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

RSA-1663-2015

Date of decision : 22.12.2015

Krishan Lal Gupta

...Appellant

Versus

Managing Committee, Banarsi Dass Arya Girls College, Jalandhar
Cantt., and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Giri, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent findings of the fact whereby, the suit for permanent injunction restraining defendant No.2 from usurping illegally and unlawfully, much less, interfering with the powers of the appellant, as Secretary of Managing Committee of Banarsi Dass Arya Girls College, Jalandhar Cantt. as enshrined in the agreement dated 18.12.19369 (Ex.P-1) and subsequent memorandum of articles and further restraining against defendants No.2 and 3 from curtailing the power illegally, unlawfully and against the statutory provisions, enshrined in agreement and for mandatory injunction directing defendants No.2 and 3 to act strictly within the four corners of the agreement and declaration that summoning of the meeting by defendant No.2 held on 19.07.2002 being illegal, void

and un-constitutional, has been dismissed.

Mr. Ashok Giri, learned counsel appearing on behalf of the appellant-plaintiff submits that the Courts below have not appreciated the oral and documentary evidence, in essence, certain questions have not been put in cross-examination to the plaintiff and, therefore, deemed to be admitted. He, further, submits that the lower Appellate Court being the last court of fact and law, was obliged to decide the appeal by framing the points of determination. Having not done so, the substantial questions of law arises for determination. The findings arrived by both the Courts below are not based upon the appreciation of oral and documentary evidence. The appellant-plaintiff was appointed as Secretary on 19.03.2001 and is still continuing. However, the plea of the respondent that the term has expired in 2009, is not sustainable nor has proved contrary by way of oral and documentary evidence. The plaintiff was not given any chance to convene the meeting and in these circumstances, filed the aforementioned suit.

I have heard the learned counsel for the appellant-plaintiff and appraised the paper book.

The trial Court after examining the oral and documentary evidence has found that the case of the appellant-plaintiff falls within the provisions of Section 38 of the Specific Relief Act, vis-a-vis breach of documentary evidence. In agreement, it was the President, under whose aegis, the Secretary was required to work, finding that the appellant-plaintiff being a Secretary has not written any complaint or any letter to the President for convening the

meeting of the Managing Committee has not proved. It has been brought on record that his term was over in the year 2009 and, therefore, the claim in the suit, has been rendered infructuous.

I am of the view that at the best the appellant-plaintiff was entitled to seek the damages in terms of provisions of Section 41 of the Specific Relief Act and not in the manner and mode adopted.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below, as these are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

22.12.2015
yogesh

(AMIT RAWAL)
JUDGE