

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

RSA No.2786 of 2013 (O&M)

Date of decision : 20.11.2015

Shri Jai Bhagwan Garg

...Appellant

Versus

Returning Officer and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Raj Kumar Gupta, Advocate for the appellant.

Mr. Anupam Gupta, Sr. Advocate with
Mr. Abhishek Sharma, Advocate for respondent Nos.2 and 3.

Mr. Harkesh Manuja, Advocate
for respondent Nos.4 to 9 and 11 to 16.

AMIT RAWAL, J. (Oral)

This Regular Second Appeal at the instance of appellant-plaintiff is against the impugned judgment and decree of the lower Appellate Court, whereby suit filed by the appellant-plaintiff, has been dismissed on the ground that it was not maintainable in view of the provision of Section 24 of the Societies Registration (Haryana Amendment) Act 2007.

During the course of the hearing of the present appeal, both the

parties are *ad idem* that since the election process has already been started and only voting has to be done against the position for which there is contest on 22.11.2015.

Mr. Anupam Gupta, learned Senior Counsel assisted by Mr. Abhishek Sharma, learned counsel appearing on behalf of respondent Nos.2 and 3 and Mr. Harkesh Manuja, Advocate for respondent Nos.4 to 9 and 11 to 16 submits, that since the main grievance of the appellant-plaintiff is with regard to the induction of 13 members i.e. defendant Nos.4 to 16 and the society would have no objection in case they do not cast vote in the forthcoming elections. He has drawn the attention of this Court to the pleadings of the suit to contend, that pith and substance of the same is not only to seek the declaration with regard to induction of the new members but also for setting aside the election for the post of Secretary SD Election Society, Panipat and thus the remedy if any is the election petition, before the prescribed authority as per Section 24 of the Act and not the Civil Court.

He further submits that in case any election petition before the prescribed authority is filed then his clients would not raise objection vis-a-vis limitation, much less, its maintainability.

In view of this, Mr. Raj Kumar Gupta, learned counsel appearing on behalf of appellant-plaintiff submits, that in case election petition is filed, then appropriate direction be issued to the prescribed authority to decide the same as expeditiously as possible preferably within a period of six months by fixing the parties to the terms and conditions, which this Court may deem it appropriate, i.e. by binding the parties to lead the evidence in a specified time span.

I have heard learned counsel for parties and appraised the paper book.

In my view, the findings rendered by the lower Appellate Court need not be interfered as the suit ex facie filed pertains to not only seeking declaration with regard to the induction of 13 members but also with regard to the setting aside of the election.

It would apt to reproduce the prayer clause:-

“It is, therefore, prayed to the Hon'ble Court that plaintiffs' suit be decreed with costs against the defendants granting the following reliefs:-

- i. By granting a decree of declaration the enrollment of new members (defendants No.4 to 16) be declared null & void ineffective and inoperative.*
- ii. The election for the post of Secretary S.D. Education Society, Panipat, who has been declared elected be also declared null & void ineffective and inoperative.*
- iii. By granting a decree the election for the above said post of the office bearer be set aside.*
- iv. By granting permanent injunction restraining the defendants No.2 and 3 from enrolling any new member.*
- v. Any other relief, for which the plaintiff are found entitled be also granted.”*

The prayer clause, as emanating from the pleadings, the suit essentially tantamounts to challenging the election of the post of Secretary SD (Election) Society, Panipat.

I have been informed that the polling is slated for 22/27.11.2015.

I am of the view that the present Regular Second Appeal can be

disposed of with following directions:-

- 1) The respondent-defendant is directed not to permit 13 members i.e. defendant Nos.4 to 16 to cast their votes in the forthcoming elections.
- 2) In case the appellant chooses to file the election petition as per Section 24 of the Haryana Act No.14 of 2007 Act before the prescribed authority which governs the present dispute, petition shall be decided by the prescribed authority within a period of six months.
- 3) The petitioner & respondent shall be given 4-4 effective opportunities to lead their evidence in support of their claims and rival claims/stands.
- 4) Registrar Firms and Societies Haryana is directed to appoint prescribed authority forthwith on receipt of certified copy of the order, to decide the dispute between the parties to the lis.

With the aforementioned directions, the judgment and decree of the lower Appellate Court is upheld as the suit was held not to be maintainable.

20.11.2015

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**(AMIT RAWAL)
JUDGE**