
(2010) 05 P&H CK 0061
In the Punjab And Haryana At Chandigarh

The Dult C.A.S.S. Ltd.

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Citation : (2010) 05 P&H CK 0061

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Grover, J.

C.M. No. 12846-C of 2009

1. The application is allowed and delay of 60 days in refiling of the appeal is condoned.

C.M. No. 12848-C of 2009

2. Allowed as prayed for.

R.S.A. No. 4244 of 2009 & C.M. No. 12847-C of 2009

3. This Regular Second Appeal is directed against judgments and decrees dated 30.3.2002 and 6.2.2008 passed respectively by the Civil Judge (Junior Division), Batala (hereinafter described as 'the trial Court') and the Additional District Judge, Gurdaspur (referred to hereinafter as 'the first appellate Court') whereby the suit and the appeal of the plaintiff-appellant have been dismissed. Since it has been filed after a delay of 315 days, C.M. No. 12847-C of 2009 has been moved for condonation thereof. To support the averments made in this C.M., affidavit of the counsel for the appellant has been placed on record.

4. For the reasons mentioned therein, i.e., the certified copies of the judgments & decrees of the trial Court and the first appellate Court inadvertently got tagged with the file of other case in the office of the counsel on account of which the

appeal could not be filed in time, the C.M. is allowed and the delay of 315 days in the filing of the appeal is condoned.

5. The appellant, which is a cooperative society registered under the Punjab Cooperative Societies Act, 1961 (for short, 'the Act'), filed a suit for declaration to the effect that order dated 16.2.1995 passed by Joint Secretary, Department of Cooperative, Punjab, Chandigarh (respondent No. 2) in Coop. Case No. 34/1994 was illegal, wrongful, null & void, without jurisdiction, arbitrary, malicious, capricious, against the principles of natural justice, against facts, unenforceable, inoperative and not binding on him.

6. The facts giving rise to the filing of the suit were that the appellant had terminated the services of Harbans Singh—respondent No. 6 on certain charges of misconduct vide resolution dated 25.9.1986 and in his place, Shri Wassan Singh was appointed as Secretary. Respondent No. 6 challenged the termination of his services before the Registrar, Cooperative Societies, Punjab, who granted a stay on 22.10.1986. The appellant preferred an appeal before the Commissioner, Appeals, Jalandhar Division, who vacated the stay order and accordingly, respondent No. 6 was not allowed to join his duties and Shri Wassan Singh continued to work as Secretary. Thereafter, respondent No. 6 moved a petition u/s 3(4) of the Act before Deputy Registrar, Cooperative Societies, Gurdaspur (respondent No. 3), who accepted the same vide order dated 20.10.1992 and declared that he had worked upto 5.12.1986 as Secretary of the appellant. Simultaneously, Assistant Registrar, Cooperative Societies, Batala (respondent No. 4) was directed to take necessary action. The appellant challenged order dated 20.10.1992 by filing a revision petition u/s 69 of the Act before respondent No. 2, who dismissed the same vide order dated 16.2.1995.

7. Respondent Nos. 1 to 4 filed a joint written statement admitting the whole version of the appellant. However, it was denied that order dated 16.2.1995 was malicious and capricious.

8. Respondent No. 6, in his separate written statement, contested the suit. It was pleaded by respondent No. 6 that against his termination, he had filed a petition and obtained a stay order on 22.10.1986; that a revision petition was filed by the appellant; that in the meanwhile on 10.10.1986, Shri Iqbal Singh Randhawa, Inspector, Cooperative Societies, was appointed as Administrator of the appellant who had allowed him to join duty; and that he had served the appellant till 15.12.1986. It was denied that Shri Wassan Singh had worked as Secretary of the appellant. Order dated 20.10.1992 and 16.2.1995 were stated to be legal and valid.

9. On the pleadings of the parties, as many as nine issues were framed by the trial Court, who, after perusing the evidence produced on record, dismissed the suit.

10. The appeal filed by the appellant was also rejected by the first appellate Court giving rise to the instant appeal.

11. In Regular Second Appeal, learned Counsel for the appellant has contended that the findings recorded by the Courts below are perverse and deserve to be set aside.

12. I have considered the contention of the learned Counsel for the appellant and have gone through the impugned judgments.

13. In my opinion, the findings recorded by the trial Court, as also by the first appellate Court do not warrant any interference.

14. It has been found, as a matter of fact, that respondent No. 6 had joined the service back on account of stay granted on 22.10.1986 against the termination of his service. Both the Courts have also concluded on the basis of evidence on record that Shri Iqbal Singh was appointed as Administrator of the appellant who had allowed respondent No. 6 to join.

15. The appellant also concealed material facts of the filing of a civil writ petition and the finality of the controversy in those proceedings. A person, who conceals material facts, is rightly to be denied indulgence by the Courts. The orders of the authorities under the Act necessarily have an inherent hierarchy of forums where they can be tested by an aggrieved person. The jurisdiction of the civil Courts to look into such matters is circumscribed by the test of violation of principles of natural justice, which violation is not proved.

16. Moreover, the suit was filed in the year 1996 after a period of ten years of the termination of service of respondent No. 6 and in appeal preferred against the termination order, a stay was granted to continue during pendency thereof. Respondent No. 6 while appearing as DW3 had deposed that he had received the letter vide which stay order was vacated on 5.12.1986 and that from that day, he ceased to perform the duty as Secretary of the appellant. He was not cross-examined on this aspect and it is a settled principle of law that if a cross-examination of any fact or allegation stated by a witness in his examination-in-chief is not conducted, then the said fact is deemed to be admitted by the opposite party.

17. Learned Counsel for the appellant failed to point out any material from where it could be inferred that the findings recorded by the Courts below are contrary to the record. Moreover, no question of law, much less a substantial question of law is shown to have arisen for consideration of this Court.

18. Accordingly, the instant appeal is held to be without any merit and is dismissed.