

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.18797 of 2015
Date of Decision: 07.09.2015

Vijay Kumar

. . . .Petitioner

Versus

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.M.S. Kang, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner is aggrieved against the order dated 24.7.2013.

In short, the petitioner was appointed as salesman in the Sheikhpur MPCASS Limited Sheikhpur [for short 'the Society'], vide resolution dated 29.5.2012 on DC rates. However, he was dismissed from service by the committee of the Society vide its resolution dated 1.2.2013.

It is submitted that the petitioner was served a notice in the month of May by respondent No.2 to produce the record of the Society on 27.5.2013 for inspection, under Section 49 of the Punjab Cooperative Societies Act, 1961 [for short 'the Act'] and thereafter, an order for warrant of his arrest was issued under Section 32 of the Code of Civil Procedure, 1908 [for short 'the CPC'] on 23.8.2013 on the ground that the petitioner has failed to produce the record of the

Society despite notice. It is also averred in the petition that the petitioner had filed a suit for declaration to challenge the order dated 23.8.2013 alleging it to be null and void and also prayed for permanent injunction therein to restrain the defendants therein from taking an action in terms of the order dated 23.8.2013. It is alleged that after the suit was filed, there was a lull, as nobody came forward to arrest the petitioner but again his house was raided on 20.8.2015 for his arrest. It is also averred that the petitioner withdrew the suit on 28.8.2015 with permission to file it afresh on the same cause of action.

Now, the petitioner has challenged the order dated 24.7.2013 in this case on the ground that the respondents have no jurisdiction to ask for the record from the petitioner in terms of Section 49 of the Act because the petitioner is a dismissed employee.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that the order dated 24.7.2013 was passed under Section 30 of the CPC, acting as a Court, asking the petitioner to produce the record and thereafter, order under Section 32 of the CPC was passed on 23.8.2013 for arresting the petitioner for non-compliance of the earlier order dated 24.7.2013. Admittedly, the petitioner had challenged order dated 23.8.2013 by way of a civil suit and withdrew the same on 28.8.2015 with permission to file it again on the same cause of action. The permission was granted and the suit was allowed to be withdrawn but strangely enough, the petitioner has now filed the present petition instead of filing the suit for which he obtained permission from the Civil Court. The petitioner has wrongly mentioned in para No.16 of the present petition that he had no other

alternative remedy though he had filed a civil suit for declaration and permanent injunction to challenge order dated 23.8.2013 which is an off shoot of the impugned order as the order dated 23.8.2013 came into being because of non-compliance of the impugned order dated 24.7.2013.

In view of the aforesaid facts and circumstances of the case, I am of the considered opinion that the petitioner cannot be allowed to file the writ petition to challenge an order which was passed two years back especially when he had already availed his remedy of civil suit and while withdrawing that suit, the Civil Court had granted permission to him to file a fresh suit on the same cause of action. Thus, the petitioner may, if so advised, avail ordinary remedy of the civil suit but for the extraordinary remedy of the writ.

Dismissed.

07.09.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**