
(1991) 06 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1478 of 1991

Prem Singh

APPELLANT

Vs

Rupinder Singh and Another

RESPONDENT

Date of Decision : 03-06-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, 115
Punjab Co-operative Societies Act, 1961 — Section 55 , 82
Punjab Co-operative Societies Rules, 1963 — Rule 12(2)

Citation : (1992) 1 ILR (P&H) 534

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

Bench : Single Bench

Advocate : G.S. Doad, for the Appellant; M.L. Sarin Alka Sarin and I.S. Sidhu, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—The election for the Committee Members (Directors) of the Primary Cooperative Agricultural Development Bank Ltd. Sarmala took place on 5th March, 1991. In all six Directors were to be elected. The Petitioner was elected after he defeated Respondent Rupinder Singh, Defendant No. 1. It is not in dispute that election of the Petitioner could be challenged under Rule 12(2) of Appendix "C" of the rules framed under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act). After the election of the Directors, election of the office bearers including, nomination of two more Directors was fixed for 25th March, 1991. Respondent No. 1. instead of filing election petition as provided under Rule 12(2) of the Rules challenging the election of the Petitioner, filed suit for permanent injunction restraining Defendant No. 1 (Petitioner) from participating and voting in the election of the office bearers and co-option of members-Directors in the meeting of the Board of Directors to be held on 25th March, 1991. In the plaint, it was alleged that the election of the Petitioner is illegal as he was wrongly, declared elected in the election. It was

also alleged in the suit that the Petitioner connived with the counting staff and the Presiding Officer concerned. The Plaintiff further alleged that the Plaintiff is going to file election petition before the competent authority. Along with suit, an application under Order 39 Rule 1 and 2, CPC was fixed seeking ad-interim injunction in the terms prayed in the suit. The learned trial Court,--vide order dated 22nd March, 1991 passed the following order:

Office report perused. Suit be registered. The Plaintiff has filed an application Under Order 39, Rule 1 & 2 read with Section 151 CPC for restraining Defendant No. 1, Prem Singh, from participating and voting in the election of office bearers and co-option of members /directors in the meeting of the Board of Directors of Respondent No. 2. The application is supported by a duly sworn affidavit. Notice of the suit and the application be issued to the Defendants on P.F. for 26th March, 1991 and in the meantime Respondent No. 1 is restrained from taking part in the voting in the election of the office bearers and co-option of members in the meeting of the Board of Directors of Defendant No. 2 to be held on 25th March, 1991 subject to making compliance of the provision of Order XXXIX Rule 3, CPC today.

2. As the Petitioner was restrained from participating in the election of the office bearers, other two Directors who were in the group of the Petitioner also did not participate in the meeting of the Board of Directors and the meeting was attended only by three members. Because of non-participation by three members, Respondent No. 1 was co-opted as a Director. The Petitioner came to know about the order only on 25th March, 1991, when the election of the office bearers and co-option of other two Directors was to be held. On coming to know of the order dated 22nd March, 1991, the Petitioner filed an application on 28th March, 1991 under Order XXXIX Rule 4 read with Section 151 of CPC for vacation of ex parte order dated 22nd March, 1991. Notice of this application was given to Respondent No. 1 for 2nd April, 1991 and on that day counsel for Respondent No. 1 (Plaintiff in the suit) made a statement that he does not want to proceed with the case and the same may be dismissed as withdrawn. This statement was made as the purpose which the Respondent No. 1 wanted to achieve, had already been achieved. However, Petitioner pressed before the trial Court that his application under Order XXXIX Rule 4, CPC read with Section 151 of the said Code be decided on merits despite the statement given by counsel for the Plaintiff for the dismissal of the suit. The trial Court in order to undo the mischief decided the application on 2nd April, 1994 and the material portion of the order reads as under:

In view of the statement made by the counsel for the Plaintiff, the suit is dismissed as withdrawn.

On the application filed by Prem Singh Respondent for modification of the injunction order, it is held that the proceedings of the meeting, dated 25th March, 1991 shall not be binding on the rights of the Prem. Singh Respondent and the proceedings held in that meeting stand set aside because the suit in

which the injunction order was passed has been got dismissed by the Plaintiff himself by making a statement. File be consigned to the record room.

3. The order of the trial Court dated 2nd April, 1991 is in two parts. Suit of the Plaintiff, was dismissed as withdrawn) and in the second part, the proceedings of the meeting dated 25th March, 1991 in which Respondent No. 1 was co-opted as a Director, were found to be not binding on the rights of the Petitioner. Proceedings held in the meeting were set aside. After the order dated 2nd April, 1991, meeting for the election of office bearers as well as for co-option of two other Members (Directors was fixed for 11th April, 1991. Since the trial Court,--vide order dated 2nd April, 1991 had undone what the Respondent No. 1 wanted to achieve Respondent No. 1 filed an appeal against the order dated 2nd April, 1991 before the Additional District Judge, Ludhiana, who,--vide order dated 9th April, 1991, stayed the operation and execution of the order dated 2nd April, 1991. As the operation of the order dated 2nd April, 1991 was stayed,--vide order dated 9th April, 1991 passed by the Additional District Judge, Ludhiana. in the meeting dated 11th April, 1991 the Petitioner was not allowed to participate and two other Directors belonging to his group also did not participate in the meeting in protest and thus in their absence, Chairman, Vice-Chairman were elected. One person was also nominated to represent the Co-operative Bank in the apex body. The Petitioner has challenged the order dated 22nd March, 1991 as well as order dated 9th April, 1991 by way of present civil revision.

4. The civil revision has been contested by Respondent No. 1.

5. After hearing learned Counsel for the parties at length, I find that this petition has to succeed. Learned Counsel for Respondent No. 1 could not dispute that the election of Petitioner could be challenged only by way of election petition as provided under Rule 12(2) of the Rules and not by way of filing civil suit as Section 82 of the Act bars the jurisdiction of the Civil Court. Section 82 of the Act provides as under:

82. Bar of jurisdiction of courts.--(a) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of:

(a) the registration of a co-operative society or its bye-laws or of an amendment of a bye-law ;

(b) the removal of a Committee;

(c) any dispute required u/s 55 to be referred to the Registrar.

6. The order of the learned trial Court, dated 22nd March, 1991 clearly shows that while granting ex parte ad-interim injunction in favour of Respondent No. 1 and against the Petitioner. The learned trial Court did not take into consideration three pre-requisite conditions which are necessary for grant of ad-interim injunction i.e. (i) prima facie case; (ii) irreparable loss injury which normally cannot be compensated in terms of money; and (iii) the balance of convenience in favour of the one seeking such a relief.

7. It has repeatedly been held by this Court as well as by other Courts "that ad-interim injunction though essentially is equitable relief but the grant or refusal of an injunction must rest in the sound judicial discretion of the Court to be exercised in the light of facts and circumstances of each case". In the present case, Respondent No. 1, though had stated in his plaint that he shall be filing an election petition challenging the election of the Petitioner but still the trial Court granted ex-parte injunction. In case the trial Court had perused the plaint, minutely and carefully, it certainly would have rejected the plaint as the election could not be challenged by way of filing a suit as the jurisdiction of the Civil Court is barred u/s 82 of the Act. The order of the trial Court dated 22nd March, 1991 also does not show that the trial Court while granting ad-interim injunction kept into consideration the three pre-requisite conditions for the grant or refusal of ad-interim injunction.

8. The order dated 9th April, 1991 of the first appellate Court Is also without jurisdiction. As noticed above, on coming to know about the ex parte order dated 22nd March, 1991, the Petitioner filed an application under Order XXXIX Rule 4 of the CPC for vacation of the ex parte ad-interim order and apprehending that the ex parte order is likely to be vacated because of the bar of the Civil court jurisdiction, the Respondent No. 1 withdrew the suit. When the suit had already been withdrawn, I cannot understand as to how the appeal was maintainable before the first appellate Court. No such suit was pending on the day when the first appellate Court entertained the appeal and granted ex parte order staying operation of the order dated 2nd April, 1991. The appellate Court also committed the same error which was committed by the trial Court while granting ad-interim injunction. The appellate Court had the order dated 2nd April, 1991 before him as the same was impugned by Respondent No. 1 in appeal but instead of calling upon Respondent No. 1 to show as to how the appeal was maintainable when the suit had already dismissed as withdrawn on the statement made by counsel for Respondent No. 1, the appellate Court granted ex parte order staying operation of the order dated 2nd April, 1991. Respondent No. 1 in view of orders dated 22nd March, 1991 and order dated 9th April, 1991 was not only able to prevent the Petitioner but also his other two group Members from attending the meeting dated 11th April, 1991, where the election of the office bearers was held and Respondent No. 1 was co-opted as a Member. A resume of the facts of this case clearly shows that the proceedings initiated by Respondent No. 1 firstly by filing a suit and obtaining ex parte injunction order and then when the same was vacated, filed an appeal before the first appellate Court and again obtaining ex parte injunction order, is clearly an abuse of the process of Court.

(a) The argument of learned Counsel for Respondent No. 1 that there is no error of jurisdiction and this Court should not interfere in revisional jurisdiction is also without any substance. To exercise the powers u/s 115, Civil Procedure Code, this Court has to satisfy the three matters:

(a) that the order of subordinate Court is within its jurisdiction;

(b) that the case is one in which Court ought to exercise jurisdiction; and

(c) that in exercising jurisdiction the Court has not acted illegally i.e., in breach of some provision of law or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

10. The facts and circumstances of this case clearly show that while passing order dated 22nd March, 1991 the trial Court, and appellate Court while passing order on 9th April, 1991, acted illegally and also with material irregularity in exercise of their jurisdiction. As observed by me, the suit itself was not maintainable because of the bar contained in Section 82 of the Act. The appeal filed by Respondent No. 1 was also not maintainable because the Plaintiff himself withdrew the suit and the suit was not pending on the day when he obtained ex parte order from the first appellate Court.

11. Consequently, the civil revision is allowed with costs. Order dated 9th April, 1991 is set aside. Since order dated 22nd March, 1991 was modified by order dated 2nd April, 1991, no direction is necessary on this score. As I am setting aside the order dated 9th April, 1991, proceedings of the meeting held on 11th April, 1991, in which election of Chairman, Vice-Chairman and co-option of two Members as also nomination of one Member to the apex body, was held is also set aside. Registrar, Co-operative Societies, Ludhiana, shall fix a date for holding a meeting and the meeting shall be attended only by six Members (Directors) who were elected on 5th March, 1991. Respondent No. 1 shall pay costs of Rs. 5,000 to the Petitioner.