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HARKISHAN DASS AND ORS.

v.

STATE OF HARYANA AND ORS.

NOVEMBER 8, 1995

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[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Punjab Co-operative Societies Act, 1961 :*

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*Ss.55, 56—Cashier-cum-Member of Co-operative Society—Misappropriation of funds by him discovered after his death—Dispute between Society and deceased Member—Reference to arbitrator—Heirs and legal representative of deceased made parties to proceedings—Award by arbitrator against heirs and legal representatives—Held, heirs and legal representatives of deceased cannot be held liable for liability of deceased except to the extent of interest devolved upon them from deceased—Dismissal of Writ Petition would be no bar of res judicata to thwart such defence at the time of recovery.*

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Respondent no. 3 a Co-operative Society, on the death of its Cashier-cum-Member, discovered that he had defalcated large sums of money of the Society. In the dispute arising between the Society and the deceased Member, his heirs and legal representatives, the appellants, were made parties. An arbitrator was appointed who made an award against the appellants for the principal amount found due as also for the 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, the liability to pay the principal sum was sustained but the award pertaining to interest and costs was struck off. The appellants filed a writ petition before the High Court, *inter alia*, on the grounds that the dispute did not squarely fall within the purview of Ss.55 and 56 of the Punjab Co-operative Societies Act, 1961 ; and that, in any case, the liability of the heirs could not exceed the interest devolved upon them. The High Court dismissed the writ petition in limine. Aggrieved, the appellants filed the appeal by special leave.

Disposing of the appeal, this Court

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HELD : The plea of the appellants raised in their writ petition before the High Court - that the liability on them could not exceed the interest devolved on them from the late employee of the Co-operative Society - was

a valid plea. This plea was personal to the appellants. They cannot be held liable personally for the liability of the late employee except to the interest devolved upon them from the said employee. Dismissal of the writ petition cannot have the effect of wiping out such plea which would remain alive when the question of recovery would arise. No bar of *res judicata* would be valid to thwart such defence as and when raised in an appropriate forum, as such matter was not, and could not be, directly and substantially in issue. [842-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 64 of 1979.

From the Judgment and Order dated 22.12.77 of the Punjab & Haryana High Court in C.W.P. No. 3573 of 1977.

K.K. Mohan for the Appellants.

Chaman Lal Itorora (N.P.) for the Respondents.

The following Order of the Court was delivered :

The Punjab and Haryana High Court at Chandigarh dismissed the writ petition of the appellants in limine, which has given rise to this appeal.

On the bare outlines 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 Prashad, deceased, cashier-cum-member of the Cooperative Society, respondent no. 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 Prashad 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 Co-operative Societies Act, 1961. An award was made by the Arbitrator against the appellants, being heirs and legal representatives of Mathura Prashad, 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

A appellants' 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 Co-operative Societies Act, 1961.

B 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:

C "(j) That in any case, the liability on the petitioners cannot exceed the interest devolved upon the petitioners from late Mathura Prashad. Late Mathura Prashad 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 Prashad in that house."

D This was a valid plea. All the same the dismissal of the writ petition cannot have the effect of wiping out such 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 Prashad except to the extent of interest devolved upon them from Mathura Prashad. If such plea is raised as defence in an appropriate forum,

E 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 the 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.

F R.P.

Appeal disposed.