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Court : Allahabad

Decided On : Aug-02-2000

Reported in : (2000)3UPLBEC2639

Judge : D.S. Sinha and ;Dev Kant Trivedi, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Co-operative Societies Act, 1965 - Sections 128

Appeal No. : Civil Misc. Writ Petition No. 5054 of 1998

Appellant : Devendra Dutta Bahuguna

Respondent : The Secretary, Co-operative Development Federation and ors.

Advocate for Def. : S.C. and ;M.P. Gupta, Adv.

Advocate for Pet/Ap. : C.D. Bahuguna, Adv.

Disposition : Petition dismissed

Judgement :

D.S. Sinha, J.

1. Heard Shri C.D. Bahuguna, the learned Counsel appearing for the petitioner and Shri M.P. Gupta, the learned Counsel appearing for the respondents.
2. The services of the petitioner an employee of the respondents, were terminated in connection with the alleged embezzlement of an amount of Rs. 31,588.99 and prolonged absence from duty.
3. However, the petitioner was reinstated in pursuance of an adjudication by the Labour Court vide its order dated 21.5.1996 in his favour.
4. The Labour Court had left open to the respondents to hold an enquiry against the petitioner in respect of the alleged embezzlement. It transpires that an enquiry was held by the respondents wherein it was found that. the petitioner had embezzled the amount of Rs. 31,475.49. Then the matter was referred to the Deputy Registrar, Co-operative Society, Garhwal Mandal, U.P. who passed an order dated 25.6.1988 under Section 68 of the U.P. Cooperative Societies Act, 1965 (hereinafter called the 'Act') directing the recovery of an amount of Rs. 31,588.99 with interest at the rate of 18% per annum.
5. In pursuance of the above order dated 25.6.1988 the recovery proceedings were initiated on 13.8.1991. The petitioner challenged the recovery proceedings before this Court in Civil Misc. Writ Petition No. 13275 of 1991. He prayed for stay of recovery proceedings. The Court vide its order dated 29.5.1991 called upon the respondent/respondents to show cause why the petition be not admitted or heard and disposed of at admission stage.
6. At this stage it is relevant to notice that the Court did not grant any interim order staying the recovery proceedings. The Writ Petition remained pending.
7. There is no material on record of the Civil Misc. Writ Petition No. 13275 of 1991, aforesaid, to indicate hat the petitioner took steps to serve notice on the respondents in pursuance of the order of the Court dated 29.5.1991.
8. The petition remained pending and its was eventually dismissed in default on 31.1.1998. The order of dismissal is still intact.

9. During the pendency of the Civil Misc. Writ Petition No. 13275 of 1991, in the absence of any interim order staying the recovery proceedings, the respondents issued afresh demand notice which is the subject-matter of challenge in the present Writ Petition. In the present Writ Petition, the Court permitted the petitioner to serve the respondents personally in addition to normal mode of service. The respondents have filed the counter-affidavit. It is not disputed that the copy of the counter-affidavit was served on the learned Counsel for the petitioner on 16.3.1998. More than 2-1/2 years have elapsed, no rejoinder-affidavit has been filed.

10. in the counter-affidavit on behalf of the respondents, inter-alia, it is pointed out that for redressal of his grievance raised herein the petitioner has got an effective statutory alternative remedy of appeal under Section 128 of the Act besides remedy of approaching the District Magistrate and the Recovery Officer.

11. The learned Counsel appearing for the petitioner has not been able to dispute the position that the petitioner has got an effective statutory alternative remedy of appeal under Section 128 of the Act.

12. Ignoring the factum of availability of statutory alternative remedy of appeal, under Section 128 of the Act, the petitioner approached this Court on the wrong assertion in para 29 of the petition that no alternative efficacious speedy remedy was available to him. It cannot be gain-said that invoking the extraordinary jurisdiction of this Court under Article 226 of [Constitution of India](#) on wrong averments disentitles the petitioner for the benefit of any discretionary relief from this Court. Such a conduct of the petitioner renders his petition liable to be dismissed at the thresh-hold.

13. On the facts and circumstance noticed above, in the opinion of the Court, the petitioner is not a fit person in whose favour this Court may exercise its discretionary and extraordinary jurisdiction under Article 226 of [Constitution of India](#).

14. Thus, the Writ Petition is dismissed summarily. The interim order dated 12.2.1998 shall stand vacated.

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