

Harkishan Dass and Others

Vs

State of Haryana and Others

Civil Appeal No. 64 of 1979

(M. M. Punchhi, Sujata V. Manohar JJ)

08.11.1995

ORDER

1. The Punjab and Haryana High Court at Chandigarh dismissed the writ petition of the appellants in limine, which has given rise to this appeal.
2. On the bare outline of the matter, it is clear that there is not much scope for interference at our end. The appellants are heirs and legal representatives of Mathura Parshad, deceased, cashier-cum-member of the Cooperative Society, Respondent 3. On his demise, it was discovered that he had defalcated large sums of money of the Society. Since a dispute arose between the Society and its deceased member, about the recovery thereof, the heirs and legal representatives of the deceased, Mathura Parshad were made to face proceedings. An arbitrator was appointed to go into the matter in accordance with the provisions of Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961. An award was made by the arbitrator against the appellants, being heirs and legal representatives of Mathura Parshad, deceased, not only for the principal amount found due, but also for the liability to pay interest at the rate of 16 per cent per annum and costs at the rate of 2 per cent on the sum awarded. On appeal before the Deputy Secretary of the Department, at the instance of the appellants, the liability to pay the principal sum was sustained but rest of the award i.e. pertaining to interest and costs was struck off. The appellant's writ petition, as said before, was dismissed in limine by the High Court, repelling the plea raised that the dispute did not squarely fall within the purview of Sections 55 and 56 of the Punjab Cooperative Societies Act, 1961.
3. Though the order of the High Court in sum and substance is in approval of the orders of the departmental officers, one claim however, laid in the writ petition, needs to be highlighted. That was contained in ground (j) in paragraph 11 of the writ petition. It is reproduced hereafter :

"(j) That in any case, the liability on the petitioners cannot exceed the interest devolved upon the petitioners from late Mathura Parshad. late Mathura Parshad had no bank balance and no property of his. All that he had was a share in the ancestral house in which some of the petitioners reside. The liability, if established, then cannot exceed the share of Mathura Parshad in that house."
4. This was a valid plea. All the same the dismissal of the writ petition cannot have the effect of wiping out such a plea which would remain alive when the question of recovery would arise. This plea was personal to the appellants. They cannot be held liable personally for the liability of late Mathura Parshad except to the extent of interest devolved upon them from Mathura Parshad. If such plea is raised as defence in an appropriate forum, that plea shall not be shut out merely on account of the dismissal of the writ petition. No bar of res judicata would be valid to thwart such defence as

and when raised as such matter was not, and could not be, directly and substantially in issue. With this clarification, the appeal stands disposed of. No costs.