
(2010) 12 P&H CK 0197

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4062 of 2010 (O and M)

Sanjeev Kumar and Others

APPELLANT

Vs

Haryana State Federation of Co-operative Sugar Mills Ltd.
and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151, 9
Haryana Cooperative Societies (Amendment) Act, 2006 — Section 10(4), 3(2), 8(2)
Haryana Co-operative Societies Act, 1984 — Section 114(1)(e), 114(2)(e), 128, 27

Citation : (2011) 2 CivCC 784 : (2011) 161 PLR 639 : (2011) 2 RCR(Civil) 563

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—The Plaintiffs are in second appeal against the order dated 21.11.2009 passed by the learned Additional Civil Judge (Senior Division), Panipat whereby application filed by the Defendants u/s 9 read with Section 151, further read with Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 [for short "Code of Civil Procedure"] has been allowed and the plaint has been rejected on the ground that it is barred by law. Aggrieved against the order of the learned Trial Court, the Plaintiffs filed first appeal which was dismissed by the learned Additional District Judge, Fast Track Court, Panipat on 04.06.2010.

2. In brief, the Plaintiffs filed a suit for declaration with consequential relief of permanent injunction in which it is averred that vide resolution dated 28.02.2006 passed by the Board of Directors of Defendant No. 2, Plaintiff Nos. 1 and 2 were appointed as Cane Supervisors, Plaintiff Nos. 3 to 7 were appointed as Seasonal Cane Clerks, Plaintiff No. 8 was appointed as Cane Clerk and Plaintiff No. 9 was appointed as Seasonal (permanent) Security Guard. After their appointments, they assumed their duties on their respective posts w.e.f. 01.03.2006. However, Defendant No. 1 vide its order dated 17.03.2006 suspended the resolution dated 28.02.2006 passed by the Board of Directors of Defendant No. 2 which was ultimately rescinded by Defendant No. 1 vide its order dated 12.05.2006. The

Plaintiffs challenged the said order dated 17.03.2006 by way of the present suit for declaration and also prayed for consequential relief of permanent injunction restraining the Defendants from relieving the Plaintiffs from their respective posts. In this suit, Defendant No. 1 filed an application for rejecting the plaint on the ground that the suit was barred by law as the Civil Court has no jurisdiction in this regard. The application was accepted by the learned Trial Court and the plaint was rejected. The said order was upheld in appeal.

3. Learned Counsel for the Appellants has vehemently argued that jurisdiction of the Civil Court is not barred u/s 128 of the Haryana Cooperative Societies Act, 1984 [for short "the Act"]. However, he was confronted by the Court to the provisions of Section 114 of the Act in which Section 114(1)(e) provides for an appeal before the Government in terms of Section 114(2)(c) of the Act against an order passed by the Registrar rescinding a resolution u/s 27 of the Act.

4. On the first date of hearing, i.e. 15.10.2010, this Court had passed the following order:

Plaintiffs are Appellants herein. Their plaint has been rejected by the learned Courts below under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 (for short "Code of Civil Procedure") on the ground that the suit is barred by law as the prayer made in the suit is covered under the special Statute namely the Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1946.

Opening his arguments, learned Counsel for the Appellants has submitted that in the plaint, he had prayed for declaration that the order passed by the Registrar, Cooperative Societies, Haryana, rescinding the resolution dated 28.02.2006 is illegal, therefore, he submits that the order of rescinding the resolution has effected his civil rights. Hence, he had no other forum to seek redressal of his grievance except to file a suit u/s 9 of the Code of Civil Procedure. In nut shell, the entire case of the Appellants/Plaintiffs is for seeking declaration of order passed by the Registrar, Cooperative Societies, Haryana u/s 27 of the Haryana Cooperative Societies Act, 1994 (for short "the Act").

On a query put to the learned Counsel for the Appellants as to whether any appeal is provided against the order passed u/s 27 of the Act, he has candidly stated that appeal is provided u/s 114(1)(e) of the Act which is maintainable before the Government in terms of Section 114(2)(c) of the Act. In the face of alternative statutory appeal, question is as to whether the suit filed by the Plaintiffs/Appellants is maintainable.

Learned Counsel for the Appellants prays for time to make submissions in this regard.

On his request, adjourned to 26.10.2010.

5. Learned Counsel for the Appellants has argued that in terms of Section 27 (2) of the Act, the Registrar, after giving committee or sub-committee an opportunity

of being heard, had to take the decision, but no opportunity of hearing was given to the committee or sub-committee or the Plaintiffs, therefore, the order of rescinding the resolution having been passed by the Registrar is patently illegal and cannot be sustained. Insofar as the query put by the Court to learned Counsel for the Appellants that as to why the Plaintiffs could not have filed an appeal to the Government in terms of Section 114(2)(C) of the Act is concerned, it is submitted that once they had chosen the forum of Civil Court, they cannot go back and in this regard he has relied upon a decision of this Court in the case of Philips Electronics India Limited v. State of Punjab and Ors.¹ 2009(4) R.S.J. 506.

6. I have heard learned Counsel for the Appellants and perused the available record with his able assistance.

7. The controversy involved in this case is with regard to a resolution dated 28.02.2006 which was firstly suspended and ultimately rescinded. The question is as to "whether the said order dated 12.05.2006 rescinding the resolution could be challenged before the Civil Court when there is an appeal provided under the Statute". In order to find out the answer, this Court has taken into consideration the relevant provisions of the Act, namely, Sections 27, 114 and 128 of the Act, which are reproduced as under:

27. Rescinding of resolutions.- (1) the Registrar may by order in writing, suspend the resolution of a managing committee or of a sub-committee of a cooperative society if in his opinion the resolution is in excess of the powers conferred by this Act, rules, or bye-laws or the execution of the resolution will be contrary to the interest of the society or the interest of the members thereof or is likely to cause waste or damage of the funds of the society[:]

[Provided that such suspension shall not exceed a period of six months.]

(2) When the Registrar makes any order under Sub-section (1), he may after giving the committee or subcommittee, as the case may be, an opportunity of being heard, rescind such resolution or may order that such resolution may continue in force with or without modification permanently or for such period as he may think fit:

Provided that such resolution may be rescinded or modified even if the same could not be suspended because of its having been acted upon{:}]

[Provided further that no such proceedings under this section shall be initiated after a period of six years from the date of passing of the resolution. However, any proceedings pending under this section in any Court or before any authority shall continue as if the provisions of the Haryana Cooperative Societies (Amendment) Act, 2006, were not passed.]"

114. Appeals.- (1) An appeal shall lie under this section against -

(a) an order of the Registrar made under Sub-section (2) of Section 8 refusing to

register a society;

(b) an order of the Registrar made under Sub-section (4) of Section 10 refusing to register an amendment of the bye-laws of a cooperative society;

[(c) if the decision or order was made by the Additional Registrar or Registrar or any person upon whom the powers of the Registrar were conferred under Sub-section (2) of Section 3 of this Act and not covered under Clauses (a) and (b) above, to the Government; and]

(d) a decision of a cooperative society expelling any of its members;

(e) an order of the Registrar rescinding a resolution u/s 27;

(f) an order of the Registrar removing the committee or a member of the committee of a cooperative society u/s 34 or 35;

(g) an order made by the Registrar regarding compensation u/s 51;

(h) an order passed by Registrar regarding costs, etc. u/s 95;

(i) an order made by the Registrar u/s 100 apportioning the costs of any enquiry or an inspection;

(j) an order of surcharge u/s 101;

(k) a decision or award made u/s 103;

(l) an order granting a certificate u/s 104;

(m) an order of winding up of a cooperative society u/s 105;

(n) an order made by the liquidator u/s 107; and

(2) An appeal against any decision or order under Sub-section (1) shall be made within sixty days from the date of decision or order, -

(a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;

(b) if the decision or order was made by the Deputy Registrar or Joint Registrar, to the Registrar or such Additional Registrar, as may be authorized by the Registrar in this behalf;

(c) if the decision or order was made by the Additional Registrar or Registrar, to the Government; and

(d) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar [as may be authorized by special or general order of the Registrar in this behalf].

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

(4) Any appeal under Sub-section (1) pending before any authority immediately before the commencement of this Act shall stand transferred to the authority to whom such appeal lies under the provisions of this Act.

128. Bar of jurisdiction of Courts.- (1) Save as provided in this Act, no civil court [or revenue court], Industrial Court or Labour Court shall have any jurisdiction in respect of-

(a) the registration of a cooperative society or its byelaws or of an amendment of bye-laws;

(b) the removal of a committee;

(c) 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; or

(d) any matter concerning the winding up and dissolution of a cooperative society.

(2) While a cooperative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award, made under this Act, shall be questioned in any court [-] on any ground whatsoever.

8. Section 27 of the Act provides power to the Registrar to suspend the resolution passed by the managing committee or sub-committee if it is in excess of the powers conferred by the Act, rules or bye-laws. Section 114(1)(e) of the Act provides an appeal against an order of the Registrar rescinding a resolution u/s 27 of the Act. Section 114(2)(e) of the Act provides the forum to whom the appeal could be filed, i.e. the Government. If the decision or order is made by the Additional Registrar or Registrar, the appeal is to be filed to the Government, i.e. the Secretary of the department. Admittedly, no such appeal is filed. However, the present suit has been filed which, according to this Court, is per se not maintainable in view of the fact that effective alternative remedy of appeal, which is creation of the Statute, is provided.

9. In view of the aforesaid discussion, I do not find any merit in the present appeal as in the presence of the provisions of appeal, suit was not maintainable and as such, there is no error in the order passed by the Courts below rejecting the plaint.

10. Hence, the present appeal is hereby dismissed. However, the Plaintiffs, if so advised, may take recourse to the remedy available to them under the Statute.