

(1979) 05 AHC CK 0034
In the Allahabad High Court
Case No : Civil Revision No. 3471 of 1978

Dharma Samaj Society, Aligarh

APPELLANT

Vs

Ram Kishan Dass and Another

RESPONDENT

Date of Decision : 07-05-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1980 All 20

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : Mohanji Varma, for the Appellant; Bharatji Agarwal, for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This is a defendant's application in revision filed against an order passed by the learned District Judge, Aligarh on 17-8-78 dismissing an application filed by the defendant-applicant for recalling an order passed by the learned District Judge on 3-7-78 summarily rejecting an appeal filed by the defendant-applicant against a decree passed in favour of the plaintiff-opposite parties.

2. Briefly stated the relevant facts are these : The defendant-applicant is a Society registered under the Societies Registration Act- The Society is said to have been formed for various religious, social and educational purposes. Its affairs are regulated by its bye-laws, which have been duly registered under the Societies Registration Act. It has a Managing Committee as well as a General Body. The Managing Committee is the executive body of the Society, and its functions, powers and duties are enumerated in Byelaw No. 16. At the relevant time, one Sri B. S. Gupta was the Secretary of the Society. The functions and duties of the Secretary of the Society are laid down in Bye-law No. 20.

3. It appears that 8-12-1974 was fixed for the election of the office-bearers of

the Managing Committee. The plaintiffs-opposite-parties filed nomination for three offices, namely, President, Secretary and Treasurer. The nomination papers of the plaintiffs-opposite-parties were rejected by the Polling Officer on the ground that the same persons had proposed the names of the plaintiffs-opposite party for all the three offices and hence the nomination was invalid. After rejecting the nomination papers, the rival candidates for all the three offices were elected unanimously for the various offices. Thereupon, the plaintiffs-opposite-parties filed a suit challenging the validity of the election of the office bearers seeking a declaration that the elections were null and void having been held as a result of the illegal rejection of the nomination papers of the plaintiffs-opposite-parties. This suit was decreed by the trial court by its judgment and decree dated 31-5-1978. The trial Court decreed the suit declaring that the election of defendant No. 2 was null and void, and that all the proceedings relating to the election of defendant No. 2 were void ab initio. The trial Court further issued an injunction restraining the Committee of Management from functioning and a direction was issued to the defendant-applicant to hold fresh elections in accordance with the law.

4. The courts having closed for the summer vacation immediately after the suit was decreed, an appeal was filed by Sri B. S. Gupta, the Secretary of the Managing Committee against the decree of the trial Court during the summer vacation on 12-6-1978. On 1-7-1978, an emergency meeting of the Managing Committee was called. Sri B. S. Gupta was specifically asked to attend the meeting. However, Sri B. S. Gupta did not attend the meeting.

5. At the meeting held on 1-7-1978, a resolution was passed to the effect that Sri B. S. Gupta was not taking any interest in the prosecution of the appeal and that he was busy with his own personal affairs. Consequently, the resolution said, the Vice-President Sri A. P. Gupta was being authorised by the resolution to appoint a proper counsel and to take all necessary steps towards prosecuting the appeal. The Committee of Management at its meeting held on 1-7-1978 took exception to the deliberate absence of Sri B. S. Gupta from the meeting, and his omission to send the relevant papers as required by the President. A true copy of the resolution is annexed to the affidavit of Sri A. P. Gupta, which has been filed in support of the stay application filed in this Court and the same is marked "1". Before this resolution could be communicated to the Court, Sri B. S. Gupta filed an application on 3-7-1978 -- the very day Civil Courts opened after the summer vacation -- before the learned District Judge where the aforesaid appeal lodged by him was pending and which had not till then been admitted, nor registered. The prayer in this application was that the applicant be allowed to withdraw the appeal. At the bottom of this application, Sri B. S. Gupta added a note that he was withdrawing the authority of all the lawyers who had been previously appointed by him in the trial Court as well as in the Appellate Court. This application of Sri B. S. Gupta was presented by Shri R. S. Gupta, Advocate, who appears to have been engaged by Shri B. S. Gupta for moving this application. In this application, Shri B. S. Gupta alleged that he had become too old to indulge

in litigation and that in the interest of smooth running of the Society, he felt it expedient to withdraw the appeal. Upon this application, the Court straightway passed the following order, which is under challenge in this Revision :--

"This appeal has neither been registered, nor admitted so far. The counsel for the applicant, however, applied for withdrawal of the appeal and has not urged that the appeal deserved to be admitted. So allowing the prayer, I reject the appeal summarily as rejected.

Sd. : Suresh Chandra, District Judge, Aligarh, 3-7-1978." A true copy of the application of Sri B. S. Gupta dated 3-7-1978 has been annexed as Annexure "2" to the aforesaid affidavit. It appears that the applicant Society immediately rushed to the Court and moved an application before the learned District Judge on 5-7-1978, and requested him to recall his aforesaid order dated 3-7-1978. In this application, it was alleged that the action of Shri B. S. Gupta in withdrawing the appeal was clearly collusive and unauthorised and that the applicant Society was not bound by his individual, unauthorised and mala fide action. It was further alleged that as a result of the resolution dated 1-7-1978 of the Society, Shri B. S. Gupta had already ceased to have right to represent it. Allegations of mala fides and collusion were specifically mentioned in this application. It was alleged in the application that the action of Sri B. S. Gupta was deliberate, calculated to harm the Society and was in express violation of the resolution, and that the Society was not, under the facts and circumstances of the present case, bound by the acts of Sri B. S. Gupta. This application dated 5-7-1978 was moved by Sri A. P. Gupta aforesaid on behalf of the Society. By means of the application, the applicant Society invoked the inherent powers of the Court and stated that it was necessary in the interest of justice that the order of the Court dated 3-7-1978 be recalled as it had been obtained by Sri B. S. Gupta by misleading the Court. The Court has rejected this application on the ground that under the bye-laws of the Society, Sri B. S. Gupta alone was authorised to prosecute the appeal as well as to withdraw it and that the Managing Committee had no powers to take away the right of Sri B. S. Gupta to prosecute the appeal or to take any action with regard thereto. The other ground on which the Court below has rejected the application is that Shri A. P. Gupta had no locus standi to move the application for review. These are the two grounds on which the court below has rejected the application of the applicant Society without going into the merits of the application, that is, whether or not the action of Shri B. S. Gupta was mala fide and collusive or whether or not the Society was bound by the action of Shri B. S. Gupta on the facts of the present case.

6. Aggrieved, the applicant Society has filed this revision. Learned counsel for the applicant has urged that the view of the court below that it was not open to the Managing Committee to appoint another person to prosecute the appeal and that Sri B. S. Gupta alone was competent to prosecute the appeal or to withdraw the same is ex facie unsustainable, and that the order of the Court below refusing to invoke its inherent powers being based upon a complete mis-

apprehension as to the true legal position in this behalf, must be set aside.

7. The next submission of the learned counsel for the applicant was that the view of the Court below that it had no power u/s 151 of the C. P. C. to recall the order passed on 3-7-1978 is unsustainable in law. Learned counsel argued that a court always has jurisdiction and power to set aside orders which have been obtained from it by misleading it or by practising fraud upon it by a party to the litigation.

8. Another argument of the learned counsel for the applicant was that a plain reading of the application of Sri B. S. Gupta dated 3-7-1978 disclosed that the application was not one made on behalf of the applicant Society but was made by Sri B. S. Gupta for personal reasons, and that consequently, the appeal of the applicant Society could not legally be permitted to be withdrawn on the basis of such an application. Learned counsel argued that while the Secretary of the Society has been empowered to institute and prosecute suits and proceedings on behalf of the applicant Society, he has not been given the power to withdraw the same, and that the power to withdraw a suit or proceeding vests only in the Managing Committee.

9. Learned counsel for the applicant also urged that the action of Sri B. S. Gupta was collusive and mala fide and where an order is obtained from the court as a result of collusion, the same could be set aside under court's inherent powers and that it is not correct to say that the only remedy of the aggrieved party is to file a regular civil suit seeking a declaration that the order is null and void.

10. Learned counsel for the opposite party on the other hand urged that the order passed by the court below is perfectly correct in law, and that on a true and proper interpretation of the various bye-laws and the scheme of allocation of powers between the various functionaries of the Society as laid down under its bye-laws, the Secretary of the Society alone is empowered to institute a suit and prosecute a litigation on behalf of the applicant, and that till the bye-laws are amended curtailing the powers of the Secretary, it is not permissible for the Managing Committee to authorise, by mere resolution, any other person or office-bearer to perform the functions or duties of the Secretary as regards litigations launched by or against the Society. Learned counsel for the opposite party also urged that the court was not concerned with the internal affairs of the Managing Committee, nor was the court required by law to go into the reasons on the basis of which the Secretary of the Society requested the court to allow the application for withdrawal of the appeal filed by him.

11. Having heard learned counsel for the parties, I am clearly of the view that the court below has rejected the application of the defendant-applicant on two grounds, neither of which are sustainable. These grounds are:--

(1) That it is only the Secretary who could legally withdraw the appeal; and as a corollary, Sri A. P. Gupta, had no locus standi to move the present application for review on behalf of the Society.

(2) Even if the action of Sri B. S. Gupta was mala fide, the defendant-applicant had his remedy elsewhere and not by way of an application u/s 151 of the Civil P. C.

12. I shall take up the two grounds on which the impugned order is based in their serial order.

13. The powers of the Secretary are laid down in Bye-law No. 20. Clause (Tha) of Bye-law No. 20 provides that the Secretary shall institute and prosecute as well as defend suits, or other proceedings instituted by or against the Society. Clause (Dha) of Bye-law No. 20 provides that the Secretary of the Society shall carry out and take steps for the enforcement of the resolutions passed by the committee of Management, as well as do all other acts which the committee of Management may require him generally or specially to do. In my view, the provisions of Clause (Dha) of aforesaid Byelaw No. 20 cast a clear and unambiguous duty upon the Secretary to carry out any resolution which the Committee of Management may pass, or any direction which the Committee of Management may issue to the Secretary for carrying out the objects of the Society. The argument of the learned counsel for the opposite parties that when a specific power had been conferred upon the Secretary under Clause (Tha) of Byelaw No. 20, the same could not be held to be capable of being curtailed under the general duties imposed upon the Secretary under Clause (Dha), does not appear to be right.

There is absolutely no warrant either in the scheme of things, as reflected by the byelaws or on the plain language of various clauses of Byelaw No. 20 for holding that the Committee of Management cannot ask the Secretary to carry out its resolution even in regard to a matter relating to the institution or prosecution of a litigation. The Secretary is only a functionary of the Society and he cannot claim to be invested with powers which are in derogation of the general powers of management vested in Committee of Management. The Committee of Management is the chief repository of the executive powers of the Society and under Clause (Da) of Byelaw No. 16, the Committee of Management has been given a general authority to do all acts and take every action which is deemed necessary for subserving the objects of the Society. Indeed, it will lead to strange results, if it is held that the Secretary enjoys powers and functions of overruling the voice of the Society, as expressed by its Chief Executive Authority, namely, the Committee of Management. In my view under Clause (Dha) the Secretary is bound to carry out any resolution passed by the Committee of Management including a resolution relating to the institution or prosecution of a litigation. That being so, it was open to the Committee of Management to appoint for a particular litigation its Vice-President, Shri A. P. Gupta to prosecute the same and the Secretary was bound by such resolution. The finding of the court below to the contrary is unsustainable.

14. Learned counsel for the opposite party submitted that if it is held that under Clause (Dha) it is open to the Committee of Management to appoint another

person to prosecute a litigation, it would amount to amendment of the byelaws inasmuch as it would be in derogation of the express powers conferred upon the Secretary under Clause (Tha) of Byelaw No. 20. In my view, there is no conflict between the provisions of Clauses (Tha) and (Dha) of Byelaw No. 20. The powers under Clause (Dha) are perfectly consistent with the provisions of Clause (Tha) and they are not in derogation of each other. Under Clause (Tha), the Secretary no doubt has a power to prosecute a litigation, but when the Managing Committee passes a resolution expressly appointing another person to prosecute a litigation, there is no general curtailment of the powers vested in the Secretary. It is not difficult to visualise a situation where the Secretary (sic) litigation. It can hardly be gainsaid that in such a contingency, the Committee of Management can, in the exercise of its powers of general management, under Byelaw No. 16, appoint another person to perform the duties of the Secretary of prosecuting litigations. If the Management Committee can in such a situation, lawfully appoint another person to prosecute a litigation on behalf of the Society, the Committee of Management can equally be held to have power to appoint an office-bearer other than the Secretary to prosecute a litigation, where the Secretary is refusing to act or where he has become a suspect as in the present case. There is, therefore, no incongruity in taking the view that in spite of general powers vested in the Secretary under Clause (Tha) to prosecute a litigation, it is open to the Committee of Management to appoint another office-bearer by means of resolution to prosecute a particular litigation. The resolution passed by the Committee of Management appointing Sri A. P. Gupta to prosecute the appeal which had been lodged on behalf of the Society was, therefore, perfectly valid and in view of that resolution, Sri B. S. Gupta had ceased to have any power to prosecute the appeal. His action, therefore, to move the court on 3-7-78 withdrawing the appeal was without any authority. The view of the learned District Judge that the Secretary alone had the power to withdraw the appeal is, therefore, unsustainable in law. The court below has founded its order mainly on the ground that Sri B. S. Gupta alone had the power to withdraw the appeal, and, therefore, the order dated 3-7-78, could not be recalled. The first ground upon which the court below has refused to recall the order, therefore, has no substance.

15. Learned counsel for the opposite parties, however, urged that even if Sri B. S. Gupta had no authority to withdraw the appeal, the order dated 3-7-78 could not be recalled on that ground alone, as the court had no option but to permit the withdrawal of the appeal at the instance of Sri B. S. Gupta, who was admittedly the Secretary of the Society.

16. Learned counsel contended that it was not the duty of the court to go into the reasons for the withdrawal of the application. While it may be correct to say that the court below was not obliged to go into the reasons for permitting the withdrawing of the appeal when the withdrawal is prayed for by a duly authorised agent of a party, in my view, it was open to the court to go into the question whether the agent of the party had acted against the express directions of the

party affected by the order and whether the act of the agent purporting to represent the principal was really an act binding upon the principal. In a case reported in *Shobha Ram v. Inamul Haq* reported in 1974 ALJ 664, a learned Judge of this Court has held that where a party comes to the court with the allegation that his agent has acted beyond the scope of his authority, and not in good faith, the principal would not be bound by the act of the agent, and that in such a situation it is permissible for the court to go into that question and decide whether the act of the agent would under such circumstances bind the principal. In that case, the agent of the party had entered into a compromise with the other side and the compromise was presented for being recorded. This Court held that such a compromise could not be recorded as under such circumstances, the act of the agent could not bind the principal. In the present case, therefore, when the principal i.e. the Society, alleges that its agent had acted beyond the scope of his authority and that the agent was in collusion with the other side, in my view, the court must be held to have inherent powers to consider such an application and if it finds those allegations true and comes to the conclusion that the act of Sri B. S. Gupta was not the act of the Society or that the court was misled into passing an order at the instance of the person who was not authorised to act for the party on whose behalf he purported to act, it should be, permissible in my view, for the court to investigate that fact even under its inherent power.

In the case of *Pearey Choudhury v. Sonoory Dass* reported in AIR 1915 Cal 622, the Calcutta High Court held that a consent decree fraudulently obtained can be set aside on review even under the court's inherent powers u/s 151 C. P. C. It has been held in this case relying on a number of decisions including a few decisions of the Privy Council that where an order is passed upon a purported consent of a party, it is open to the court to review its order under its inherent powers, on the ground that in fact, the party had given no such consent. The defendant-applicants are seeking to prove precisely this, namely, that so far as the applicant Society is concerned, it had not withdrawn the appeal and that the order passed by the court on 3-7-78 had been obtained by Sri B. S. Gupta by misleading the Court into believing that the application was on behalf of the Society. In *Peary Choudhury v. Sonoory Dass* reported in AIR 1915 Cal 622, the legal position as regards the powers of the court to invoke its inherent jurisdiction u/s 151 C. P. C. has been dealt with elaborately. It has been held that a court has inherent jurisdiction to correct its wrong procedure where it has been misled. In the case of *Gulab Koer v. Badshah Bahadur* reported in (1909) 2 Ind Cas 129, their Lordships of the Privy Council distinguished the decision of the Privy Council in *Unnoda Dadee v. Stevenson* reported in (1874) 22 WR 290 and observed as follows:--

"This case is manifestly distinguishable, on the ground that it was in essence an application by a person to vacate a decree which was made in her absence and without her consent. She asked to be relieved from the effects of a decree to which in substance she was not party, a condition of things entirely different from

what we find in the class of cases where a person who is a party to a suit assents to a consent-decree which he subsequently seeks to impeach on the ground that his assent was obtained by fraud."

In *Unnoda Dadee v. Stevenson* (supra), their Lordships of the Privy Council had held that it was competent to the court to set aside on review, a decree against an infant who was not represented before the court and on whose behalf there was no assent to the compromise by any competent person. To the same effect is the view of the Bombay High Court as expressed in *Basangouda Hanmantgowda v. Churchigirigowda Yogangowda* reported in ILR (1910) 34 Bom 408 in which it was observed as follows:--

"What the defendant says is that there was a suit against him and that the suit was declared to have ended by reason of a decree passed with his consent. He never consented, and the result has been that there has been fraud committed upon the Court. The Court was persuaded to sign a decree to which the defendant had never consented and that upon the representation that he had consented to it. Therefore once the Court is asked to go back upon its own procedure, it is not a question whether there is any section in the Civil P. C. to warrant the action of the Court amending its proceedings. It is an inherent power of every Court to correct its own proceedings where it has been misled."

The view of our own Court seems to be much the same (vide *Sita Ram Sahu and Others Vs. Kedarnath Sahu*, in which it was observed that a court has inherent power to recall an order made earlier in the suit when it is found that the order has been passed in the absence of material which was subsequently placed before the Court, the material being of a character justifying recalling of the previous order. The view of the Patna High Court has also been in line with the decisions cited above (vide the case of *Mahendra Lal Vs. Mst. Rekha and Others*, .

17. The position of the Law as it has emerged out of the decisions discussed above, therefore, seems to be that it is permissible for a Court to invoke its inherent powers where a party approaches a Court with a complaint that the Court has been misled into passing an order at the instance of the person who merely pretended to represent that party though in fact that person had no authority to represent the party. The Court below is thus not right in holding that the remedy of the applicant lay elsewhere, perhaps meaning a regular suit. The dictum laid down in the above cited decisions are fully applicable to the facts of the present case. In my view, the process of the Court was grossly abused in the present case. The provisions of Section 151 C.P.C. are meant precisely for this, namely, to prevent and undo the effects of the abuse of the process of the Court.

18. The fact that owing to great urgency and importance of the matter, the appeal was filed by Sri B. S. Gupta during the summer vacation, the omission of Sri B. S. Gupta to attend the meeting on 1-7-78 despite a notice served upon him and calling upon him to attend the meeting and to produce the relevant

papers pertaining to the litigation, the withdrawal of the powers executed by Sri B. S. Gupta in favour of all the previous lawyers engaged by him, the engagement of a new counsel for the purpose of moving the application for withdrawal of the appeal even before it was admitted or registered, the entirely inexplicable hot haste in which Sri B. S. Gupta raced to withdraw the appeal on the very day when the court reopened after the summer vacation on 3-7-78, which incidentally, was the first working day after Sri B. S. Gupta had been stripped of the powers to prosecute the appeal, the contents of the application for the withdrawal of the appeal are extremely telling and speak eloquently for themselves. They point to the inescapable conclusion that the action of Sri B. S. Gupta in withdrawing the appeal was all his individual and personal action and not that of the Society, and that Sri B. S. Gupta filed the application for withdrawal on 3-7-78 simply to harm the Society, got an order passed on the application then and there, fully aware of the fact that he had ceased to have authority to represent it. The further conclusion, equally inescapable, is that Sri B. S. Gupta was in a desperate hurry and the object was to forestall any action which Sri A. K. Gupta was expected to take in pursuance of the resolution dated 1-7-78 with regard to the appeal in question. It also appears from the facts mentioned in the application of the Society moved on 5-7-78 that every single action taken by Sri B. S. Gupta was calculated to harm the Society, if not, to oblige the opposite parties.

19. In my view under these circumstances, inherent powers of the court not only ought to but must be invoked. The court below has refused to invoke its inherent powers upon grounds which are entirely sustainable in law. The present is clearly a case where the court was misled into passing an order at the instance of Sri B. S. Gupta against the applicant under the misapprehension that Sri B. S. Gupta continued to represent the Society. In my view, this is a preeminently fit case for invoking inherent powers of the court.

20. In view of what has been stated above, this Revision succeeds and is allowed. The order passed by the court below is set aside. The application of the defendant-applicant dated 5-7-78 is allowed. The order passed by the court below dated 3-7-78 rejecting summarily the appeal of the defendant-applicant is set aside. The appeal filed by the defendant-applicant is restored to its original number. The court below will now proceed to dispose of the said appeal in accordance with the law. The defendant-applicants will be entitled to their costs from the opposite parties.