
(2009) 12 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : CIMA No. 449 of 2009, CMP No. 638 of 2009 and Caveat 771 of 2009

Prabhat Singh Jamwal and Others

APPELLANT

Vs

Iqbal Singh and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Citation : (2010) 2 JKJ 406

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Judgement

Sunil Hali, J.—Prayer of the Appellants for grant of temporary injunction claiming themselves to be the office bearers of the Jammu and

Kashmir Bank Officers Association, stood rejected by the 1st Additional District Judge, Jammu vide its order dated 19.08.2009. A suit was filed

before the trial court seeking declaration to the effect that Appellants/Plaintiffs are the legally appointed office bearers of the Association. The trial

court while considering the prayer of the Appellants for the interim relief, rejected the application of the Appellants on the ground that the suit was

barred by the principle of res-judicata and it is under these circumstances, the appeal has been filed.

2. I have heard learned Counsel for the parties.

3. The Petitioners are erstwhile office bearers of the Association and their term was to remain for a period of two years which expired on

November, 2008. The Constitution of the Association envisaged that the election process of the next term was to be initiated by the office bearers

who are on saddle. It seems that no steps were taken by them as a result of which the officers of the bank held election more particularly

Respondents 1 and 8 and issued a Notification dated 27.02.2009 for holding a general body meeting on 1.3.2009. It seems that meeting held on

1.3.2009 resulted in election of new team of 10 office bearers of the Association vide notification published in Kashmir Times on 2.3.2009. In

pursuance to the other notification issued on 17.2.2009 by Appellants, eight members were elected as unopposed office bearers of the Jammu and

Kashmir Bank Officers Association on 7.5.2009. Resultant effect is that both the parties claim to be elected members of the Association.

4. For purposes of determination of the application for grant of temporary injunction, this Court is called upon to determine the rival claim of the

parties who claim to be legally elected members of the Association.

5. It is important to note that a suit was filed by some of the present Appellants questioning the election of the Defendants held on 2.3.2009. The

suit has been withdrawn without seeking permission to file afresh.

6. The trial court after hearing the parties dismissed the application of the Appellants on the ground that the second suit filed by them questioning

the election of the Defendants on 2.3.2009 was barred by principle of res-judicata. The findings of the trial court is that the present suit filed by the

Appellants was based upon same cause of action even though the parties were different.

7. The question with regard to maintainability of the suit has been decided in an application for temporary injunction. The Appellants claim that the

earlier suit was for canceling the election held on 2.3.2009 by the Defendants. In the second suit a declaration is sought that the Appellants are duly

elected members of the Association. The consequences of which automatically will be cancellation of the election of 2.3.2009. Undoubtedly, the

cause of action accrued to the Appellants on 2.3.2009, but right to sue became available on the date they claimed themselves to be duly elected

members of the Association. In the earlier suit the court was required to determine the legality of the order dated 2.3.2009 while in the second suit

the legal character of the Appellants to claim themselves to be duly elected members of the Association is to be determined. As stated herein supra

the cause of action has accrued to them on 2.3.2009, but right to sue seeking a declaration of their legal character to hold their office became

available only on 7.5.2009.

8. In the face of this, I am of the opinion that the finding of the trial court was not correct. Since the finding of the trial court on this issue became

the basis of rejecting the claim of the Appellants for grant of temporary injunction, the direction of the trial court to that extent cannot be sustained.

9. Now coming to the question as to whether the Appellants are entitled to relief of injunction, permitting them to function as newly elected

members of the Association, has to be determined on the basis of the material which has been produced before the Court, on the basis of which

both the parties were claiming to be duly elected members of the Association.

10. The Appellants in support of their claim have placed reliance on notification dated 17.2.2009 whereby elections for the posts were notified to

be held on 7.5.2009. In view of the said notification, 8 members are declared to be elected as members of the Association unopposed. The

notification also makes a mention that it was in pursuance to the general body meeting which elected the aforesaid members of office bearers of the

Association. The minutes of the general body meeting have not been placed before this Court.

11. On the other hand, Respondents/Defendants stated that the general body meeting of Jammu and Kashmir Bank Association was convened on

1.3.2009 at Kranti Hotel. It was resolved to conduct fresh election in presence of independent observers. It is further revealed that the general

body meeting was attended by 75% of the total strength of the body. The election result was notified and office bearers assumed the charge after

approval by the general body meeting. The proceedings of the general body meeting have also been placed on record in which approximately 414

officers have participated in the said meeting. The general body is stated to have passed four resolutions. Resolution No. 3 dealt with holding of the

election and after adopting the resolution, election process was initiated by the members present. By unanimous decision, 8 persons were

appointed as office bearers.

12. Weighing the two contentions in light of the material placed on record, the following case emerges.

(a). The manner in which election of the Appellants has been conducted is not supported by any resolution of the general body. Nothing has been

placed before this Court on this account.

(b). That the election process in respect of the Respondents was preceded by a general body meeting which seems to have been attended by 414

persons.

13. What appears prima facie is that the claim of the Appellants for being permitted to work as office bearers of the Association is not well

founded at this stage. As revealed from the record and the pleadings of the parties, it appears that the Plaintiffs/Appellants have shown reluctance

in appointing a new team. The manner of their holding the general body meeting without any supporting documents as to who has attended the said

meeting clearly tilts balance against their continuance. The contention of the Appellants is that the election of the Respondents have been conducted

in an illegal manner, is subject matter of trial, but prima facie it appears that the persons appointed on 2.3.2009 have right to continue as such.

14. I, therefore, dispose of the revision petition with the following directions. (a). That the observation made by the trial court regarding the

maintainability of the suit been hit by principle of res-adjudicata is set aside. The trial court is directed to hear the parties on this question after

framing issues in the suit. (b). That the prayer of the Appellants to allow them to function as office bearers is not sustainable as they have failed to

show any prima facie case in their favour. Resultant effect of this direction is that Defendants shall continue to hold office till the trial court decides

the legality of the election conducted on 2.3.2009. Revision petition is disposed of. 15. Parties are directed to appear before the trial court on 16th

of December, 2009.