

Before S. S. Sandhawalia, C.J. & R. N. Mittal, J.

HARCHAND SINGH,— Appellant.

versus

THE KHALA KALAN AGRICULTURAL CO-OPERATIVE SERVICE SOCIETY LTD., AND OTHERS,—Respondents.

First Appeal from Order No. 249 of 1973.

August 9, 1982.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 55, 56 and 82—Arbitration Act (X of 1940)—Sections 33 and 46—Dispute between a co-operative society and its employee referred to arbitration under section 55—Statutory award under section 56 pronounced against the employee—Application under section 33 of the Arbitration Act filed challenging the arbitration proceedings—Such application—Whether maintainable—Jurisdiction of the Civil Court to entertain such an application—Whether barred.

Held, that a plain reading of sections 55 and 82 of the Punjab Co-operative Societies Act, 1961 would indicate that atleast within the specific context of a statutory arbitration under section 56 of the Act and the award rendered therein, the legislature has imposed a triple bar in pre-emptory terms for excluding the jurisdiction of the civil courts. This would inevitably oust the application of section 33 of the Arbitration Act, 1940 because it cannot be denied that the same has to be enforced in that forum alone. Section 55 aforesaid expressly lays down, that disputes falling within its ambit would be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect thereof. The use of such wide language as "other proceedings" is significant. Again, section 82(1)(c) of the Societies Act in terms bars the jurisdiction of the civil or revenue courts in respect of any dispute required to be referred to the Registrar under section 55. A general exclusion is then spelt out in section 82(3) providing that no award made under this Act shall be questioned in any court on any ground whatsoever except as provided in the Societies Act. Apart from an express bar it would appear that the patent inconsistencies betwixt the provisions of the Societies Act and those of the Arbitration Act militate strongly in favour of an implied exclusion of the provisions of one statute from the other. It would be obvious that the provisions of the Societies Act which in detail govern the statutory arbitrations thereunder are in principle and details inconsistent with those under the Arbitration Act. Once it is so held, section 46 of the Arbitration Act would be itself straightaway attracted in so far

as it provides that the provisions of the Arbitration Act would not be applicable to statutory arbitrations under other statutes which are inconsistent therewith or any Rules made thereunder. It is, therefore, held that the provisions of the Punjab Co-operative Societies Act, 1961 exclude the applicability of section 33 of the Arbitration Act to a statutory award under section 56 of the former Act.

(Paras 8, 9, 10 and 15).

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| <i>Jullundur Co-op. Bank</i> |) | |
| <i>vs. Jawala Dass and others Civil Revision</i> | } | Overruled |
| <i>No. 402 of 1962 decided on 16th August, 1983.</i> |] | |

First Appeal from Order of the Court of Shri Jagat Parkash Gupta, P.C.S., Sub-Judge 1st Class (A), Mansa, dated 12th December, 1973 dismissing the petition and leaving the parties to bear their own costs.

R. N. Narula, Advocate, for the Appellant.

B. S. Khoji, Advocate, for the Respondents.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the provisions of the Co-operative Societies Act, 1961, expressly or by necessary implication exclude the applicability of section 33 (read with section 46) of the Indian Arbitration Act, 1940, to a statutory award under section 56 of the former Act is the significant question which has necessitated this reference to the Division Bench.

2. The facts are in narrow compass. The dispute arose betwixt Harchand Singh appellant, then serving as cashier of the Khiala Kalan Agricultural Co-operative Service Society (hereinafter referred to as the Co-operative Society), on the one hand and the society on the other. This dispute was referred to Mr. K. L. Sharma, the Manager of Faridkot Central Co-operative Bank Limited, Faridkot, as Arbitrator under section 56 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as "The Societies Act"). The Arbitrator rendered his award on 15th of January, 1969, against the appellant and held him liable to pay the amount in dispute. The appellant then preferred an appeal under section 68 of the Societies Act, which was dismissed by the

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Assistant Registrar Co-operative Societies, Bhatinda, on 15th of November, 1971. It was thereafter that the appellant resorted to the filing of an application under section 33 of the Arbitration Act for seeking a declaration that the entire arbitration proceedings held and conducted by Mr. K. L. Sharma were without jurisdiction, illegal and inoperative. The society contested the application, *inter alia* on the grounds that the Civil Court has no jurisdiction to entertain the petition and further that the petition had been filed after the period of limitation and that the same was not maintainable. The Court framed the following issues:—

- (1) Whether this Court has got jurisdiction to hear the petition?
- (2) Whether petition has been filed within limitation ?
- (3) Whether petition is not maintainable on the grounds taken in reply filed?
- (4) Whether the certified copy of order was not properly stamped; if so, its effect ?

3. The Court held that it had no jurisdiction to bear the petition; that the same was filed within limitation, and that the petition was not maintainable. Issue No. 4 was not pressed. Ultimately the court dismissed the application. Aggrieved by this order, the appellant preferred this appeal against the order of the Subordinate Judge.

4. This F.A.O. had first come up before my learned brother R. N. Mittal J., while sitting singly. The solitary contention pressed before him (as before us now) was that the Civil Court had the jurisdiction to try the application under section 33 and that it erroneously held otherwise. In support of this stand primary reliance was placed on *Jullundur Central Co-operative Bank Limited, Jullundur, through S. Mehar Singh Manager versus Jawala Dass and others* (1). This judgment undoubtedly lent support to the stand of the appellant. However, finding this view contrary to those prevailing in Calcutta and Hyderabad High Courts the matter was referred to Division Bench for an authoritative decision.

(1) C.R. 402 of 1962 decided on 16th August, 1963.

5. At the very threshold it deserves notice that though section 33 of the Arbitration Act refers in terms to an arbitration agreement, yet by virtue of section 46 of the said Act, it would become applicable to every arbitration under any other enactment for the time being in force. It is thus patent that the Arbitration Act would apply to a statutory arbitration including these in the Societies Act, unless there is an express or implied bar in the latter or its provisions are inconsistent with the same or any rules made thereunder.

6. For clarity sake the matter herein deserves examination from the twin aspect of an express and implied exclusion. It is, therefore, apt to deal with these two aspects distinctly and separately. It is, however, elementary that if both an express and an implied bar is indicated then these would coalesce to make the exclusion of the jurisdiction of the Civil Courts and the applicability of the Arbitration Act even more categorical.

7. Inevitably one must advert to the express exclusion of the Civil Court and consequently of the Indian Arbitration Act under the Societies Act. Herein, what calls for pointed notice is a triple bar imposed by the statute both in section 55 and section 82 of the Societies Act, which may be read at the very threshold. Section 55 of the Societies Act provides as under:—

“55. *Dispute 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:—

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| (a) | * | * | * | * | * |
| (b) | * | * | * | * | * |
| (c) | * | * | * | * | * |
| (d) | * | * | * | * | * |

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.

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| (2) | * | * | * | * | * |
| (a) | * | * | * | * | * |

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- (b) * * * * *
- (c) Any dispute arising in connection with the election of any officer of the Society.

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82. *Bar of jurisdiction of courts.*—(1) Save as provided in this Act, no civil or revenue court, shall have any jurisdiction in respect of:—

(a) * * * * *

(b) * * * * *

(c) Any dispute required under section 55 to be referred to the Registrar; and

(d) * * * * *

(2) * * * * *

(3) Save as provided in this Act, no order, decision or award, made under this Act, shall be questioned in any court on any ground whatsoever.”

8. A plain reading of the aforesaid provisions would indicate that at least within the specific context of a statutory arbitration under Section 56 of the Societies Act and the Award rendered therein the legislature has imposed a triple bar in pre-emptory terms for excluding the jurisdiction of the civil courts. This would inevitably oust the application of Section 33 of the Arbitration Act because it cannot be denied that the same has to be enforced in that forum alone. Section 55 aforesaid expressly lays down, that disputes falling within its ambit, would be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect thereof. The use of such wide language as “other proceedings” is significant. Again Section 82(1)(c) of the Societies Act in terms bars the jurisdiction of the civil or revenue courts in respect of any dispute required to be referred to the Registrar under Section 55. A general exclusion is then spelt out in Section 82(3) providing that no Award made under this Act shall be questioned in any court on any ground whatsoever except as provided in the “Societies Act” itself. The wide amplitude of the language used herein is again worthy of pointed notice.

9. Though the language of the statutory provisions is categoric enough, the provisions of Sections 55 and 82 of the Societies Act have been the subject matter of interpretation by a Full Bench in *Ran Singh v. The Gandhar Agricultural Co-operative Service Society* (2), wherein it was observed as under:—

“A combined reading of these provisions shows that it has been made imperative for either a Society or its member to refer their disputes *inter se* to the Registrar for decision. Not only has the jurisdiction of ordinary Civil Courts been taken away for entertaining any suit or other proceedings in respect of such a dispute, but an express bar has been created against the Civil Courts regarding all types of jurisdiction in respect of disputes required to be referred to the Registrar. The use of the words “in respect of” is pregnant with significance. It perhaps shows that even if the decision of the Registrar or the arbitrator is wholly illegal, an aggrieved party would have to take resort to the remedies provided by the Act itself and a Civil or a revenue Court will not be competent to adjudicate upon the matter unless there is a specific provision to the contrary in the Act.”.

It thus seems to follow both on the language of Sections 55 and 82 of the Societies Act and the authoritative precedent that the provisions of Section 33 of the Arbitration Act would be ousted with regard to a statutory Award under the Societies Act.

10. Now apart from an express bar it would appear that the patent inconsistencies betwixt the provisions of the Societies Act and those of the Arbitration Act militate strongly in favour of an implied exclusion of the provisions of one statute from the other. Admittedly, the Societies Act and the Rules framed thereunder provide in great detail for both the reference of the dispute under Section 55 of the Societies Act and the rendering of the statutory Award under Section 56 of the Arbitration Act. Section 68 (1)(b) of the said Act then provides a statutory appeal against the Award and inevitably in this appeal, the challenge thereto can be a wide ranging one. Section 69 of the Act in specific cases provides further

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for a revision against the appellate forum. There is no corresponding provision under the Societies Act or Rules framed thereunder which would necessitate any application for making an Award, a rule of the court as under the Arbitration Act. On the other hand, Section 63 in terms provides *inter alia* that upon the issuance of a certificate, the Award would be deemed to be a decree of the civil court and shall be executed in the same manner. It would thus be obvious that the provisions of the Societies Act which in detail govern the statutory arbitrations thereunder are in principle and details inconsistent with those under the Arbitration Act. Once it is so held, Section 46 of the Arbitration Act would be itself straightaway attracted in so far as it provides that the provisions of the Arbitration Act would not be applicable to statutory arbitrations under other statutes which are inconsistent therewith or any Rules made thereunder.

11. Now apart from the express provisions of Section 46 of the Arbitration Act it is otherwise well-settled that the jurisdiction of a civil court and the provisions of Acts endorseable therein may be excluded by the clear implication arising from the scheme of an Act. This is more so when the legislature sets up a special forum for determining the disputes and the rights and liabilities of the parties under the statute itself. In *State of Kerala v. M/s. N. Ramaswami Iyer and Sons* (3), their Lordships have authoritatively laid down the rule in the following terms:—

“But the jurisdiction of the civil court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the Legislature sets up a special tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of the civil courts would be deemed excluded by implication.”

12. There is then a long line of precedents holding directly that the provisions of the Arbitration Act are ousted by similar or analogous provisions of the various Co-operative Societies Acts. Reference in this connection may first be made to the observation of Chagla, J. (as the learned Chief Justice then was) in *G.I.P. Railway Employees Co-operative Bank Ltd. v. Bhikhaji Merwanji Karanjia* (4). A

(3) 1966 S.C. 1738.

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

Division Bench of the Calcutta High Court in *Nanda Kishore Goswami and another v. Bally Co-operative Credit Society Ltd., etc.* (5), took the view that the provisions of the Co-operative Societies Act, 1912 and the Rules framed thereunder, were inconsistent with the provisions of the Arbitration Act and would, therefore, exclude its applicability. A similar view has been expressed by the Division Bench in *B. Balreddy v. Joint Registrar, Co-operative Society and others*, (6). Directly on the point is the observation of the Division Bench in *Bhadur Singh v. The District Judge, Rampur and others*, (7), holding that the provisions of Section 33 of the Arbitration Act are inconsistent and inapplicable to the statutory Award under the Co-operative Societies Act.

13. By way of analogy, massive support for the aforesaid view accrues from the observations in *District Co-operative Federation Ltd., Meerut and another v. Registrar, Co-operative Societies, U.P., Lucknow and others* (8), *Union of India (Military Department) v. Ramdas Oil Mills, Jamshedpur*, (9), *The State of Bihar v. Damodar Valley Corporation and others* (10), *Sir Dinshaw Manekji Petit v. G. B. Badkas and others* (11) and *H.P. State Co-operative Bank Ltd. Chamba v. Smt. Naroo Devi and Ors.* (12).

14. Inevitably one must now advert to *Jullundur Central Co-operative Bank Ltd.'s case* (supra). The Judgment therein shows that counsel were rather remiss in not bringing to the pointed notice of the Court the express bar spelt out in Sections 55 and 82 of the Arbitration Act, and the inherent inconsistencies betwixt the Societies Act and those in the Arbitration Act. *Nanda Kishore Goswami's case* and, *B. Balreddy's case* (supra) the earlier judgments were apparently not brought to the notice of the learned Single Judge. It is manifest that the subsequent line of precedent after the judgment was rendered in 1962, in *Jullundur Central Co-operative Bank Ltd's* (supra), has consistently taken a contrary view.

(5) A.I.R. (30) 1943 Calcutta 255.

(6) A.I.R. 1955 Hyderabad 238.

(7) A.I.R. 1975 Allahabad 12.

(8) A.I.R. 1966 All. 489.

(9) A.I.R. 1968 Patna 352.

(10) A.I.R. 1974 Patna 354.

(11) A.I.R. 1969 Bom. 151.

(12) A.I.R. 1979 H.P. 1.

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With the greatest respect, therefore, it must be held that *Jullundur Central Co-operative Bank Ltd.'s case* (supra) was incorrectly decided and is hereby overruled.

15. The answer to the question posed at the outset is, therefore, rendered in the affirmative and it is held that the provisions of the Co-operative Societies Act, 1961, exclude the applicability of Section 33 of the Indian Arbitration Act to a statutory Award under Section 56 of the former Act.

16. Applying the above it is inevitable that the solitary contention pressed before us that the civil court had the jurisdiction to try the application under Section 33—has to be rejected. Affirming the trial court's finding on this point (the other issues were not challenged before us) we dismiss the present appeal. In view of some conflict of precedent within this Court, we leave the parties to bear their own costs.

Rajendra Nath Mittal, J.—I agree.

N. K. S.

Before G. C. Mital, J.

MOHAN LAL,—Appellant.

versus

RAMESHWAR DASS AND OTHERS,—Respondents.

Regular Second Appeal No. 1417 of 1981.

August 10, 1982.

Code of Civil Procedure (V of 1908)—Sections 141 and 153—Order 1 Rule 10 and Order 41 Rule 20(2)—Appeal filed in court against two respondents—One of the respondents dead before the filing of the appeal but after the judgment of the lower court—Such appeal—Whether could be said to be a nullity—Legal representatives of such a deceased—Whether could be brought on the record.

Held, that the death of one of the respondents after the decision of the Court below and before the filing of the appeal does not