

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RA-RS-14-C-2013, CM-12023-C-2013,
XOBS-3-C-2012, CM-930-C-2012,
CM-5005-C-2013, CM-5030-C-2013
in RSA No.689 of 2011 (O&M)

Date of decision: 07.10.2015

Kandi Friends Educational Trust and others

..... Appellants

versus

Smt.Kulwinder Kaur and others

..... Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.H.S.Phoolka, Senior Advocate with
Mr.Gursimranjit Singh and Mr.Navkiran Singh, Advocates
for the applicants-respondents No.3 & 4
Mr.Gautam Dutt, Advocate for the respondent No.2
Society
Mr.Anil Sharma, Advocate for respondents No.1& 6
Mr.Akshay Goel, Advocate for respondents No.2
Mr.H.S.Rakhra, Advocate for respondents No.2 and 3
Mr.Judgepreet Singh Warring, Advocate
for respondent No.5

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

RA-RS-14-C-2013

Respondent Nos.3 and 4 have sought the review of the
order dated 2.11.2012, passed in CM No.12835-C-2012 in RSA
No.689 of 2011, vide which, the appellant were allowed to withdraw

the regular second appeal.

Brief facts of the case are that Kandi Friends Educational Trust through his General Secretary and two of his trustees filed a suit before the Civil Judge, Chandigarh for declaration that they are the only trustees of Kandi Friends Educational Trust. They had also challenged the resolution dated 14.10.2003 adopted by defendants No.1 to 4. Permanent injunction was also sought against defendants No.1 to 4. The learned Civil Judge, Junior Division, Chandigarh, vide judgment dated 31.7.2009, decreed the suit in favour of plaintiffs with costs. Resolution dated 14.10.2003 was declared null and void being against the memorandum of association and rules and regulations dated 27.7.1999. Permanent injunction was also granted restraining the defendants from interfering with the affairs of plaintiff No.1 trust and to run the Institute of Engineering and Technology, Village Bhaddal, Tehsil and District Ropar. Against the said judgment, defendant No.1 Kulwinder Kaur went in appeal, which was decided by learned Additional District Judge, Chandigarh on 16.12.2010. Learned Additional District Judge allowed the appeal. Judgment and decree dated 31.7.2009, passed by the trial Court was set aside and the suit of the plaintiff was dismissed. Against the said judgment and decree, the plaintiffs preferred regular second appeal No.689 of 2011. When the same was pending for hearing, a CM bearing No.12835-C of 2012 was filed and this Court passed the following order on 2.11.2012, dismissing RSA No.689 of 2011 as withdrawn:-

“Learned counsel for the applicants-appellants

states that he wants to withdraw the regular second appeal as the matter has been compromised between the parties. Mr.Jaspal Singh, General Secretary of the appellant-trust is also present in the Court. His statement to that effect has also been recorded separately.

As such, the instant miscellaneous application is allowed and the RSA No.689 of 2011 is dismissed as withdrawn.”

It is against this order that the present review application has been filed by respondent Nos.3 and 4, namely, Hardev Kaur wife of B.S.Randhawa and B.S.Randhawa, inter-alia on the ground that the appeal could not be withdrawn by Jaspal Singh without due consent of all the members of the society and secondly, no such compromise, as claimed in the application, had taken place between the members of the society and further that this Court has been misled by the false statement made by Jaspal Singh and therefore, regular second appeal has been withdrawn by committing fraud upon this Court.

In reply, the plaintiff-appellants have asserted that Jaspal Singh was General Secretary. Later on he ceased to be General Secretary. Shri Jaspal Singh was orally authorized by the Trust to withdraw the RSA which was withdrawn as matter was settled out of the Court. Therefore, the RSA was rightly withdrawn vide order dated 2.11.2012. It is further stated that verbal instructions given by the governing body were ratified by the governing body of the trust in the meeting held on 8.4.2013. Copy of the resolution is also

attached with the reply.

I have heard learned counsel for the parties and have also carefully gone through the file.

Plaintiffs-appellants were master of their appeal. The appeal was dismissed as withdrawn on the statement of the counsel as well as of one Jaspal Singh. There are no allegations that counsel was not duly authorized to withdraw the appeal. Even the statement of Jaspal Singh has been ratified by the subsequent resolution. The matter was decided by learned Additional District Judge, Chandigarh in favour of Kulwinder Kaur-defendant No.1, who had preferred the appeal before the Additional District Judge. The present applicant had not even preferred the appeal before learned Additional District Judge. Therefore, present applicants have no locus standi to file this review application. Even otherwise on merits, the appellants being the master of their appeal, are always at liberty to withdraw the same and the same cannot be questioned by the respondents. The appellants still affirm that they had rightly withdrawn the appeal.

It being so, the application for review is found to be frivolous and is dismissed.

In view of dismissal of review application, CM-12023-C-2013 has become infructuous and is dismissed accordingly.

CM-5005-C-2013 and CM-5030-C-2013

These applications have been filed in the main RSA. Since main RSA has already been withdrawn and disposed of these applications are dismissed as infructuous.

XOBS-3-C-2012 and CM-930-C-2012

These cross objections have been filed by respondent No.1 Kulwinder Kaur regarding the judgment of the lower Court as affirmed by the lower appellate Court regarding the issue No.1. Though in appeal, the suit of the plaintiff was dismissed and the appeal filed by the defendant /Cross-objector was allowed. In this case, the regular second appeal filed by the plaintiffs has already been withdrawn,. Therefore, the findings on Issue No.1 will not affect the outcome of the final judgment and will be of academic interest only. However, these cross objections are required to be decided separately.

Therefore, the Registry is directed to put up Cross objections bearing XOBS-3-C-2012 along with CM-930-C-2012 for condonation of delay of 62 days in filing the cross objections, separately within one month for preliminary hearing.

07.10.2015
gk

(Kuldip Singh)
Judge