
(2016) 02 P&H CK 0276
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1922 of 2013 (O&M).

The Central Provident Fund Commissioner, New Delhi and Others APPELLANT

Vs

Lala J.R. Education Society and Others RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2016) 2 PLR 523

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Onkar Singh Batalvi, Advocate, for the Appellant; Subhash Ahuja, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.(Oral) - C.M. No.2217-CII of 2016

1. For the reasons stated in the application, order passed by this Court on 12.01.2016 is recalled and the revision petition is restored to its original number.

2. Application is allowed.

C.R. No.1922 of 2013

1. In a suit by the plaintiff claiming that a notice issued under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 making the employer liable for contribution contending that the notice as contemplated under the Act was not issued before taking action and that further the employees whose contribution was sought were not really employees of the plaintiff administration, the defendant moved an application to reject the plaint on a plea that the suit was not competent and that provision for an appeal was available under the Act itself. That application was dismissed.

2. I have no difficulty in examining a situation of where the plaintiff contends that the provisions of the Act themselves have not been followed even if there is an ouster clause, it will be possible to maintain the suit. The suit is laid on such an assertion and when I asked the counsel appearing on behalf of the respondent whether he would not avail to himself the benefit of an appeal where he can still contend that the provisions of the Act are not followed, the counsel states that there is abundant case law that allows for institution of suit and that the suit is properly laid.

3. I do not want to detain myself on a fundamental proposition of where the plaintiff contends that the provisions of the Act themselves have not been followed, a Civil Court will still have jurisdiction in spite of the ouster clause. The Court will take up the objection regarding the maintainability of the suit as contended by the defendant and give a ruling on the issue of jurisdiction as well along with the other issues.

4. Learned counsel appearing on behalf of the petitioner states that even if the order has been passed ex parte without serving of notice in the manner contemplated under Section 7-A (4) that provides for a right to apply to the very same authority to have the order set aside, the plaintiff could have easily resorted to such a remedy as contemplated under the provision. This does not still in my view constitute ouster of jurisdiction, for I have already observed that violation of the procedure prescribed under the Act will itself give a power to the Civil Court to examine whether the notice issued was competent or not. The ouster of jurisdiction of Civil Court shall be strictly construed at all times, for an application under Order 7, Rule 11 CPC will be examined from the point of view of what is stated in the plaint as true. If the plaintiff's averment is that the action taken by the authorities was not competent under the provisions of the Act itself that surely leaves a scope for Civil Court to examine the correctness of the contentions of the plaintiff.

5. I do not think any interference is called for in the revision petition. The revision petition is dismissed but with the above observations.