

(1997) 05 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1248 of 1997

Kalsana Credit and Services Co-operative Societies Ltd.,
Kalsana

APPELLANT

Vs

Bikram Singh and another

RESPONDENT

Date of Decision : 26-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : AIR 1997 P&H 317 : (1997) 117 PLR 776 : (1997) 3 RCR(Civil) 678

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Ashwani Talwar, for the Appellant; R.S. Longia, for the Respondent

Judgement

1. Bikram Singh plaintiff-respondent is a member of the Kalsana Credit and Services Co-operative Society Ltd., Kalsana, Tehsil Thanesar. District Kurukshetra (for short, the Society). It is a "Primary Society" within the meaning of Cl. (o) of S. 2 of the Haryana Cooperative Societies Act, 1984 (referred to hereinafter as the Act). The Society is a member of the Kurukshetra Central Co-operative Bank Ltd., Kurukshetra (hereinafter called the Bank). Elections to the governing body of the Bank have been notified which are yet to be held. Each Cooperative Society which is a member of the Bank had to appoint one of its members to vote on its behalf in the elections. A meeting of the governing body of the Society was held on 13-11-1996 and one of the items on the agenda was to appoint a member who could vote on its behalf in the elections to the governing body of the Bank. It is not in dispute that there are in all eleven committee members who constitute the governing body of the Society but only nine members-attended the meeting held on 13-11-1996. The names of Anil Kumar and that of the plaintiff-respondent were proposed in the said meeting for being appointed to represent the Society. Three members supported the nomination of Anil Kumar whereas the remaining six supported the candidature of the plaintiff, A resolution was accordingly passed appointing the plaintiff to represent the Society in the said elections and his name was sent to the Bank informing the

latter that the plaintiff would be representing the Society in the elections. The Zonal Committee of the Bank in its meeting held on 4-12-1996 scrutinized all the nominations received from various member societies and rejected the name of the plaintiff on the ground that the resolution of the Society appointing him had not been passed by a majority of two-third members of the Committee, It was then that the plaintiff filed the suit out of which the present revision petition has arisen, for a permanent injunction seeking to restrain the Society from holding a fresh meeting for nominating any other person to cast his vote on behalf of the Society in the elections to the governing body of the Bank. Along with the suit an application under O. 39, Rules 1 and 2 of the CPC was filed requiring the Bank to permit the plaintiff to participate in the aforesaid elections.

2. On a consideration of the material placed on the record and the contentions raised by the parties the Courts below came to the conclusion that the rejection of the plaintiff's nomination by the Zonal Committee of the Bank on 4-12-1996 was illegal and that he was entitled to participate in the elections to the governing body of the Bank. They also found that the plaintiff had a prima facie case and the balance of convenience was also in his favour. Consequently, a temporary injunction was issued and the Society was restrained from holding a fresh meeting to nominate another person in place of the plaintiff. It is against these orders of the Courts below that the Society has filed the present revision petition.

3. I have heard counsel for the parties and am of the view that the orders of the Courts below granting temporary injunction deserve to be set aside. According to S. 21 of the Act, every member of a Co-operative Society has to exercise his vote in person and no member is permitted to vote by proxy. However, a Co-operative Society which is a member of another Co-operative Society may, subject to the rules, appoint one of its committee members through a resolution to vote on its behalf in the affairs of the other Society and in case of a primary Society which is a member of another Society, the primary Society may, subject to rules, appoint one of its members to vote on its behalf in the affairs of the other Society. Since the plaintiff is a member of a primary Society which is a member of the Bank (another Co-operative Society), he was eligible to be appointed to vote on its behalf in the elections to the governing body of the Bank. Rule 20 of the Haryana Co-operative Societies Rules, however, provides that no member of a primary Society, which is a member of another Co-operative Society, shall be appointed to vote on behalf of the Society in the affairs of the other Society unless a resolution is passed by 2/3rd members of the Committee of a Primary Society. In other words, the Society could nominate any of its members including the plaintiff to vote on its behalf in the elections to the governing body of the Bank provided its governing body passed a resolution by a majority of 2/3rd of its members. The plaintiff was nominated by the governing body of the Society in the meeting held on 13-11-1996. Out of the 11 committee members only 9 attended the meeting. 6 of the members present voted in favour of the plaintiff whereas the other 3 in favour of Anil Kumar. The question that arises for

consideration is whether the resolution could be said to have been passed by a 2/3rd majority of the members of the governing body of the Society. Since the total members of the Society are 11, the answer to the question has to be in the negative. 6 members out of 11 do not constitute 2/3rd majority and, therefore, the requirement of sub-rule (2) of Rule 20 of the Haryana Co-operative Societies Rules is not satisfied.

4. The argument of the learned counsel for the plaintiff-respondent is that out of the 9 members present 6 had voted in his favour and, therefore, the resolution of the governing body could be said to have been passed by a majority of 2/3rd members. There is no merit in this contention. The requirement of sub-rule (2) of Rule 20 of the Rules is that the resolution nominating a member should be passed by 2/3rd members of the governing body of the Society. If the rule had provided for the resolution to be passed by the 2/3rd members of the Committee present and voting then the argument would have been valid but it is not so. As observed earlier, in the case of a primary Society, a member can be nominated only by a resolution passed by a majority of 2/3rd members of its governing body. Since this has not been done, the plaintiff has no prima facie case nor is the balance of convenience in his favour. The Courts below were, therefore, in error in granting the temporary injunction.

5. In the result, the revision petition is allowed, the impugned orders set aside and the application for the grant of a temporary injunction dismissed. No costs.

6. Before parting with the order, it may be stated that whatever has been observed above was only for the purposes of deciding the application filed by the plaintiff under O. 39, Rules 1 and 2 of the Code and nothing stated hereinabove should be taken as an expression of my views on the merits of the case.

7. Petition allowed.