

(2012) 10 P&H CK 0212

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No"s. 7013 of 2011, 2362, 5140 and 5143 of 2012 (O and M)

Shri Sanatan Dharam Education Society (Registered) and
Another

APPELLANT

Vs

Anil Goyal and Others
 Ajay Goyal and Others Vs Shri
Sanatan Dharam Education Society (Registered) and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 39 Rule 1, Order 39 Rule 2

Citation : (2013) 171 PLR 761 : (2013) 1 RCR(Civil) 658

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Ashok Aggarwal, with Mr. Harkesh Manuja in CR Nos. 7013 of 2011 and 2362 of 2012 and Mr. Anupam Gupta, with Mr. Karan Singh Sandhu in CR Nos. 5140 and 5143 of 2012, for the Appellant; Akshay Bhan, Advocate for Respondent Nos. 3 and 4 in CR Nos. 5140 and 5143 of 2012, Mr. R.K. Gupta, Advocate for Respondent Nos. 1 and 2 in CR No. 2362 of 2012 and Mr. B.R. Gupta, Advocate for Respondent No. 3 in CR No. 2362 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—This order shall dispose of Civil Revision Nos. 2362, 5140, 5143 of 2012 and 7013 of 2011, as common questions of law and facts are involved in all the petitions. Civil Revision Nos. 2362 and 5140 of 2012 have arisen out of the order dated 07.04.2012 passed by the Additional District Judge, Panipat, reversing the order dated 01.10.2011 passed by the Civil Judge (Senior Division), Panipat, declining the application for temporary injunction in favour of the plaintiffs.

2. Civil Revision Nos. 7013 of 2011 and 5143 of 2012 have arisen out of the order dated 19.04.2011 passed by the Civil Judge (Junior Division), Panipat, extending permission to the plaintiffs to file suit in a representative capacity and

order dated 11.08.2011 dismissing the review application against the aforesaid order dated 19.04.2011.

3. Gone are the times when the Sanatan Dharam Education Society (Regd.), Panipat (for brevity "the Society"), was known for imparting quality education and producing cream for the society, but now the Courts are its battlefield.

4. The present case is a classical example, which has started putting imprints over the minds of the public that members of the Society are not concerned with the pious cause of development and upliftment of education and development of the student culture, but they are after the chair; concerned with their own bowls while throwing the development of education to the winds. Their motive now is no more to take the education forward, but is as to how to play politics; snatch power and position to maintain arrogance and egoism. The prevalent mode of politics is to spread rudism; excuse and abuse and to get power at any cost.

5. Factual background of the case is that the Society having 201 life members, has been running number of institutions at Panipat. It is a registered society. The object of the Society was to provide literacy, industrial, commercial, technical, scientific, professional, moral and religious education and to devise means to establish institutions. Earlier in the year 2006, Shri Rajinder Kumar Goel was discharging his duties in the capacity of Secretary of the Society. The said Society passed a resolution dated 18.06.2005 to introduce new members in view of the enlargement of the institution and its work load. But, the said enrollment of the members was challenged by filing a civil suit. They had also filed an application for grant of injunction against the election of the said Society, which was declined by the trial Court and in the appeal against the said order, the Appellate Court had directed to hold the elections, but by including new members who were enrolled vide resolution dated 18.06.2005. Ultimately, the said enrollment was challenged and was set aside by the Civil Court on 21.08.2009. The Society had also enrolled 13 new members in place of dead members, but the said election was also challenged by filing a civil suit No. 96 of 2011, which was also decreed in favour of Jai Bhagwan Garg and said election of 13 new members was also declared as null and void.

6. Still, the Society with a view to add 100 more members, called a meeting on 05.02.2010, which was attended by 143 members, who passed various resolutions, including increasing the members and amendment of the constitution in that regard.

7. Still dissatisfied, Anil Goyal and Parveen Goyal, present plaintiffs, challenged the said resolution and alleged that out of 143 members, 90 had opposed the agenda items and the Chairman dropped the agenda matters; as such the necessary amendment for increasing the members could not be introduced. It was further pleaded that no alleged consent was given to the resolution passed by the committee, but the Secretary of the Society had snatched away the minute-book from the Chairman and handed it over to the members and bogus

proceedings were scribed therein. Thus, it was pleaded that the resolution dated 05.02.2010, passed by the Secretary, was illegal, null and void, against the democratic principles and on the basis of said resolution, 100 new members were not enrolled in accordance with the rules and regulations of the Society. Thus, they are not entitled to attend the meeting or to get elected to the various governing bodies of the institutions of the Society and they do not have any right to cast vote in any proceedings or election. The plaintiffs have prayed that the newly enrolled 100 members be directed not to cast their votes in election of the society, managing committee of Educational Institutions and they be also restrained from seeking election for any of the post of governing bodies of various institutions of the Society.

8. The suit was contested by defendant Nos. 1 and 2, who in their written statement, submitted that the meeting was quite legal and was attended by 143 members. Though, at the first instance, they had put their stamps with regard to attendance and not regarding passing of the resolution, yet later, they had withdrawn the said stamps and ultimately, the said stamps were considered as invalid. Not only 143 members were present, but 40 other members had also participated in the proceedings, but their presence was not recorded. According to defendant Nos. 1 and 2, defendant No. 3-Ram Niwas Gupta was elected as Chairman to conduct the proceedings and he along with other members had unanimously passed a resolution that the stamps, which were affixed by other members, may be held as invalid. Thereafter, the resolution dated 05.02.2010 regarding adding of 100 new members was passed. The list of 100 members was available with the Society. Not only the resolution with regard to enrollment of 100 new members was passed, but many other resolutions were passed and later on, the resolution passed on 05.02.2010 was unanimously approved in the next meeting held on 12.09.2010. While denying other allegations, it was submitted that the plaintiffs are not entitled to any relief of injunction.

9. Defendant No. 3 Ram Niwas Gupta, while filing the written statement, sided with the plaintiffs and went against the resolution, which was passed under his Presidentship. He submitted that defendant No. 2-Roshan Lal Mittal, with the help of his associates, had illegally enrolled 100 new members. He has further stated that no resolution was passed on 05.02.2010 and the said resolution being illegal, null and void, the newly added 100 members have no right to participate in the activities of the Society.

10. Learned counsel for the petitioners, while assailing the impugned order, urged that in the light of the fact that two resolutions dated 05.02.2010 and 12.09.2010 stand admitted having been passed by the General Body of the Society, the validity of it could not be challenged at this stage. 100 new members were enrolled after due amendment in the Constitution and the resolution dated 05.02.2010 was approved in the next meeting of the General Body held on 12.09.2010. The declining of permission to utilize their franchise and their participation in the meetings held from time to time by the Society, would

amount to decreeing the suit at the interim stage. Unless the enrollment of 100 new members is held to be void, they cannot be deprived of their valuable right. Therefore, the mandatory injunction directing 100 new members not to participate in the election; utilize their franchise and attend the meetings of the Society, is beyond the domain of Order 39 Rules and 2 CPC.

11. To the contrary, Mr. R.K. Gupta, Advocate, for the plaintiffs-respondents while supporting the impugned order, urged that as per the rules and regulations of Sanatan Dharm Education Society (Regd.), Panipat (Annexure P-1), the Society shall have 201 life members and any further membership could be added only after the amendment in the Constitution that too by majority of the members of the Society on roll, but 2/3rd majority of the members present. It was also urged that; (i) no agenda/regulation was passed in the meeting held on 05.02.2010, (ii) no new member was inducted and could be inducted without there being any amendment in the Constitution of the Society and (iii) the amendment in the Constitution of the Society was not effected, as such, the question of inducting any new member does not arise. It was further urged that majority of the members i.e. 90 members, out of 143 members, opposed the agenda dated 05.02.2010, as such, no resolution could be passed due to the disturbance in the meeting. Hence, the 100 members, alleged to have been inducted by the Society, cannot be treated as members, duly enrolled after passing of proper resolution.

Arguments Heard. Records perused.

12. It is not in dispute that Shri Sanatan Dharam Education Society (Regd.), Panipat, through its Secretary Roshan Lal Mittal-defendant No. 3 had issued notice dated 21.01.2010 to hold a General Body meeting on 05.02.2010 at 4.00 P.M. to discuss the following agenda:-

- (1) To elect Chairman of the meeting.
- (2) To console the death of society members since last general meeting.
- (3) To confirm the minutes of last general body meeting.
- (4) To pass the proposals of E.C. & secretary of the Society.
 - (a) to add some more posts in the society i.e. President, Vice-President & Auditor.
 - (b) No office bearer will hold same seat after two terms including present office bearers.
 - (c) The election of the society and its institutions will be held by Secret-ballot.
 - (d) To make separate Managing Committees for M.A.S.D., APIIT, S.D.V.M. Senior & Junior Wing.
 - (e) To make separate Governing Body for Nursing College.
 - (f) To increase 100 members in the society i.e. 301 instead of 201 as demanded

by members of the society.

(5) Proposal to make a committee for amendments in the constitution as discussed & passed by the E.C. of the following Members:-

(i) Secretary Sh. Roshan Lal Mittal

(ii) Sh. Rajinder Goel

(iii) Sh. Vinod Bindal

(iv) Sh. Pawan Garg

(v) Sh. Vijay Aggarwal

(vi) Sh. Ram Niwas Gupta

(vii) Sh. Anand Singla

(viii) Sh. Satish Chandra

(ix) Sh. Anil Bindal

(6) to demand A/c Books, other documents regarding society & cash if any, from ex-secretary Sh. Rajinder Goel, as passed by E.C. of the Society.

13. It is also not in dispute that the meeting was called under the Presidentship of Shri Ram Niwas Gupta on 05.02.2010. The record reveals that initially, the members were somewhat controversial, as it always happens in a democratic State even before the meeting commences, and they put their stamps on the proceeding book mentioning that the "signature is only for attendance and not for passing any resolution." But, later on it was unanimously decided as under:-

XX XX XX XX XX XX

Sd/- Stamp not required.

The house unanimously decided that the stamp should be declared invalid.

Sd/- Ram Niwas 5/2/10

Total 143 members attended the meeting (One hundred forty three).

14. All this goes to show that after some objections, the members stood convinced and agreed to pass the resolution and accordingly, the resolution was passed. Though, Ram Niwas Gupta now has changed the stand (may not be feeling benefited by the resolution for his own reasons), yet at that time he being an educated and respectable person, had passed the resolution, which was signed by the Secretary of the Society.

15. The agenda No. 4(f), as referred to above, was with regard to increasing the members of the Society from 201 to 301 and it was recorded in the resolution that "after discussion on the same, all the members gave their consent and it was also suggested that the members, who will be increased, they should be the

residents of Panipat and not from outside cities." Consequently the following resolution was passed:

.....number of members of the society is increased from 201 (two hundred and one) to 301 (three hundred and one).

XX XX XX

With this, the Secretary requested the General Body meeting that the sanction of 100 (one hundred) which has been accorded by the General Body, the members are requested to make advertisement that any person from Aggarwal Sanatan Dharam, who wish to be member of S.D. Education Society (Regd.) as per our constitution, he should move his application along with an amount of rupees eleven hundred with me in the office of the Society.

16. The aforesaid resolution further speaks that it was decided to constitute a committee for making amendments in the Constitution of the Society. Thereafter, whether the process of amendment was completed or not, is a matter of evidence. From the resolution dated 12.09.2010, it appears that the process must have been completed, as the said resolution reveals that the proceedings of the last meeting dated 05.02.2010 were approved. Rather this resolution further indicates that one Jai Bhagwan Goel had raised objection that certain members are not the residents of Panipat, therefore, their membership may be terminated.

17. From the aforesaid resolutions, it is apparent that there was a General Body meeting of the society held on 05.02.2010, which was attended by 143 members and the resolution with regard to amendment of the Constitution and enrollment of the members was passed. The stamp of attendance, which was initially affixed by the opposing members, was held invalid and their presence stood approved at the time of passing of the resolution. No immediate steps were taken to challenge the said resolution by Roshan Lal Mittal, Secretary, as well as Ram Niwas Gupta or any other member attending the meeting, though, a civil suit No. 402 dated 08.09.2010 was filed by Anil Garg and an FIR was also lodged on 16.04.2011 at the instance of complainant Jai Bhagwan. The value off these belated steps taken, would be considered at the time of deciding the suit on merits.

18. As regards Jai Bhagwan, he has always been aggrieved with the working of the Society and earlier also he had opposed the induction of 13 members in the Society and filed a civil suit No. 96 of 2011.

19. The argument that the petitioners did not know about the increase of members on the day of passing of the resolution, is totally false, as the notice dated 21.01.2010 (Annexure P-2) clearly indicates that the meeting was being called for approval of many agendas, including "increase of 100 members in the Society."

20. The argument given that Ram Niwas Gupta, who had presided over the proceedings dated 05.02.2010, has given different version while filing the written

statement, is difficult to approve. Ram Niwas Gupta was not illiterate person, who had attended the meeting and remained present throughout at time of passing the resolution. He did not say that no such resolution was passed, rather he has admitted about some of the proceedings. But the question, as to "whether the story as set up by Ram Niwas Gupta in the written statement, is correct or not", is a matter of evidence. As such, this issue cannot be decided at this time of grant of injunction.

21. As regards the argument that it is not made out from the record, as to when 100 members were inducted, it is apparent from the aforesaid two resolutions that the resolution dated 05.02.2010 was passed to increase 100 members of the Society and the said resolution also contains the procedure, which was to be followed for inducting those members. Thereafter, this resolution appears to have been approved in the next meeting of the Society, which was held on 12.09.2010. Therefore, it is a matter of evidence, as to "whether the induction of those 100 members was illegal, void; who were the members of the committee and whether the proper procedure was followed for inducting those members?" Such issues requiring evidence could be decided after providing opportunities to both the parties to lead evidence. The Court, at this juncture, has only to examine, "if the plaintiff has a prima facie case for grant of injunction."

22. It is well settled by now that in order to succeed in an application filed under Order 39 Rules 1 and 2 CPC for grant of injunction, the plaintiffs has to establish; (i) prima facie case, (ii) irreparable loss, if injunction is not granted in their favour and (iii) balance of convenience lies in their favour in the facts and circumstances of the case. In order to determine the other grounds for grant of injunction, the Court has to examine that there is no comparative hardship and public interest is not sacrificed or put to peril.

23. In this case, the main challenge of the plaintiffs-respondent Nos. 3 and 4 is that the resolutions dated 05.02.2010 and 12.09.2010 are not legal and valid. No Constitutional amendment was made, as such, 100 new members could not be inducted. But, they have not denied calling of the General Body meeting and existence of the resolutions. However, they claim that such resolutions never came into existence, whereas prima facie, the copies of those two resolutions dated 05.02.2010 and 12.09.2010 are already on the record. It has not been urged that members were not enrolled. Rather, it is alleged that those enrolled members are the relatives of other members. As such, it is also difficult to say prima facie, that the members were not enrolled. The issue raised by respondent Nos. 3 and 4 that the proceeding book was snatched from the Chairman and was handed over to the members, who scribed the proceedings according to them, also is a matter of evidence.

24. The questions, as to whether the resolution dated 05.02.2010 passed by the Society is the result of manhandling or snatching of the proceeding book from the Chairman and the members were enrolled against the rules and regulations and also without amendment in the Constitution, are the moot questions to be

decided at the time of trial. If these issues are decided at time of disposing of the application under Order 39 Rules 1 and 2 CPC, then nothing would be left to the trial Court to decide on merits. The proceeding book, prima facie, shows that all the members had consented to the enhancement of the members. As such, the plaintiffs cannot be said to have prima facie case for grant of injunction in their favour to seek direction that 100 new members should not participate in the meetings of the Society; seek election to any post of governing bodies of various educational institutions governed by the society and exercise their franchise/ votes in the election of the Society. If those 100 new members are deprived of their right to cast their franchise, which they have legally attained after payment of necessary fee, as claimed by the Society, then certainly they would lose a valuable constitutional right provided to them. However, their nonparticipation would not, in any way, jeopardize the rights of the plaintiffs to avail franchise and election. As such, plaintiffs appear to have instituted the present suit in order to create obstruction in the smooth functioning of the Society. If the functioning of the Society is stopped, then certainly it would be a serious set back to the development of the education and smooth functioning of the institutions in various ways.

25. Having scrutinized the order dated 07.04.2012 passed by the Additional District Judge, Panipat, he appears to have exceeded his jurisdiction while discussing the evidence in detail. It also appears that he has decided the suit finally, which is not the intent of the cannon of law to be used at the time of the decision of the application under Order 39 Rules 1 and 2 CPC. As such, the order dated 07.04.2012 passed by the District Judge, Panipat, having rendered in perversity, deserves to be set aside.

26. Now coming to the other contentions raised by learned counsel for the petitioner(s) in Civil Revision Nos. 7013 of 2011 and 5143 of 2012.

27. The record reveals that the trial Court granted permission to the plaintiffs-Anil Goyal and Parveen Goyal under Order 1 Rule 8 CPC to sue in the representative capacity. The suit was accompanied by the list of life members and was accompanied by an application under Order 1 Rule 8 CPC for representing those and also inviting those who have similar or same interest or who oppose the claims set up by them. The said order granting permission is in consonance with the provisions of Order 1 Rule 8 CPC. The bare perusal of the said Rule indicates that it has been incorporated in the Code to apprise the public at large about the "lis" pending in the Court, in which numerous persons have similar or same interest. The Rule is a safeguard and an intimation to the parties concerned to apply, if they want to say anything in support or against the said lis pending in the Court.

28. No doubt, if any judgment and decree is passed in the absence of the persons, who are not party to the suit but wanted to claim certain right and who never came to know about the pendency of the lis in the Court, then they could challenge the said judgment and decree on the ground that the Court failed to

follow the procedure as laid down under Order 1 Rule 8 CPC before granting permission to sue in the representative capacity, on account of which he/they remained deprived of being setting up their claim/contesting their rights in the suit properly. Since the judgment and decree passed in the suit filed in a representative capacity was binding upon the community as a whole, therefore, it was open to those adversely affected persons to say that the procedure was not properly followed, as provided under Order 1 Rule 8 CPC. But, the parties, who have appeared or intend to appear in the Court to oppose the lis, cannot claim that the mandatory provisions of Order 1 Rule 8 CPC have not been complied with. Moreover, the provision of Order 1 Rule 8 CPC is a procedural law and as per settled proposition of law, the procedural law being handmaid is to be interpreted liberally with a view to advance justice between the parties. Similar observations were made in case Punjab and Sind Bank Ltd. v. Ms. Tosh Metals & Alloys Industries Pvt. Ltd. etc., 1980 CLJ (Civil) 165, wherein this Court while relying on the judgment passed by the Hon"ble Supreme Court in case The State of Punjab and Another Vs. Shamlal Murari and Another, , observed as under:-

Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the noncompliance, though procedural, will thwart fair bearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, the court should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product technicalities. So even what is regarded as mandatory traditionally may, perhaps, have to be moderated into wholesome directions to be complied with in time or in extended time.

29. The crux of the judgment is that though the provision carries the word "shall", but it should be read not as a handicap; or obstruction in the advancement of justice, but as a handmaid to be adopted as the situation required. As a matter of fact, the procedural laws enacted for governance of the adversial trials in the common Law Courts should be interpreted not like the academicians, but from the view point of common man"s judgment which may help smooth functioning of the Courts and not be applied or interpreted in such a manner which thwart or delay justice resulting serious prejudice or failure of justice or set the clock back and make the trial a de-novo, negatory or mockery.

30. It would be pertinent to mention here that the main object of the rule is to apprise the parties having similar or common interest about the lis pending in the Court and the party, who has been served and intended to contest or support the cause and was before the Court to do so, is least concerned to say that the rule has not been complied with. The contest by such party, notwithstanding the fact that the rule is mandatory, would highlight that such party is not interested in contesting the suit but delaying it.

31. Recently this Court in case Rulda Ram and Others Vs. Barkat Ali and Others,

PLR 801, did not approve the locus standi of the party defendants to challenge the procedure while observing as under:

14. Still further, the said objection regarding non-compliance of the mandatory provisions of Order 1 Rule 8 of the Code is available only to a party who was not arrayed in the list attached with the application and had been adversely affected by the decision of the suit. The objection raised at the behest of those defendants who were served notice shall not be maintainable.

32. In any case, even the necessary permission, if suffers from any defect, could not be thrown away for that very defect. Even the law does not provide for any permission in the specific words. This Court in case Abdul Rehman (Deceased) and Others Vs. Jumma Khan and Others observed as under:-

4. The first contention raised by the learned counsel for the appellants is that the present suit was not properly instituted under Order 1 Rule 8 of the Code inasmuch as the procedure prescribed thereunder had not been strictly complied with. It is urged that in the absence of any permission granted by the trial Court under sub-clause (a) of clause (1) of Rule 8 of Order 1 of the Code, the suit was not maintainable. After hearing counsel for the parties, I find no merit in this contention. It is not necessary under the law that the permission referred to in sub-clause (a) of clause (1) of Rule 8 of Order 1 of the code should be expressly recorded. Permission can be inferred from the proceedings in the trial Court. In the instant case, the plaintiffs had filed an application under Order 1 Rule 8 of the Code and the trial Court passed the following order on 19.05.1978:-

It has been brought to my notice that the plaintiff has filed this suit in representative capacity. An application under Order 1 Rule 8 CPC is also on the file. As the number of plaintiffs is numerous and it is not possible to serve each of them individually, so I order that they all be served by Munadi. Expenses to be deposited within 3 days and Munadi under Order 1 Rule 8 CPC be got effected by 8.6.78.

From the aforesaid order, it may be clearly inferred that the trial Court granted permission to the plaintiffs to file the suit in a representative capacity. What is really important in such a suit is the issue of a proper notice under sub-clause (2) of Rule 8 of Order 1 of the Code. This sub-rule casts upon the Court a duty to give notice of the institution of the suit to all persons having the same interest therein. In the absence of such a notice, grave injustice may result in the form of a decree against persons who were never told that a case is pending against them. It is for this reason that the Courts have held that this part of the rule is mandatory and a sine qua non for the applicability of Rule 8 of Order 1 of the Code. In the case before us, it is not in dispute that in pursuance to the order dated 19.05.1978 a proclamation by beat of drum was made in the village on 30.06.1978 giving notice to all the proprietors of the Patti that a suit had been filed in the Court of Sub Judge, Gurgaon and that any member of the Patti having any objection could appear in the Court and take further proceedings in

accordance with law. A copy of the proclamation is Ex. P2 on the record. I am, therefore, satisfied that the provisions of Order 1 rule 8 of the Code were strictly complied with and, therefore, the suit was properly instituted. The contention of the learned counsel for the appellants is, therefore, rejected.

33. As such, since the petitioners are either the parties to the suit or their names are mentioned in the list, over which, notice was to be served, they now cannot come to contend that the procedure, as laid down under Order 1 Rule 8 CPC could not be followed. Resultantly, Civil Revision Nos. 2362 and 5140 of 2012 are accepted; the impugned judgment dated 07.04.2012 passed by the Additional District Judge, Panipat, is set aside and the application under Order 39 Rules 1 and 2 CPC, filed by the petitioners is dismissed. Civil Revision Nos. 7013 of 2011 and 5143 of 2012 challenging the orders dated 19.04.2011 and 11.08.2011 passed by the trial Court on the application under Order 1 Rule 8 CPC, are hereby dismissed.