
(1995) 12 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4320 of 1995

Jagdish and Another

APPELLANT

Vs

Ranjit Singh and Others

RESPONDENT

Date of Decision : 14-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115
Haryana Co-operative Societies Act, 1984 — Section 114

Citation : (1996) 112 PLR 422

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : S.S. Dalal, for the Appellant; G.S. Bawa, for the Respondent Nos. 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.

1.This is defendant's civil revision directed against the orders of the Courts below whereby defendants had been restrained from implementing the order dated 1.2.1993 passed by the Deputy Registrar, Cooperative Societies, Hissar, vide which the Deputy Registrar had set aside the election held on 19.11.1992.

2. In brief, the facts are that the election of the Managing Committee of Kharia Co-operative Credit and Service Society Limited, Kharia, Tehsil Rani, District Sirsa (hereinafter referred to as the Society) was held on 19.11.1992. The petitioners challenged the election before the prescribed Authority Under Sections 102/103 of the Haryana Co-operative Societies Act, 1984 (for short the Act). The Deputy Registrar, after hearing the parties concerned and on perusal of the record, vide order dated 1.2.1993, set aside the election held on 19.11.1992 and ordered that fresh election be held in accordance with law. Pursuant to the direction, fresh elections were held in which the plaintiffs too participated on 19.4.1993 and a new Managing Committee came into existence. Plaintiffs, dissatisfied with the decision of the Deputy Registrar whereby election held on

19.11.1992 had been set aside filed a civil suit challenging the order dated 1.2.1993. Along with the suit, they also made an application under Order 39, Rule 1 and 2 of the CPC for restraining the defendants from implementing the order dated 1.2.1993 till the decision of the suit. Vide order dated 23.4.1993, the Subordinate Judge 1st Class, Sirsa allowed the prayer of the plaintiffs and restrained the defendants from implementing the order dated 1.2.1993. He also ordered that the Managing Committee elected on 19.11.1992 would continue to manage the affairs of the Society and no other person would interfere in the management of the same. In appeal, the Additional District Judge, Sirsa affirmed the order of the Subordinate Judge 1st Class, Sirsa. The present civil revision is by the defendants.

3. Counsel for the defendants has contended that the learned trial Court as well as Appellate Court have erred in law in entertaining the suit which is specifically barred under the provisions of the Act.

4. In answer to this, the learned counsel for the plaintiffs contended that the order of the Deputy Registrar was without jurisdiction and, therefore, civil suit was maintainable and the order of injunction has been passed after the Court had found prima facie case in favour of the petitioners.

5. Having heard the learned counsel for the parties at some length, I am of the view that the orders under revision are to be set aside and the civil revision has to be allowed. The election of the Managing Committee of the Society was held on 19.11.1992. This election was challenged before the Deputy Registrar Under Sections 102/103 of the Act on the ground that the Returning Officer had illegally rejected the nomination papers of some of the candidates in connivance with respondents No. 3 to 9 under political pressure. The challenge was also on the ground that the voters' list was not prepared and exhibited as per rules. The election and election programme was not made as per Rules 34 and 35; neither any publication was made nor Members were informed; even time and place was not mentioned in the election programme; the procedure adopted by the Returning Officer was against law and the election rules. Parties were summoned by the Deputy Registrar and the petition was fixed for regular hearing. Vide order dated 1.2.1993, election was set aside. Respondents No. 3 to 9, instead of filing appeal before the Registrar, Co-operative Societies as provided u/s 114 of the Act, filed a civil suit, little realising that Section 102 of the Act bars the jurisdiction of the Civil Court. It provides that if any dispute touching the constitution, establishment, management or the business of a co-operative society arising among members, past members and persons claiming through a member or deceased members, has been referred to the arbitration of the Registrar or Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Section 128 of the Act also provides that no Civil Court, Revenue Court, Industrial Tribunal or Labour Court shall have any jurisdiction in respect of any dispute required u/s 102 to be referred to the arbitration of the Registrar or any matter in which proceedings u/s 104 have

been initiated. Indisputably, the order dated 1.2.1993 had been passed in a dispute among the members referred u/s 102 of the Act and, therefore, u/s 128 of the Act, the jurisdiction of the Civil Court is completely barred.

6. Faced with the situation, the learned counsel for the respondent No. 3 to 9 contended that there was violation of rules of natural justice inasmuch as the Deputy Registrar had not afforded any opportunity to lead evidence to the respondents and, therefore, the order passed was nonest and could be challenged by way of civil suit. This contention is devoid of any merit. Reading of the order dated 1.2.1993 not only reveals that the parties were summoned for regular hearing of the petition but respondents No. 3 to 9 were also represented by Shri Nar Singh Bishnoi, Advocate who argued the case on their behalf at length and after hearing the parties, the order was passed. In this regard, the concluding paragraph may be noticed which reads as under :-

" On hearing the parties and consulting the relevant evidence it is held that the election programme was not sent to the members through U.P.C. as required under the election rules. No copy of the election programme is forthcoming in the file maintained in the office of the Returning Officer, the Assistant Registrar, Cooperative Societies, Sirsa. It is sufficient to believe that the election of the managing committee of the respondent-society has not been conducted in accordance with the procedure laid down under the election rules. So, I, Chand Singh, Deputy Registrar, Cooperative Societies, Hissar, in exercise of the powers of the Registrar, Cooperative Societies, Haryana vested in me u/s 102/103 of the Haryana Cooperative Societies Act, 1984 do hereby set aside the election dated 19.11.1992 of the managing committee of the respondent-society, the Kharia Cooperative Credit and Service Society Ltd., Kharia."

7. Rules 81 to 85 of the Haryana Cooperative Societies Rules, 1989 (for short the Rules) provide for the procedure to be followed for settlement of disputes. Under rule 81 of the Rules, when a party to the dispute referred to in Sub-section (1) of Section 102 desires to have the dispute determined in accordance with the said section, has to apply to the Registrar in writing stating the substance of the dispute and the name and addresses of the other party. Under rule 83 of the Rules, the Registrar has to communicate the date, time and place of hearing the dispute to all the parties concerned. Under rule 85 of the Rules, the Registrar or the arbitrator, as the case may be, has to hear the parties and witnesses who attend. On the basis of such evidence and after consideration of any documentary evidence that may be produced by either party, he has to give Award, in accordance with justice, equity and good conscience. The Award has to be reduced to writing, announced to the parties and filed in the office of the Registrar. In the present case, election which has been annexed as Annexure P-I to this petition, not only gives the substance of the dispute referred to the Registrar but also the names and addresses of the affected parties who were required to be summoned. It is not in dispute that respondents No. 3 to 9 were summoned and were represented by counsel. Reading of the order dated

1.2.1993 makes it abundantly clear that the election was set aside after hearing the parties and consideration of the evidence which had been brought on the record. The judgment in the case of Satish Mohindroo and Ors. v. The Assistant Registrar, Cooperative Society, Gurdaspur and Ors. 1989 P.L.R. 239 cited by the learned counsel for respondents No. 3 to 9 has no application to the facts of the present case as in that case, question with regard to maintainability of civil suit was not involved. The election of the Managing Committee of the Cooperative Society had been set aside in writ jurisdiction of this Court under Article 226 of the Constitution of India whereas Civil Courts have no power to issue writ alike Constitutional Courts under Article 32 and 226 of the Constitution.

8. In these circumstances, I am of the view that the Courts below, in granting interim injunction despite bar contained in Sections 102 and 128 of the Act, with regard to entertaining the suit by the Civil Court, have acted illegally and also with material irregularity in exercise of their jurisdiction and the orders thus have to be reversed. In case the order passed by the Deputy Registrar was not correct in law and on facts, the only remedy with respondents No. 3 to 9 was to file appeal as provided u/s 114 of the Act instead of invoking the jurisdiction of the Civil Court, Consequently, this civil revision is allowed, the orders of the Courts below are set aside and in consequence thereof, the Committee which had been elected in pursuance of the election held on 23.4.1998 would manage the affairs of the Society.