

in pursuance of this order too no further amount was paid. The petitioner instead went up in revision before the Advisor to the Administrator of the Union Territory, Chandigarh, who, by his order of October 25, 1989 (annexure P/4), dismissed the revision petition.

(5) The circumstance of material significance to note here that on December 11, 1987, during the pendency of the revision petitioner before the Advisor to the Administrator and after the lease of the site in favour of the petitioner, already stood cancelled, she entered into an agreement for the sale of this site to Smt. Murti Devi for Rs. 1,20,000.

What is more, according to the return filed on behalf of the Chandigarh Administration, the present market value of the site is Rs. 5,00,000. The relief that the petitioner now seeks is the setting aside of the order cancelling the lease, upon the petitioner now paying the entire amount due as per the terms and conditions incorporated in the letter of allotment (annexure P/1). In other words, at its 1977 price, with, of course, interest thereon.

(6) It will be seen that ample time and opportunity was afforded to the petitioner to pay the amount due even much after the time fixed in the allotment letter (annexure P/1) had elapsed. Not only this, even after stating before the Chief Administrator her willingness to pay the entire amount due, she again failed to avail of the opportunity afforded to her to do so. It is apparent, therefore, that the entire exercise, on the part of the petitioner now, is but an attempt to profiteer, keeping in view the great escalation in the price of residential sites in Chandigarh, which now far exceeds the total amount payable as the sale/lease price of such sites.

(7) Such being the situation, no occasion is provided here for granting to the petitioner the relief claimed. This writ petition is accordingly hereby dismissed and in the over-all context of the circumstances here, with Rs. 1,000 as costs.

J.S.T.

Before : J. S. Sekhon and S. S. Rathor, JJ.

DHARAM PAL CHHACHHIYA.—Petitioner.

versus

JOINT SECRETARY (CO-OPERATIVE), HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 6215 of 1991.

18th November, 1991.

Punjab Co-operative Societies Act, 1961 (as applicable in Haryana)—Ss. 54, 55 & 56—Embezzlement—Reference to arbitration—

Society claiming arbitration u/s 55/56 for recovery of defalcated amount—Criminal proceedings also initiated which however culminating in acquittal—Departmental action also taken without prejudice to pending arbitration proceedings—Warning issued—In arbitration, liability fastened on the delinquent employee on the basis of material collected and not on the basis of audit report—Case does not fall u/s 54 but u/s 55—Reference to arbitration rightly claimed u/s 55/56 by the Society.

Held, that a combined reading of Ss. 49 and 51 of the Madras Act with Ss. 54 and 55 of the Punjab, it is true that they are analogous to some extent but not in strict that. Under the Madras Act, a remedy to an aggrieved person is available before the District Court of judicial nature, whereas under the Punjab, there is no such provisions. It is not correct to say as observed in Om Parkash Chopra and Jai Pal's cases that the provisions are analogous. These two cases have been decided on the assumption and admitted so by the other party that proceedings were initiated on the basis of an audit report or shortage found on verification of stocks respectively.

(Para 8)

Held, that where facts were not placed on record to show that the liability had been fastened upon the petitioner on the basis of an audit report alone, surprisingly, no such plea has been taken in this writ as well on this revisional authority.

(Para 10)

Held, that in view of the observation of the Supreme Court Sections 48 (Audit), 49 (inspection of societies), 50 (enquiry by the Registrar), 51 (inspection of books of the indebted societies) of Chapter VIII of the Punjab Act have not been taken note of in the aforesaid Single Bench judgments. If some illegality of fraud, embezzlement or shortage is found during the proceedings under the aforesaid Sections and incriminating material so collected is made, the sole basis in its claim by the society, then of course, it can be said that S. 54 would apply. But if the facts so collected during any such proceedings as contemplated under the aforesaid sections are not put in the claim made by the society, then S. 55 would apply. For instance, if the society seeks reference and during arbitration proceedings, it relies upon some auditor inspection report, or some other enquiry report by way of piece of evidence alongwith the other evidence, then it cannot be said that in that eventuality, the matter will be coverable only under S. 54 of the Act. If such view was contemplated in the aforesaid two judgments of this Court, then they are contrary to the observations of the Supreme Court in Pentakota Sriramula's case.

(Paras 13 & 14)

Held, further, that the observations of the Supreme Court in Pentakota Sriramula's case (supra) are fully applicable to the facts of the case in hand and we hold that reference for arbitration proceedings was rightly claimed by the society and ordered so by the Registrar in terms of Ss. 55/56 of the Punjab Act.

(Para 15).

JAI PAL V. STATE OF HARYANA 1984, P.L.J. 8 and OM PARKASH CHOPRA V. STATE OF HARYANA & OTHERS 1988 P.L.J. 263.
(DISTINGUISHED)

PENTAKOTA SRIRAMULA V. CO-OPERATIVE MARKETING SOCIETY LTD., ANAKAPALLI & ANOTHER AIR 1965 S.C. 621.
(INTERPRETED)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to :

- (i) *issue suitable writ, order or direction quashing the impugned orders dated 28th July, 1982 (P-8), dated 30th July, 1983 (P-9), appellate order dated 24th May, 1985 (P-10) and order dated 1st February, 1990 (Annexure P-11), restoring the award dated 24th December, 1981 (P-7) passed by the Assistant Registrar Co-operative Societies, Rohtak,—vide which the petitioner was completely exonerated from the liability of the amount of Rs. 17,839.95 and declare that the petitioner is not liable for the said amount.*
- (ii) *issue direction to Respondent No. 2 to restore the status of the petitioner as Assistant from the date when he was promoted,—vide order dated 21st December, 1978 (P-1) and is entitled to all benefits attached to the post of Assistant.*
- (iii) *grant any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case ;*
- (iv) *filing of certified copies of Annexure P-1 to P-11, and service of advance notice upon the respondents, be dispensed with ;*
- (v) *writ petition be allowed with costs in favour of the petitioner.*

It is further prayed that during the pendency of the present writ petition, the respondent authorities be restrained from recovering the alleged amount from the petitioner, for the ends of justice, equity and fair-play.

Mr. V. P. Sharma, Advocate, for the Petitioner.

Mr. C. B. Goel, Mr. J. B. Tacoria and Shri K. S. Kundu, Advocates,
for the Respondents.

JUDGMENT

S. S. Rathor, J.

(1) The Ganaur Co-operative Marketing Society Limited, Ganaur (respondent No. 4) raised a demand referred in arbitration case under

Section 55/56 of the Punjab Co-operative Societies Act, 1961, as applicable to Haryana (hereinafter called the 'Act') for a sum of Rs. 17,839.95 paise as principal amount and Rs. 1,083.40 paise as interest up to 31st January, 1980 at the rate of 14% per annum totalling Rs. 18,923.35 paise against its Ex-Manager Dharam Pal (the writ petitioner) and one Shri Jhaber (respondent No. 5). Alongwith seeking an arbitration, the Society also initiated criminal proceedings against Shri Dharam Pal, petitioner. The District Manager HAFED Sonapat sent a complaint to the police on the basis of which a criminal case bearing F.I.R. No. 137, dated 26th August, 1979 was registered against the accused Dharam Pal for offences under Sections 467/471/406/409, I.P.C. In this way, criminal proceedings as well as arbitration proceedings were got initiated by the aggrieved Society simultaneously on identical charges the details of which are as under:—

1. That Shri Dharam Pal, Ex-Manager prepared a bogus false bill for Rs. 9,613.80 paise and showing a payment to Shri Jhaber, who was working as Contractor. The payment in question relates to loading unloading and cartage of 13,734 bags at the rate of 70 paise. Shri Jhaber has verbally denied having received any money from Shri Dharam Pal, Ex-Manager.
2. That Shri Dharam Pal, Ex-Manager had taken an advance of Rs. 2,496.79 paise and did not return and are still outstanding in his name in the record of the society.
3. That there was a cut from F.C.I. to the tune of Rs. 4,874.65 paise which is shown recoverable from Shri Jhaber.
4. That there are shortages of the value of Rs. 854.71 paise. Thus, totalling to Rs. 17,839.95 paise.

(2) *Vide* order dated 24th December, 1981 Assistant Registrar acting as Arbitrator rejected the Society, exonerating the petitioner from order the Society (respondent No. 4) went allowed and the matter was remanded back directions in the order by the Deputy Sec its order dated 28th July, 1982 (Annexure arbitration case in question was decided order dated 30th July, 1983 by Shri Sis Ra Co-operative Societies, Rohtak (Annex the petitioner was absolved of charge N paise only. Regarding other charges,

the petitioner. The petitioner feeling aggrieved against this order (Annexure P-9) filed an appeal which was disposed of by Shri J. C. Kanwar, Additional Registrar (Marketing),—*vide* order dated 24th May, 1985 (Annexure P-10). In this appeal, liability under charge No. 4 was also fastened upon the petitioner and as such, the entire claim of the Society of principle amount of Rs. 17,839.95 Paise was granted in favour of the Society. Against this order, a revision petition was filed by the petitioner before the Government which was dismissed by Shri Dalip Singh, Joint Secretary, Co-operation Department,—*vide* order dated 1st February, 1990 (Annexure P-11).

(3) It is relevant to mention here that,—*vide* judgment dated 11th October, 1983 (Annexure P-4), the Judicial Magistrate 1st Class, Sonapat acquitted the petitioner in the aforesaid criminal case No. 271/2 of 3rd November, 1980 arising out of F.I.R. No. 137, dated 26th August, 1979 of Police Station Ganaur. The Judicial Magistrate acquitted the petitioner primarily on the ground that the arbitration proceedings and criminal proceedings cannot go together on the same facts and further observed that,—*vide* award dated 24th December, 1981 (Ex. 01), petitioner had already been absolved. These observations of the learned Magistrate *prima facie* are not correct particularly when the said award dated 24th December, 1981 had been set aside in appeal and after remand of the matter, liability had been fastened upon the petitioner in the arbitration proceedings,—*vide* order dated 30th July, 1983 (Annexure P-9). The matter does not rest here. Even if the petitioner had obtained an erroneous order of acquittal yet the departmental proceedings were initiated against him and,—*vide* order dated 11th July, 1990 (Annexure P-6), the Managing Director of the HAFED awarded a punishment of warning in his character rolls of the petitioner and specifically took into account the pendency of the arbitration proceedings as a mitigating circumstance on the point of punishment with a further observation that this departmental action was being taken without prejudice to the pending arbitration proceedings.

(4) In the background of the aforesaid orders passed in the arbitration proceedings, the petitioner filed this writ petition on 24th April, 1991 challenging the impugned orders Annexures P-8, P-9, P-10 and P-11.

(5) Mr. V. P Sharma, learned counsel for the petitioner at the outset has argued that the liability has been fastened upon the petitioner on the basis of an audit report. The petitioner being an Ex-Manager of the Society, could be only proceeded against under Section 54 instead of section 55 of the Punjab Co-operative Societies

Act, 1961 (as applicable to Haryana). In short, his submission is that the matter could not be referred for arbitration. In support of his contention, he has placed reliance on two Single Bench judgments reported as *Jai Pal v. State of Haryana*, (1) and *Om Parkash Chopra v. State of Haryana & ors.*, (2). In the former judgment, brother J. M. Tandon, J. (as he then was) placed reliance on a judgment of the Supreme Court reported as *Pentakota Sriramula v. Cooperative Marketing Society Ltd. Anakapalli & anr.*, (3).

(6) Before examining the validity of the argument raised by Mr. Sharma, it is necessary to analyse the aforesaid precedents. So far as the aforesaid Single Bench judgments are concerned, it is clear that there was no dispute before this Court that the liability has been fastened upon the delinquent official of the Society solely on the basis of the audit report. In *Jai Pal's case* (supra), the accounts of the Society for the period 1st July, 1975 to 30th July, 1977 were audited by the Audit Inspector and during the audit process, embezzlement of Rs. 58,093.34 paise was detected. Placing reliance on the observations of the Apex Court in *Pentakota Sriramula's case* (supra), brother J. M. Tandon, J. was of the view that provisions of Sections 49 and 51 of the Madras Cooperative Societies Act 1932 (for short the 'Madras Act') are analogous to the provisions of Sections 54 and 55 respectively of the Punjab Cooperative Act, 1961 (for short the Punjab Act as applicable to Haryana). And further while deciding the matter, the learned Single Judge took into consideration the following observations of their Lordships :—

"In this connection learned counsel relied on a decision of the Madras High Court in *Sundram Iyer v. Deputy Registrar of Co-operative Societies* (4). There it was held that it was only in case where the provisions of Section 49 were inapplicable that recourse could be had to section 51. In case, where a matter fell both within sections 49 and 51, the two provisions were not intended to operate on parallel lines. As section 51 excluded the jurisdiction of civil Courts it must be strictly construed and for that reason, in cases where section 49 was applicable, section 51 would be excluded. Further, it was held section 51 was of general nature providing for a variety of matter and was almost exhaustive of the parties

(1) 1984 P.L.J. 8.

(2) 1988 P.L.J. 263.

(3) AIR 1965 S.C. 621.

(4) ILR (1957) Mad. 371 : AIR 1957 Madras 684.

between whom as well as the disputes that could arise in co-operative societies. Section 49 on the other hand dealt with special types of disputes which arise in exceptional circumstances, segregated out of the larger group dealt with under Section 51. When there was thus an overlapping of the terms of both the section the provisions of section 49 alone it was held would be applicable. Based on this line of reasoning, the submission of learned counsel was that the claim in the present case was one 'against a person in management of the Society' and 'for the fraudulent retention of money or other property of the Society' and, therefore, it was completely covered by Section 49 and that in consequence the Registrar had no jurisdiction to direct an enquiry by the Deputy Registrar under Section 51 of the Act. This argument, however, proceeds on ignoring one further essential requisite for the application of section 49(1). Besides the two factors to which learned counsel referred and which we have just set out, there is also another condition which has to be satisfied before section 49(1) could be attracted. The facts giving rise to the charge have to be disclosed in the course of an audit under section 37 or an enquiry under Section 38 or an inspection under section 39 or on the winding up of the society. Mr. Ram Reddy while not disputing that unless this condition is also satisfied section 49 would not be attracted, however, submitted that there was an enquiry under section 38 preceding the supersession and that in consequence the condition was fulfilled. It is true that there was an enquiry conducted into the affairs of the Society under Section 38, but that by itself is not sufficient. It has further to be proved that the facts alleged in the claim, and on which it is based, were disclosed at that enquiry. This can be proved or established only if the enquiry report which was submitted to the Registrar was placed before the Court and the facts disclosed therein corresponded with the facts alleged in the statement of claim. Mr. Ram Reddy admitted that the enquiry report was not before the Court and it is not in the record of the proceedings. It is not, therefore, possible to say that there is correspondence between the facts disclosed in that report as a result of enquiry under section 38 and those found in the statement of claim which was referred by the Registrar to the Deputy Registrar for arbitration under section 51. The case must, therefore, be held not to fall under

Section 49 of the Act. There can be no doubt that if section 49 does not apply, subject to the other argument about illegality to which we shall advert, the order of the Registrar proceeding under section 51 is not open to objection. This first point, therefore, has to be rejected."

Aforementioned Sections 49 and 51 of the Madras Co-operative Societies Act, 1932 run as under :—

- "49. (1) Where in the course of an audit under S. 37 or, an inquiry under S. 38 or an inspection under S. 39 or the winding up of a society, it appears that any person who has taken part in the organization or management of the society or any past or present officer of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society, the Registrar may, of his own motion or on the application of the committee or liquidator or of any creditor or contributory, examine into the conduct of such person or officer and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, fraudulent retention or breach of trust as the Registrar thinks just.
- (2) The order of the Registrar under Sub-section (i) shall be final unless it is set aside by the District Court having jurisdiction over the area in which the headquarters of the society are situated or if the headquarters of the society are situated in the City of Madras, by the City Civil Court, on application made by the party aggrieved within three months of the date of receipt of the order by him" and S. 51 the other provisions runs ;

"Arbitration ;

Disputes : 51. If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises—

- (a)
(b)

(c) between the society or its committee and any past committee, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant, of the society, or (d)

(2) The Registrar may, on receipt of such reference,—

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the (Provincial Government) with powers in that behalf, or

(c) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrations.”

Similarly, the alleged corresponding analogous provisions of Sections 54 and 55 of the Punjab Cooperative Act, 1961 (in short the Punjab Act) are reproduced below :—

“54. Surcharge,—(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may of his own motion or on the application of the committee, liquidator or any creditor, enquire himself or direct any person authorised by him, by an order in writing in this behalf, to enquire into the conduct of such person;

Note :—Proviso omitted by Haryana Act 13 of 1971.

(2) Where an inquiry is made under sub-section (1) the Registrar may, after giving the person concerned an opportunity of being heard, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable.

Chapter VIII : Settlement of Disputes.

Section 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) among members, past members and persons claiming through member, past members and deceased members ; or
- (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 employees of the society or liquidator, past or present; or
- (c) between the society or its committee and past committee, any officer, agent or employee, or any past officer, past agent past or 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 disputes 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.

(2) For the purposes of sub-section (1) the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely—

- (a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;
- (b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the

principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the Constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.

(4) No dispute arising in connection with the election of an officer of the society shall be entertained by the Registrar unless it is referred to him within thirty days from the date of the declaration of the result of election.

55-A. *Recovery of loan members.*—If it comes to the notice of the Registrar that a member of a co-operative society has not repaid the loan due from him within the stipulated period and no reference under section 55 has been made, he may make an inquiry into the matter, either himself or through a person authorised in writing, by him.

(2) After enquiry under sub-section (1) has been made the Registrar may pass an order issuing a certificate for recovery of the amount of the loan with interest :

Provided that no such order shall be passed unless the persons effected thereby has been given a reasonable opportunity of being heard in the matter.

(3) No reference under section 55 shall be entertained after the Registrar has initiated action under sub-section (1)."

(7) Apparently in *Pentakota Sriramula's case* (supra) matter came to the Supreme Court against the judgment of the Madras High Court in which High Court had interpreted Sections 49 and 51 of the Madras Act to the effect that in case the dispute is covered under Section 49 then the order of the Registrar proceeding under Section 51 is invalid. That High Court also took the view that when there was overlapping of the terms of both the Sections, the provisions of Section 49 alone will apply. The counsel for the appellant in the

Supreme Court raised the argument primarily on the reasoning given by the High Court and it was contended by the counsel that claim against a person in management of the society and for the fraudulent retention of money or other property of the society was completely covered under Section 49 and consequently, the Registrar had no jurisdiction to direct an enquiry by the Deputy Registrar under Section 51 of the Act. The Supreme Court turned down this argument as that there was another condition which has to be satisfied before Section 49(1) could be attracted. The condition was that the facts giving rise to the charge have to be disclosed in the case of an audit under Section 37 or an enquiry under Section 38 or an inspection under Section 39 or on the winding up of the society. It was further held that the matter did not arise under either of the aforesaid Sections i.e. 37, 38 and 39 or because of winding up of the society as per the facts alleged in the claim by the society and as such, Section 49 was not attracted and the dispute was rightly dealt with by the Registrar under Section 51 of the Act. Besides this, Supreme Court also held that a dispute against a person who is managing the society and who fraudulently retains the money or property of the society shall certainly be a dispute touching the business of the society and as such, provisions of Section 51 were rightly invoked by the Registrar.

(8) Now if we have a combined reading of the aforesaid Sections 49 and 51 of the Madras Act with Sections 54 and 55 of the Punjab Act, it is true that they are analogous to some extent but not in strict that Under the Madras Act, a remedy to an aggrieved person is available before the District Court of judicial nature, whereas under the Punjab Act, there is no such provisions. It is not correct to say as observed in *Om Parkash Chopra and Jai Pal's cases* (supra) that the provisions are analogous. These two cases have been decided on the assumption and admitted so by the other party that proceedings were initiated on the basis of an audit report or shortage found on verification of stocks respectively.

(9) Now it has to be seen as to what extent the aforementioned Supreme Court judgment is applicable to the facts of the case in hand and whether provisions of Section 54 or that of 55 of the Punjab Act would apply. It is made clear that the Supreme Court after taking into consideration the pleadings of the parties and claim made by the society before the Registrar had observed that in such like situation, the case would not completely fall under Section 49 and consequently proceedings under Section 51 were held to be not open to objection.

(10) Now if these observations of the apex Court in the afore-said case are applied to the facts of the present case, it is quite clear that the contention raised by Mr. Sharma is fallacious because no such plea was raised before the authorities below as is apparent from the impugned orders. Of course, half-heartedly it was raised before the revisional authority but no such facts were placed on record to show that the liability had been fastened upon the petitioner on the basis of an audit report alone. Surprisingly, no such plea has been taken in this writ petition as well. On this ground alone, petitioner is not entitled to raise this plea (which is based on facts) for the first time during the course of arguments at this belated stage, particularly when there is inordinate delay of more than 14 months in filing the present writ petition from the date of order of the revisional authority.

(11) Even if this laches on the part of the petitioner is ignored for the sake of argument, yet there is no dispute that the Ganaur Cooperative Society (respondent No. 4) raised an arbitration dispute which was decided, though against the society by the Arbitrator,— *vide* order dated 24th December, 1981 (Annexure P-7). The petitioner also earned acquittal, himself arguing that as arbitration proceedings were already pending with the Arbitrator under Section 55 of the Act and criminal proceedings could not go on simultaneously. Similarly, he obtained a lenient award of punishment of warning on the ground that arbitration proceedings under Section 55 were pending before the arbitrator. In all the impugned orders as well, it is specifically mentioned therein that arbitration proceedings had been initiated by the society against the petitioner under Sections 55/56 of the Punjab Co-operative Act, 1961. As such, from the discussion of all these facts on record, the unescapable factual conclusion is that the Ganaur Co-operative Society (respondent No. 4) had sought a reference and got initiated arbitration proceedings against the petitioner under Section 55/56 of the Punjab Co-operative Societies Act, 1961.

(12) A bare perusal of the charges against the petitioner as given above, would also show that it was a dispute touching the management or business of the Co-operative Society that the petitioner (an ex-Manager of the society) had fraudulently retained and embezzled the property of the society.

(13) Jai Pal's and Om Parkash Chopra's case (*supra*) were decided on undisputed facts before the High Court, rather a clear cut admission by the other side is infreable that Section 54 of the Act is attracted. But this is not the position in the present case and the ratio of the said judgment are not applicable to the case in hand. While deciding these two cases, the Hon'ble Judges did not feel the

necessity of taking all the observations of the Supreme Court about the existence of another condition as discussed above. In view of the observations of the Supreme Court Sections 48 (audit), 49 (inspection of societies) 50 (enquiry by the Registrar), 51 (inspection of books of the indebted societies) of Chapter VIII of the Punjab Act have not been taken note of in the aforesaid Single Bench judgments.

(14) If some illegality of fraud, embezzlement or shortage is found during the proceedings under the aforesaid Sections and in-criminating material so collected is made the sole basis in its claim by the society, then of course, it can be said that Section 54 would apply. But if the facts so collected during any such proceedings as contemplated under the aforesaid Sections are not put in the claim made by the society, then Section 55 would apply. For instance, if the society seeks reference and during arbitration proceedings, it relies upon some auditor inspection report, or some other enquiry report by way of piece of evidence alongwith the other evidence, then it cannot be said that in that eventuality, the matter will be coverable only under Section 54 of the Act. If such view was contemplated in the aforesaid two judgments of this Court, then they are contrary to the observations of the Supreme Court in *Pentakota Sriramula's Case* (Supra).

(15) Though we have expressed some doubt about the correctness of the aforesaid two judgments of this Court, yet as per the discussion made above we shall refrain from doing so as the same is not needed for the just decision of the case in hand. The observations of the Supreme Court in *Pentakota Sriramula's case* (supra) are fully applicable to the facts of the case in hand and we hold that reference for arbitration proceedings was rightly claimed by the society and ordered so by the Registrar in terms of Section 55/56 of the Punjab Act.

(16) Resultantly, for the elaborate reasons recorded above, the writ petition is ordered to be dismissed with costs. The costs are quantified at Rs. 1,000 to be paid to respondent No. 4 only.

R.N.R.

Before : G. R. Majithia, J.

RAJ KUMAR,—Appellant.

versus

DHARAM SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 476 of 1979.

25th November, 1991.

(a) Code of Civil Procedure, 1908—O. 2. rl. 2—Suit for declaration that decree of civil court and order of purchase under S. 18 of