the officers, agents or employees, past employees and liquidators including therein even their nominees, heirs or legal representatives, etc. (without being exhaustive) should be protected and saved from the long drawn out and tortuous procedure of ordinary civil litigation for the purpose of resolving such a dispute. It is to achieve this object that the speedier and inexpensive remedy of a statutory arbitration is provided to the exclusion of all other remedies. The concluding portion of sub-section (1) of section 55 in the clearest terms provides that in such a situation no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. To further reiterate this position, section 82(c) of the Act provides that no civil or revenue Court shall have any jurisdiction in respect of any dispute required under section 55 to be referred to the Registrar or any matter in which proceedings under section 55-A have been initiated. It would be thus clear that the whole thrust of the statutory provision herein is to bring the specified dispute *qua* the parties enumerated in section 55 within the realm of statutory arbitration alone to the entire exclusion of the Civil and revenue Courts. Again a broad look at the frame of the whole section 55 exhibits the legislature's concern to extend this arena of protection and the exclusion of the civil and revenue Courts both as regards the nature of the dispute as also the parties thereto. Therefore, it seems apt that a liberal construction should be placed on the language of section 55 both as regards the nature of the dispute and the number of the parties thereto in order to advance the larger purpose of this statute as against the literal or constricted interpretation thereof.

(Paras 11, 12 & 13).

Petition Under Articles 226/227 of the Constitution of India praying that the order of the Assistant Registrar, dated 14th January, 1980, and the order of the Joint Secretary, dated 19th May, 1981, may be quashed being illegal and without jurisdiction.

Further praying that the operation of the impugned orders may be stayed during the pendency of the case/writ.

G. S. Sandhu, Advocate, for the Petitioner.

Prem Singh, Advocate with C. R. Dahiya, Advocate, for Respondent.

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether a dispute between a Co-operative Society on the one hand, and the employee, agent, or member, of another Co-operative Society (claiming through a member), is within the ambit of arbitration under section 55(1) (b) of the Punjab Co-operative Societies Act, 1961—is the significant question which has necessitated the hearing of this writ petition by the Full Bench. Also at issue is some discordance of precedent within this Court though at the motion stage.

(2) Mam Raj petitioner was working as the salesman of the Imbli Co-operative Agriculture Service Society Ltd., which used to purchase fertilizers from the Jagadhri Co-operative Marketing-cum-Processing Society Ltd., Jagadhri (hereinafter called the 'Marketing Society'), on a consignment basis. The commission earned by the Imbli Co-operative Agriculture Service Society Ltd., (hereinafter called the Imbli Society), on the sale of such fertilizers payable by the Marketing Society was shared equally by the petitioner and the Imbli Society. A dispute arose between the Marketing Society Ltd., the Imbli Society *inter alia* with regard to the payment of the commission on fertilizers and the matter was referred to the Assistant Registrar, Co-operative Societies, Yamunanagar for arbitration under Section 55 of the Punjab Co-operative Societies Act, 1961 (hereinafter called 'the Act'). The arbitrator rendered an Award therein, which, however, was later quashed by the Civil Court. Thereafter, the Marketing Society sought another arbitration claiming Rs. 16,721 from the petitioner. The arbitrator appointed in these proceedings gave his Award, annexure P/1, against the petitioner as also the Mustafabad Farmers Co-operative Credit and Service Society Ltd., jointly and severally, with the further direction that the amount be recovered first from the petitioner and if it cannot be so done, then it should be recovered from the Mustafabad Farmers Co-operative Credit and Service Society Ltd. The petitioner appealed against the said Award and *inter alia* took up the stand that no arbitration was maintainable between the Marketing Society on the one hand and the petitioner on the other, because he was not a member of the said Society. The Joint Secretary to the Government, however, dismissed the petitioner's appeal,—vide annexure P/3. The present writ petition has

Mam Raj 'v. The State of Haryana and others
(S. S. Sandhawalia, C.J.)

been preferred against the said Award and was pressed primarily on the ground that no valid reference to the arbitration could be made as against the petitioner. At the motion stage, it was noticed that there were conflicting Division Bench decisions on the point and the writ petition was, therefore, admitted to a hearing by the Full Bench.

(3) As before the Motion Bench, so before us, the primary and indeed the solitary challenge levelled on behalf of the petitioner is against the validity of the reference to the arbitration itself. It was contended that the petitioner not being a member of the Marketing Society, no valid reference to arbitration under Section 55 of the Act could be made against him. Consequently, the proceedings before the arbitrator and the appellate forum were vitiated *qua* the petitioner.

(4) To appreciate the aforesaid contention, it is best to clear the factual matrix first. It is not disputed that the Imbli Society stands amalgamated with respondent No. 4. The Mustafabad Farmers Co-operative Credit and Service Society Ltd., (hereinafter called the 'Mustafabad Society'). Equally, it is the admitted position that the Imbli Society and the Mustafabad Society were themselves the members of respondent No. 3, the Marketing Society. The firm stand of the respondent further is that the petitioner acted as a partner of the Imbli Society in so far as the sharing of the profits of commission etc., on the sale of fertilizers betwixt him and the Imbli Society was concerned. The findings of the appellate authority,—*vide* annexure P/3 also is that the petitioner was acting on behalf of the Imbli Society and as a partner, thereof.

5. Before proceeding further it is equally apt to recall that under Section 30 of the Act, every Society registered thereunder is a body corporate with perpetual succession. Consequently, it is clothed with a legal personality of its own. On settled principles, therefore, a Co-operative Society is a legal person having its individual corporate existence separate and distinct from its individual members whether they be natural persons or other corporate bodies. This distinction betwixt the legal personality of the Society and its constituent members, has always to be kept in mind.

5-A. Inevitably, the controversy here revolves around the language of Section 55 of the Act and in particular sub-section (1) thereof which may be read at the very out-set —

“55. *Disputes which may be referred to arbitrator.*

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises—

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased and the society, its committee or any officer, agent or employee of 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, past agent or past employee or the nominee, heirs or legal representatives of any deceased Officer, deceased agent or deceased employee of the society, or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society.

such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

* * * * *

6i Now a larger conspectus of the aforesaid provisions would indicate that to be within the ambit of its provisions, two pre-conditions have to be satisfied. Firstly, with regard to the nature of the dispute. It is not any and every dispute which

Mam Raj v. The State of Haryana and others
(S. S. Sandhawalia, C.J.)

can be the subject-matter of a reference under the statute. The circumscribing of the disputes which are so referable is spelled out to be one which touches the constitution, management or the business of a co-operative society. This aspect lays down the qualitative condition of the nature of the dispute. In passing, it has to be noticed that the word 'dispute' as used in the statute, is apparently a wide ranging one. It does not necessarily visualise a rightful or legally valid dispute as noticed in *Dacca Co-operative Industrial Union v. Dacca Co-operative Sankhya Silpa Samity Ltd. and others* (1), in the following terms:—

“.....Equally untenable is the view that because the claim of the Union was a bad one or even a false one, there was no dispute. There would in our judgment be a dispute, so long as a claim is asserted by one party and denied by the other, be the claim a false or a true one, or whether it ultimately turns out to be false or true.”

Equally the phrase 'touching the business of society' has been interpreted by Chagla, J. (as he then was) in *G.I.P. Railway Employee Co-operative Bank Ltd. v. Bhikhaji Merwanji Karanjia*, (2). In view of this, there is hardly any doubt that in the present case, the nature of the dispute is well within the four corners of section 55(1) of the Act.

7. Clause (a), (b), (c) and (d) of sub-section (1) of section 55 of the Act then deal with the parties of such a dispute. Once the pre-condition of the nature of dispute is satisfied, what is to be next looked for are the parties thereto. It is only if they come within the wide ranging ambit of the four clauses (which seem to have been framed deliberately to cast a wide net) that a dispute would be referable to arbitration by the Registrar.

8. Again a glance at clauses (a), (b) and (c) would indicate that broadly these visualise the dispute *inter se* betwixt the society and its members, past members, deceased members, officers, agents or employees of the society with a designed extension to non-members who may be claiming through a member, past member, or a

(1) A.I.R. 1938 Calcutta 327.

(2) A.I.R. (30) 1943 Bombay 341.

deceased member. It is manifest that herein the legislature has deliberately widened the scope to bring in non-members as well as if they satisfy the necessary condition. The enumeration of the parties mentioned in these three clauses would show that herein what is envisaged by the statute are (to use a term of art) intra-society disputes.

9. On the other hand clause (d) visualises parties which are inter-societies. It seems to provide for disputes between the independent co-operative societies or between one society and the liquidator of another and even betwixt the liquidators of both such societies.

10. Now the firm stand on behalf of the respondents has been on the language of clause (b) and specifically on the phrase 'person claiming through a member, past member or deceased member'. Mr. Prem Singh, their learned counsel contended that the petitioner came squarely within the ambit of this terminology.

11. In construing the provisions of section 55 of the Act, in general, and of clause (b) of sub-section (1) thereof, in particular, the larger purpose of the enactment cannot be lost sight of. One cannot in this context do better than to reproduce the oft-quoted words of Chief Justice Bhagwati (as he then was) speaking for the Division Bench in *Rasiklal v. Kailasgauri* (3) :—

“A co-operative society is a form of organisation in which persons voluntarily come together for promotion of their economic interests in accordance with co-operative principles. ‘Co-operation’ as pointed out by C. R. Ray, is ‘an association for the purpose of joint trading among the weak and conducted always in an unselfish spirit on such terms that all who are prepared to assume the duties of membership may share its rewards in proportion to the degree which they make use of their association.’ It is essentially an association of person of limited means and, as indicated in the pre-amble to the Bombay Co-operative Societies Act, 1925, its object is *inter alia* ‘promotion of

Mam Raj v. The State of Haryana and others
(S. S. Sandhawalia, C.J.)

thrift, self-help and mutual aid among agriculturists and other persons with common economic needs.' It is based on the principle of equality and avoids selfish exclusiveness by recognising that its membership should be open to all who want to join it. The voting power in a co-operative form of organisation is not in proportion to the shareholding as in the case of a joint-stock company but each member is given one vote so as to ensure equal participation in management by all, irrespective of their wealth. Co-operation also seeks to eliminate the middle man by bringing producers and consumers closer to each other through the process of integration and aims at preventing the exploitation of the weaker sections of the community by the stronger ones. It stands for distributive justice to all who contribute to the earning of wealth including the consumers. It is a form of organisation which avoids the evils of capitalism and yet assures the human dignity of the individual. That is why it has been accorded a preferred place in our socio-economic set up. The Legislature enacting a law in regard to it might, therefore, well consider it desirable that a special machinery should be provided for adjudication of disputes touching the constitution, management or business of a Co-operative Society which would be much simpler and speedier and much less expensive than the ordinary remedy of adjudication by a Civil Court. It was with that end in view that the Legislature enacted the impugned section. The object of providing the special machinery by the impugned sections is to bring about speedy settlement of disputes, to lessen cost of litigation and to secure dispensation of justice unhampered by technical rules of procedure so that Co-operative Societies do not get involved in long drawn out protracted litigation which would consume their time, energy and resources. This object having regard to the nature and character of the co-operative form of organisation, the principles on which it is founded and the objects it is intended to serve, would fully justify application of the special procedure to resolution of disputes touching the constitution, management or business of a society."

Adverting particularly to section 55 of the Act there is no manner of doubt that the underlying object of the legislature herein is that once a dispute touches the constitution, management or the business of a Co-operative Society then such a Co-operative Society, its members, past members and persons claiming through them as also the officers, agents or employees, past employees and liquidators including therein even their nominees, heirs or legal representatives etc., (without being exhaustive) should be protected and saved from the long drawn out and tortuous procedure of ordinary civil litigation for the purpose of resolving such a dispute. It is to achieve this object that the speedier and inexpensive remedy of a statutory arbitration is provided to the exclusion of all other remedies. It calls for repetition that the concluding portion of sub-section (1) of section 55 in the clearest terms provides that in such a situation no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. To further reiterate this position, section 82(c) of the Act provides that no civil or revenue Court shall have any jurisdiction in respect of any dispute required under section 55 to be referred to the Registrar or any matter in which proceedings under section 55-A have been initiated. It would be thus clear that the whole thrust of the statutory provision herein is to bring the specified disputes *qua* the parties enumerated in section 55 within the realm of statutory arbitration alone to the entire exclusion of the Civil and revenue Courts.

12. Again a broad look at the frame of the whole of section 55 exhibits the legislature's concern to extend this arena of protection and the exclusion of the civil and revenue Courts both as regards the nature of the dispute as also the parties thereto. As to the former it is apt to recall the following observations of Chagla, J., (as he then was) in *G.I.P. Railway Employees Co-operative Bank Ltd. v. Bhikha-ji Merwanji Karanjia Employees* (4).

"It is not right to give a restricted meaning to the words 'touching the business of a Society used by the Legislature in section 54 of the Act. The word 'business' is a very wide term and certainly it is not synonymous with the objects of a society. The expression 'touching the business of a society would mean affecting the business of a society or relating to the business of a society. Although, it is not

Mam Raj v. The State of Haryana and others
(S. S. Sandhawalia, C.J.)

one of the objects of the company to employ or dismiss servants, it is something which it does in the ordinary course of its business. And whatever is done in the ordinary course of business certainly relates to or affects the business."

As regards the parties, the legislature has designedly brought within its ambit members, past members, deceased members and persons claiming through them as also the officers, agents, employees, past employees and their nominees, heirs or legal representatives etc. Therefore, it seems apt that a liberal construction should be placed on the language of section 55 both as regards the nature of the dispute and the number of the parties thereto in order to advance the larger purpose of this statute as against the literal or constricted interpretation thereof.

13. The core of the matter herein is the amplitude of the phrase 'claiming through a member, past member or deceased member' as employed in section 55(1) (b). It is obvious that so far as the dispute betwixt a Society and its past members are concerned they are plainly within the net of statutory arbitration. The legislature, however, deliberately extended the same when it employed the aforesaid phrase to bring non-members also within its ambit. The qualification or limitation expressly placed is that such a non-member must be either claiming through a member, past member or deceased member and as a necessary corollary be liable through them because if one claims through someone the inevitable legal consequences are that he would be equally answerable through him.

14. It was sought to be contended on behalf of the petitioner that the phrase 'claiming through a member, past members or deceased member' should be confined only to cases of devolution of interest and consequently would include only successors-in-interest, heirs or legal representatives. I am unable to give any such artificial and constricted interpretation to the phrase which, as already noticed, would run counter to the larger purpose of the statute. Reference in this context may be made to clause (c) of sub-section (1) of section 55. This in terms talks of nominees, heirs or legal representatives. The legislature was thus actually conscious of this phraseology and if it was intended that the claim must be through only a nominee,

heir or legal representative etc., then surely the same terminology would have been employed in clause (b) as well. These terms are well-known terms of art and the legislature has deliberately chosen to use the words 'claim' and 'through' and, therefore, couched it in language of wide general amplitude. I see no rationale in cutting down the plain and ordinary meaning of these words to the far constricted and limited concepts of a devolution of interest or successors-in-interest and legal representatives etc., of such a member of past member. In an analogous context the true meaning to be attached to the word 'through' fell for consideration by a Bench of five Judges in *Karta Ram Mansa Ram and another v. Om Parkash Hira Ram* (5). What fell for construction there was section 15(2) (a) of the Punjab Pre-emption Act. Therein it was held as follows:—

"It is pertinent to mention that the word used in section 15(2) (a) of the Pre-emption Act is 'through' which means — 'by means of', 'on account of', 'by the instrumentality of', 'agency', 'by reason of', etc. This word 'through' is, therefore, of wide amplitude."

In the light of the aforesaid authoritative enunciation I see no reason to construe the word 'through' used in section 55 of the Act in a constricted manner or impose any artificial limitation on a word of wide amplitude.

15. The actual application of the phrase 'touches the constitution, management or the business of a Co-operative Society' to the facts of the present case is equally instructive. Herein there is no dispute that the transaction giving rise to the dispute was betwixt respondent No. 3, the Jagadhri Co-operative Marketing Society and the Imbli Society which was a member of this Marketing Society acting in its capacity as a member. The petitioner on his own showing as the salesman of the Imbli Society was its agent or partner with regard to the sales and commission payable on fertilizers. The Imbli Society has been amalgamated with the Mustafabad Farmers Co-operative Credit and Service Society, respondent No. 4. There can thus be no doubt that the dispute betwixt respondents Nos. 3 and 4 plainly falls within section 55(1) (b) since it arises between a society and its member in the capacity of a member. Once that is so, an integral

Mam Raj *v.* The State of Haryana and others
(S. S. Sandhawalia, C.J.)

and indivisible off-shoot of this dispute is the claim of the Marketing Society against the petitioner in his capacity as the agent or partner of respondent No. 4 and, therefore, it is a claim through a member. It seems but logical that once the statutory reference is competent betwixt the Marketing Society and the Mustafabad Society then the connected claims like commission or other liability rooted through the member society should also be within the ambit of clause (b). Holding otherwise would in effect be rendering the purpose and the provision of clause (b) wholly nugatory. In my view limiting it to the strait-jacket of merely a case of devolution-in-interest alone like those of heirs or legal representatives etc. seems to be uncalled for.

16. The matter can be viewed from another angle if the situation is reversed. It is the petitioner's own case that he was sharing the commission on the fertiliser with the Imbli Society. Supposing such commission was not paid, the Imbli Society through the Mustafabad Society would be plainly entitled to claim an arbitration with regard to the dispute over the payment of commission. The petitioner would be equally a claimant and a sharer in the commission. Can it be reasonably said that in spite of the wide language of clause (b) the petitioner would either be barred from making such a claim through the Mustafabad Society or joining it in a reference to arbitration for this purpose? The answer seems to be plain that he would be so entitled.

17. Equally instructive it is to view the matter in the light of the hallowed principle that the law abhors the multiplicity of proceedings for the same cause of action. Herein it cannot be disputed that a reference to arbitration betwixt respondent No. 3, and 4 two Co-operative Societies who are members inter se, would be patently maintainable and indeed any suit for the said claim would be barred. On the argument of the learned counsel for the petitioner if the Marketing Society, respondent No. 3, wishes to make a claim against the petitioner as well with regard to the commission jointly payable to him and the Imbli Society it must resort to a civil suit so far as the claim against the petitioner is concerned and to statutory reference against the Imbli Society because admittedly civil jurisdiction would be barred in this context. This obviously involves parallel proceedings where the dispute is not only intimately connected but is both indivisible and unseverable. Again it could not be

disputed before us that if respondent No. 4 the Mustafabad Society has to agitate any claim or dispute with regard to the payment of the same commission against the petitioner it can certainly claim an arbitration under section 55 of the Act. For the same dispute, therefore, two distinct references to arbitration would be open, namely, by respondent No. 3 against respondent No. 4 and by respondent No. 4 against the petitioner. Such a dispute can be resolved in a single arbitration on a plain interpretation of the phrase "Claiming through a member, past member or deceased member". There appears to be no reason why by giving a constricted interpretation thereto a multiplicity of arbitrations and civil suits should be compelled.

18. On the stand taken on behalf of the petitioner for the resolution of the same dispute, three separate parallel proceedings would have to be resorted to. Instead of a single arbitration resolving the whole dispute there would have to be (1) arbitration betwixt respondent No. 3 and respondent No. 4; and (2) arbitration betwixt respondent No. 4 and 3, the petitioner and for the purposes of the claim of the Marketing Society (respondent No. 3) against the petitioner a separate suit must be filed in a civil Court. On the larger canon of construction also where an interpretation is likely to lead to such anomalous results and plainly works out to be a public mischief the same should be avoided and a multiplicity of proceedings mercifully avoided.

19. Having examined the matter primarily on principle and the provisions of the statute it is nevertheless inevitable to advert to precedent as well. In *Deccan Merchants Co-operative Bank Ltd. v. M/s Dalichand Jugraj Jain and others*, (6) their Lordships were construing the somewhat analogous provision of the Maharashtra Co-operative Societies Act 1961. On the particular facts of the case they came to the conclusion that the lease which was the subject-matter of the dispute had been executed by the original owner not in his capacity as a member but as a mortgagor in possession. Therefore, the transaction having not been conducted by a member in his capacity as a member *stricto sensu* the whole dispute did not come within the ambit of the statutory reference to arbitration. However in an obvious reference to claims through members where the

Mam Raj v. The State of Haryana and others
(S. S. Sandhwalia, C.J.)

transaction would be within the ambit of reference it was categorically observed as follows:—

****It seems to us that before a person can be said to claim through a member, the claim should arise through a transaction or dealing with which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then he must be covered, if at all, by the provisions of Section 91 (1) (a) or (c). *But once it is held that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of section 91 (1) (b)."*

20. The case which, however, directly covered the issue is the Division Bench judgment in *Navjivan Paper Mart v. Rajkot Vibhagiya Nagrik Sahakari Bank Ltd.* (7). Therein the virtually identical provision of section 96(1) (b) of Gujarat Co-operative Societies Act, 1962 had fallen for consideration. The petitioner therein also had taken up the identical stand that because it was not a member of the Co-operative Society making the claim no reference against it was tenable. Rejecting this stand after an exhaustive discussion on principle and precedent and relying basically on the ratio in *M/s Dulichan Jugraj Jain's* case (supra) it was held as follows:—

"The claim contemplated in the aforesaid observations would also include the claim made against the non-member. If that claim made against a non-member arises through a transaction which the member entered into with the Society as a member, the non-member can be proceeded against under section 96 provided the non-member is a person who claims his rights or title through that member."

21. No meaningful challenge to the rationale of the above case could be raised by the learned counsel for the petitioner. The solitary submission sought to be made was that that was a case

where the disputed property, namely, a printing machine stood hypothecated to the Co-operative Society. This appears to me as a distinction without any difference. The closest examination of the whole judgment would indicate that the decision thereon did not even remotely turn on this factor which do not even seem to have been noticed. The core of the reasoning turned therein on the phrase in section 96(1) (b) of the Gujrat Act with regard to a person claiming through a member, past member, or a deceased member of a Society as is the case before us. I would unhesitatingly agree with the line of reasoning in Gujrat case and follow the same.

22. It remains now to consider some intra-court, discordance of view which indeed had necessitated the reference to the larger Bench. This, however, is only in the context of brief observations made at the motion stage. In *Inderjit Singh v. The State of Haryana*, (8) the virtually identical point before us had come up for consideration though at the motion stage. A reference to the brief order would indicate that the matter was not adequately debated before the Bench. The specific provision of section 55(1) (b) was perhaps not relied upon by the counsel for the parties and was not even remotely adverted to by the Bench. In particular the crucial issue of claiming through a member, past member or deceased member was neither agitated nor pronounced upon. Reference consequently could not be made to the larger principles in this context nor to the relevant authorities which have been discussed in detail above. With the greatest respect it appears to me that for the aforesaid reasons *Inderjit Singh's* case does not lay down the law correctly and is hereby overruled.

23. A reference also must be made to the brief observations of O. C. Reddy and M. R. Sharma, JJ. in *Narpat Singh v. Assistant Registrar, Co-operative Societies* (9), holding that having regard to Section 55 no award can be made against the employee of an indebted Society. The facts therein would indicate that the Creditor Society was not claiming against the sales man through a member acting in his capacity as a member. Section 55(1) (b) was, therefore, neither attracted nor was it remotely adverted to by the

(8) C.W. 414 of 1981 decided on 23-3-1981.

(9) 1976 P.L.J. 522.

Mam Raj (*v.* The State of Haryana and others
(S. S. Sandhawalia, C.J.)

Bench. *Narpat Singh's* case, therefore, appears to me as distinguishable on the limited point that the employee of an indebted Society is not *ipso facto* within the ambit of section 55 of the Act.

24. The aforesaid view is plainly buttressed by the observations in the later Division Bench judgment, on which Sharma J., was a member, reported as *Amar Singh v. The State of Haryana and others*, (10). Therein after referring to *Narpat Singh's* case (*supra*) it was held as follows:—

“The grievance made in the petition is that an award has been given by the Arbitrator appointed under section 56 of the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act), against a salesman of the Primary Society and in favour of the Central Society. It is argued on the basis of *Shri Narpat Singh v. Assistant Registrar, Co-operative Societies and others* (11), that a dispute between the salesman of a Primary Society and the Central Society cannot be referred for arbitration by the Registrar.

2. Written statements filed on behalf of the respondents have been seen. It has been averred therein that the petitioner was a member of the Primary Society, i.e. respondent No. 5, which was in turn a member of the Central Society, i.e. respondent No. 3. The petitioner claimed his right through respondent No. 5. Consequently, his case was covered by section 55(1)(b) of the Act and the reference of the dispute for adjudication was in order. In these circumstances, we see no force in this petition and order the same to be dismissed.”

I am wholly in agreement with the aforesaid observations brief as they are, and would unhesitatingly affirm the said view for the detailed reasons recorded earlier.

25. To conclude the answer to the question posed at the very outset is rendered in the affirmative and it is held that a dispute

(10) 1978 P.L.J. 46.

(11) 1976 P.L.J. 522.

between a Co-operative Society on the one hand and the employee, agent or member of another Co-operative Society would be within the ambit of the arbitration under section 55 (1) (b) where the claim made is rooted through a person or a Society which in turn is a member of the claimant-Society.

26. As noticed earlier the solitary point raised on behalf of the petitioner is thus concluded against him by the answer aforesaid. No other point was urged. The writ petition is, therefore, without merit and is hereby dismissed. There will be no order as to costs.

S. P. Goyal, J.—

27. I have gone through the judgment prepared by my learned brother, the Chief Justice, but with utmost respect I regret my inability to concur with the same.

28. The facts as alleged in the petition are that Imbli Co-operative Agriculture Service Society, Limited, now represented by respondent No. 4, the Mustfabad Farmers Co-operative Credit and Service Society Limited (hereinafter called the Imbli Society) used to purchase on consignment basis fertilizers from the Jagadhri Co-operative Marketing-cum-Processing Society, Limited, Jagadhri (for short called the Jagadhri Society) and get commission on its sale at the agreed rate. It further appointed the petitioner, Mam Raj, as its, salesman to receive the fertilizers from the Jagadhri Society and affect its sales. The petitioner was not paid any fixed salary but under the agreement entered into with the Imbli Society he was to be paid 50 per cent of the commission earned by the Imbli Society. The petitioner under the agreement was further required to deposit the sale proceeds directly with the Jagadhri Society. Certain amounts on account of the price of the fertilizers having remained unpaid, the Jagadhri Society moved the Assistant Registrar, Co-operative Societies under section 55 of the Punjab Co-operative Societies Act, 1961 (for brevity called the Act) for settling their dispute who gave award in the amount of Rs. 16,721 holding the petitioner and the Imbli Society responsible for its payment severally and jointly with a further direction that the amount may be first realised from the petitioner. The petitioner went in appeal against the award and challenged it mainly on the ground that no

Mam Raj v. The State of Haryana and others
(S. P. Goyal, J.)

reference under section 55 of the Act was competent between him and the Jagadhri Society. His appeal was dismissed by the Joint Secretary to Government which led to the filing of the present petition under Article 226 of the Constitution.

29. In the written statement filed by respondent No. 4, the averment of the petitioner that he was a salesman and employed by Imbli Society was denied and it was averred that according to the agreement between the parties, he used to receive commission on the sale of the fertilizers. However, before the Arbitrator no plea was raised that the petitioner was anything except the salesman of the said society and whole of the award proceeds on that basis. The Arbitrator has also referred to the agreement entered between the petitioner and the Imbli Society under which he had also furnished the security in the amount of Rs. 10,000 for being appointed as salesman. It is only in the appellate order that the petitioner has been described as the salesman and partner of the Society. The word, "partner" appears to have been used loosely by the Appellate Authority probably because the petitioner was not to be paid any fixed salary and was to share commission earned on the sales. Otherwise no facts or reasons have been given in the appellate order to hold the petitioner as partner with the Society. If the petitioner was a partner with the Society he could not be its salesman at the same time. Taking a clue of the use of the word, "partner" in the appellate order, respondent No. 4 for the first time pleaded in the written statement that the petitioner was a partner with the Society in the sale of the fertilizers. Although, respondent No. 4, the Society was in possession of the agreement executed with the petitioner but it never chose to produce it with the written statement which could show the nature of the relationship between the parties. In the absence of the agreement, the relationship between the petitioner and respondent No. 4 has to be determined on the admitted facts between them and no conclusion can be based on the mere averments in the written statement or the use of the word, "partner" by the appellate Authority in its order.

30. The admitted facts between the petitioner and respondent No. 4 relating to the actual relationship between them are the Imbli Society, through a written agreement appointed the petitioner as

its salesman, authorised him to take delivery of the fertilizers from the Jagadhri Society, affect its sales and deposit the sale proceeds with the Jagadhri Society directly. For all this job, he was to share equally the commission received by the Imbli Society on the sale of the fertilizers from the Jagadhri Society instead of fixed remuneration. From these facts it is evident that the petitioner never joined the Imbli Society as partner in the sale of the fertilizers but was only appointed as salesman or agent to affect sales on behalf of the former on payment of 50 per cent of the commission which was to be received from the Jagadhri Society.

31. The controversy between the parties centres round the interpretation of the words, "person claiming through a member" in clause (b) of section 55 of the Act. Under this section, any dispute touching the business of a Co-operative Society can be referred to an Arbitrator if it arises between the Society, its members and other persons mentioned in four clauses (a) to (d). According to the petitioner, he is not covered by any of the said clauses and as such no reference could be claimed against him whereas according to the respondent, his case is covered under clause (b), he being a person claiming through a member, i.e., the Imbli Society. It is not disputed that the Imbli Society was a member of the Jagadhri Society. The relevant provisions of section 55 and clause (b) read as under:—

"55. *Disputes which may be referred to arbitration.*

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises:—

(a) * * * *

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present,
or

(c) * * * *

(d) * * * *

Mam Raj v. The State of Haryana and others
(S. P. Goyal, J.)

A similar provision as clause (b) and the exact words, "claiming through a member" came up for consideration before Supreme Court. The matter in my view stands concluded by its judgment in *Deccan Merchants Co-operative Bank Ltd. v. M/s Dalichand Jugrai Jain and others*, (12). It was an appeal against the judgment of the Bombay High Court who while interpreting the words, "claiming through a member" in section 91 of the Maharashtra Co-operative Societies Act, 1961, ruled as under:—

"that the words, 'claiming through a member' must be given their ordinary meaning, that is, deriving title or rights through a member. At the same time weight must be attached to the word 'member' and the title or rights claimed must be those to which a member was entitled or which he could claim by virtue of his being a member. The words 'claiming through a member,' therefore mean deriving such title or rights through a member as the member possessed or had acquired by reason of his being a member or in his capacity as member."

The view of the Bombay High Court was approved by the Supreme Court in the following words:—

**

** It seems to

us that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the society as a member. If a member entered into a transaction with the society not as a member but as a stranger, then, he must be covered, if at all, by the provisions of section 91 (1) (a) or (c). But once it is held that the original transaction was entered into by the member with the society as a member then any person who claims rights or title through that member must come within the provisions of section 91(1) (b)."

Although the main stress in that case was laid on the fact that the member entered into the transaction with the society not as a member but as a stranger but all the same, the words "person claiming through a member" were stated to mean a person who claims right or title through such a member.

(32) Before applying this test to the facts of the present case, it may also be observed that section 55 of the Act does not create, declare or recognize any rights or liabilities of the parties concerned and instead only provides an alternate forum for deciding the disputes between them. The rights and liabilities giving rise to the dispute must have their foundations on the common law of the land or the provisions of the Act.

(33) Now turning to the facts of the present case, we find that the petitioner was appointed as salesman by the Imbli Society on payment of half of the commission to be earned on the sales of the fertilizers and authorised to take its delivery from the Jagadhri Society on its behalf. The Imbli Society by its agreement with the petitioner never transferred any of its rights or liabilities under the agreement with the Jagadhri Society. By virtue of his agreement with the Imbli Society, the petitioner acquired no right or liability under the contract between the two societies and he was thus neither liable to render accounts to the Jagadhri Society for the sale proceeds of the fertilizers nor entitled to claim his share of the commission from it. He could not force the Jagadhri Society for delivery of the fertilizers or make any claim for damages for breach of the contract with the Imbli Society. He was just to act as authorised agent and was to be rewarded for the service rendered by the Imbli Society. For any dereliction of the duty or mal-practice or misfeasance on his part, he was only answerable to its employer, or the principal i.e. the Imbli Society. As he could neither claim anything under the agreement between the two societies nor was liable for payment of the price of the fertilizers to the Jagadhri Society by virtue of the said agreement, he cannot be said to be a "person claiming through a member" and, therefore, would not be covered by clause (b) of section 55 of the Act.

(34) The learned counsel for the respondents, on the other hand, relied on *Navjivan Paper Mart, Rajkot v. Rajkot Vibhagiva Nagrik Sahakari Bank Ltd., Rajkot*, (supra) in support of his contention that the petitioner would be a "person claiming through a member." This decision, however, is distinguishable on facts and has no bearing on the present case. There, a member of the co-operative

Mam Raj 'v. The State of Haryana and others
(S. P. Goyal, J.)

society had purchased a machine by securing a loan from a co-operative bank by creating a charge on that machine in favour of the Bank in respect of that loan. He subsequently sold the hypothecated machine to 'C' who was not a member of the co-operative society. On these facts it was held that the dispute as to the enforcement of the hypothecation in regard to the machine could be referred to arbitration and 'C' who was claiming through the member made a party to the dispute under section 96(1) (B) and nominee of the Registrar had the jurisdiction to proceed against him to the extent of the hypothecated property purchased by him. Obviously, 'C' had derived the title to the hypothecated machine through a member of the Society and was his successor-in-interest. That case, therefore, was fully covered by the rule laid down in *M/s Dalichand Jugraj Jain's case* (supra). Similarly, another argument raised by the respondents that if the petitioner is not joined in the present reference, it would lead to multiplicity of proceedings is of no consequence so far as the interpretation of the said clause (b) is concerned nor on such a consideration, its language can be stretched so as to bring within its net the persons otherwise not covered thereunder. The mischief to be avoided is also of not such magnitude that it may warrant stretching of the language of the statute because two separate references, one by the Jagadhri Society against the Imbli Society and the second by the latter against the petitioner could proceed together and be disposed of simultaneously.

(35) Much stress was laid by the learned counsel for the respondents on the purpose of section 55 of the Act and the need to interpret clause (b) so as to advance that purpose. Apparently, the purpose of section 55 is to save the co-operative societies from long drawn litigation in Civil Courts and to provide speedy remedy by way of arbitration to settle their disputes between them *inter-se* or with the other persons enumerated in its four clauses. It passes my comprehension as to what bearing this argument has on the question in hand or in what manner the purpose of the said section would be defeated if it is held that no reference could be claimed at the instance of the Jagadhri Society against the petitioner concerning the dispute arising out of the agreement to supply fertilizer and the payment of its price between Jagadhri and Imbli Societies because in any case the claim of the Imbli Society against the petitioner

would be covered by clause (b) and a reference competent against him to determine his liability.

For the foregoing reasons, this petition is liable to be allowed and the impugned award quashed so far as the petitioner is concerned.

D. S. Tewatia, J.—

(36) I have had the privilege of going through the judgment of Hon'ble the Chief Justice and S. P. Goyal, J. I concur in the view of the Hon'ble the Chief Justice.

Order of the Court.

(37) In accordance with the majority view, the writ petition is hereby dismissed.

There will be no order as to costs.

S. S. Sandhawalia, C.J.

D. S. Tewatia, J.

S. P. Goyal, J.
