

(1985) 07 P&H CK 0066
In the Punjab And Haryana At Chandigarh

Lohgarh Co-op Agricultural Service Society Ltd.

APPELLANT

Vs

Surjit Singh

RESPONDENT

Date of Decision : 12-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1986) 2 LLJ 87

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Judgement

Sukhadev Singh Kang, J.—This revision petition u/s 115 of the CPC is directed against the order dated 11th December, 1984 of the learned Subordinate Judge, 1st Class, Barnala, dismissing the objections filed by the petitioner in the execution proceedings filed by Surjit Singh, respondent to this revision petition. It has been filed in the following circumstances:

The petitioner-society vide resolution dated 29th May, 1981 terminated the services of Surjit Singh, respondent. He filed a civil suit challenging the resolution and the orders of his termination. The suit was decreed and a declaration was granted that the impugned resolution was a nullity. The petitioner filed an appeal against the decree of the learned trial Court and the same was dismissed by the learned Additional District Judge, Barnala, on 24th August, 1982.

2. Surjit Singh filed an execution application. The petitioner filed objections. The petitioner pleaded inter alia that the decree was a nullity and that the arrears of pay could not be granted to the workman. These objections were dismissed by the Executing Court. Aggrieved the petitioner has filed the present revision petition.

3. It has been argued by Mr. B.S. Khoji, the learned Counsel for the petitioner, that the decree of the Civil Court was a nullity. The civil Court had no jurisdiction to order the reinstatement of a workman. The relationship of the parties was

determined by a pure contract of master and servant, which was not enforceable by a civil suit. In support of this contention he relied upon a recent decision of this Court in *The Tapa Co-operative Marketing-cum-Processing Society Ltd Tapa through its Manager v. Gurdev Singh* 1983(1) All India LLR 601. This contention cannot prevail. In the objections a vague plea has been raised that the decree sought to be executed was a nullity. It was not explained how it was so. Even during the course of arguments, it was not argued as to how the decree was a nullity. A point which was not raised before the Executing Court and on which no finding has been given by it cannot be a subject-matter of the revision.

4. The second point raised by Mr. Khoji has merit. The services of Surjit Singh, respondent, were terminated on 29th May, 1981. A suit was decreed on 18th December, 1981. An appeal against that order was dismissed on 24th August, 1982. So the legal proceedings remained pending uptill the date of the dismissal of the appeal. Consequently, Surjit Singh was entitled to back-wages upto the date of the decision of the Additional District Judge. The Executing Court fell into a grave error in not considering this aspect of the matter.

5. For the aforementioned reasons, this revision petition is partly allowed and it is held that Surjit Singh, respondent, is entitled to recover back-wages in pursuance of the decree of the civil court for the period 29th May, 1981 to 24th August, 1984. The petitioner shall make payment of this amount. There shall be no order as to costs.

6. It is, however, clarified that it will be open to Surjit Singh to take recourse to whatever remedies are available to him for the redress of his other grievances regarding the arrears of pay etc.

Revision partly allowed.