

APPELLATE CIVIL

Before H. R. Sodhi, J.

THE PHAGWARA CO-OP. UNION LTD.,—Appellant.

*versus*THE INDIAN ENGINEERING CO-OPERATIVE SOCIETY, LTD., ETC.,—
Respondents.**Execution Second Appeal No. 252 of 1968**

January 20, 1971.

Punjab Co-operative Societies Act (XXV of 1961)—Section 56—Punjab Co-operative Societies Rules (1963)—Rule 53—Award given by an arbitrator without communicating the date, time and place of hearing to the concerned parties—Whether incapable of execution, being without jurisdiction and a nullity.

Held, that Rule 53 of Punjab Co-operative Societies Rules, 1963, which deals with the procedure for the settlement of disputes by an arbitrator appointed under section 56 of the Punjab Co-operative Societies Act, 1961, enjoins upon the arbitrator to inform the parties about the date, time and place of hearing the dispute and the arbitrator is bound to hear them and also the witnesses, who attend. The award is to be based on evidence, if any, produced by the parties and the award so made is required to be announced to them and a copy thereof filed in the office of the Registrar. Where an award is made by an arbitrator without communicating the date, time and place of hearing to the parties concerned, such an award is incapable of execution being without jurisdiction and a nullity.

(Para 3)

Execution Second Appeal from the decree of the Court of Shri R. L. Anand, Sub-Judge, 1st Class, Phagwara, dated 30th May, 1968, ordering the award against the applicants and holding it to be nullity and incapable of execution and the property already attached is ordered to be released from attachment.

J. V. GUPTA, ADVOCATE, for the appellant.

K. N. TEWARI, ADVOCATE, for the respondents.

JUDGMENT

H. R. SODHI, J.—(1) This is an execution first appeal against the order of Subordinate Judge, 1st Class, Phagwara, who, on an objection raised by the judgment-debtor, dismissed the execution application on the ground that the decree sought to be executed was a nullity.

The Phagwara Co-op. Union, Ltd. v. The Indian Engineering Co-operative Society, Ltd., etc. (Sodhi, J.)

(2) Facts that have led to the appeal can be stated in a narrow compass.

(3) There was a dispute between the Phagwara Cooperative Union Limited, Phagwara, a society registered under the Punjab Co-operative Societies Act, 1961 (Punjab Act No. 25 of 1961), hereinafter called the Act, and the Indian Engineering Cooperative Society Limited, Phagwara, similarly registered. The Phagwara Cooperative Union was alleged to have advanced some loan for which Smt. Jaswant Kaur, respondent, was a surety. The Assistant Registrar appointed one Benarsi Dass, Sarpanch of village Panchhet as an Arbitrator under section 56 of the Act, by an order made on 9th August, 1965. The award, as stated by the Sarpanch, was given on 8th September, 1965, though the copy that is on the record bears the date, 29th September, 1965. A certified copy of the award, as supplied to the judgment-debtor respondent, has been shown to me and it bears the date 8th September, 1965. In view of the statement of the Sarpanch as made in Court, it has to be accepted that the award was made on 8th September, 1965. There is no denying the fact that the date of hearing by the Arbitrator was fixed for 8th September, 1965, and the acceptance of the registered notice sent to the judgment-debtor was refused on 9th September, 1965. What it comes to is that before the notice could reach the judgment-debtor respondent, the award had already been given by the Arbitrator. There can be no manner of doubt that an award made without communicating the date, time and place of hearing to the parties concerned must be held to be without jurisdiction and, therefore, a nullity. There are rules called the Punjab Co-operative Societies Rules, 1963, made by the State Government in exercise of the rule making power conferred by the Act. Chapter VII, containing rules 51 to 57, deals with the procedure for the settlement of disputes by an Arbitrator. Rule 53 enjoins upon the Registrar or any other person acting as arbitrator to inform the parties about the date, time and place of hearing the dispute and the arbitrator is bound to hear them and also the witnesses who attend. The award is to be based on evidence, if any, produced by the parties and the award so made is required to be announced to them and a copy thereof filed in the office of the Registrar. The Arbitrator, in the instant case, acted in clear violation of the statutory rules inasmuch as he gave no opportunity to the alleged debtor society to be heard and to produce any evidence if it so desired. The

action of the Arbitrator was, therefore, not only in clear violation of the Rules but also against the well-established rules of natural justice requiring that no one shall be condemned unheard. The executing Court was thus well-justified in upholding the objection of the judgment-debtor and declaring the award to be incapable of execution as it was without jurisdiction and a nullity.

(4) Mr. K. N. Tewari, learned counsel for the respondent, urges that a notice was necessary to the judgment-debtor by the Registrar or the Assistant Registrar before the Arbitrator was appointed but it is not necessary to express any opinion on that question when the award is otherwise patently illegal and inexecutable for reasons stated above.

(5) In the result, there is no merit in the appeal which stands dismissed. The parties are left to bear their own costs.

B. S. G.

APPELLATE CIVIL

Before Gopal Singh, J.

KAMLA RANI,—Appellant.

versus

RAJ KUMAR,—Respondent.

F. A. O. No. 44-M of 1970

January 27, 1971.

Hindu Marriage Act (XXV of 1955)—Sections 9 and 24—Proceedings for restitution of conjugal rights against wife—Maintenance allowance to the wife under section 24 during such proceedings—Whether payable only from the date of order granting the same.

Held, that under section 24 of the Hindu Marriage Act, 1955, monthly maintenance allowance to support the wife has to be paid for the period during which proceedings of the petition for restitution of conjugal rights under section 9 of the Act remain pending against the wife. Under this section, the wife is entitled to the maintenance allowance for the whole of the said period unless the husband can show that she has some independent income sufficient for her support or there are any other circumstances disentitling her to claim that maintenance. She has a right for arrears of