

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

**CR No.3229 of 2016(O&M)
Decided on.14.09.2016.**

K.R. Mangalam School

.....Petitioner

Versus

Master Mani Thakran and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sanjay Vij, Advocate
for the petitioner.

Mr. Gaurav Aggarwal, Advocate
for respondent no.1.

Mr. Arun Kumar Yadav, Addl. AG, Haryana

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 04.11.2015 passed by the learned Civil Judge (Jr. Division), Gurgaon, whereby the application filed by plaintiff-respondent no.1 under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'C.P.C') has been allowed and the application moved by petitioner has been dismissed. Plaintiff-respondent no.1 was held entitled to be granted admission in Class-VI in the petitioner-defendant no.1 school and the said admission was ordered to be subject to the final outcome of the suit and without any prejudice to the legal rights of either of the parties in any manner. Petitioner has also challenged the Appellate order dated 11.04.2016 passed by the learned Additional District Judge, Gurgaon, vide which the appeal filed by the petitioner against the aforesaid order passed by the learned trial Court has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. As per the case of the plaintiff, he falls under the category of Economically Weaker Section (EWS)/Below Poverty Line (BPL) and is eligible for admission in the petitioner-school in 6th class. He moved an application for admission to the defendants under EWS/BPL for the reserve category. EWS/BPL category certificate was issued by the Competent Authority, Gurgaon and was duly acknowledged by defendants. As per Rule 134-A of the Haryana School Education Rules, 2003 (amended) (for short 'Rules'), defendant no.4, the Block Level Committee held draw for selecting candidates under the reserve category. Plaintiff was found eligible to seek admission under the EWS/BPL category in defendant no.1 school. All the documents submitted by the plaintiff were found to be correct by defendant no.4, the Block Level Committee and his name was recommended for admission to the defendant no.1 school. However, defendant no.1 rejected the claim of the plaintiff and admission was not granted to him on baseless grounds that his documents are forged. Plaintiff approached defendants no. 2 to 4 with a request to direct defendant no.1 school to grant him admission, but of no avail. Hence, he filed the suit seeking a decree for mandatory injunction directing the defendants to give him admission under the reserve category of EWS/BPL as provided under Rule 134-A of the Rules and to honour the guidelines and rules framed under Rule 134-A of the Rules under the provisions of Haryana School Education Act, 1995.

4. Along with the suit, he moved the application under Order

39 Rule 1 and 2 read with Section 151 CPC for grant of *ad interim* injunction.

5. Petitioner-defendant no.1 contested the suit as well as the application for *ad interim* injunction on the grounds *inter alia* that plaintiff neither belongs to EWS category nor he is a meritorious student. The mother of the plaintiff is well off lady and getting a salary of Rs. 1,00,000/- per annum. She has submitted false income certificate. She is working as Aganwari worker and had obtained false BPL category certificate on the basis of forged documents. She also furnished false affidavit with regard to the age of the plaintiff. It was further pleaded that at present, plaintiff is studying in Class-6-F in R.E.D. Sen. Sec. School, Chhuchhakwas (Jhajjar) affiliated to CBSE, New Delhi as a normal category student by paying an exorbitant fee of Rs. 43,300/- per quarter which cannot be expected to be paid by a person belonging to the EWS/BPL category. In Class 5th also, he was studying in the same school by paying huge fees. It was further pleaded that plaintiff had applied to defendant no.1 in August, 2015 after closing of the admissions when there was no vacancy. He did not submit the date of birth certificate. The documents submitted in the form of ration card and affidavit shows a clear discrepancy in the age of the plaintiff. Thereupon, petitioner-defendant no.1 made a representation to defendants no.2 to 4 apprising them of the facts concealed by the plaintiff while moving the application under Rule 134-A of the Rules and requested for appropriate action. The said matter is still pending. It was further pleaded that selection of the plaintiff, if any, is totally illegal, *mala fide* and has been procured by

him from the authorities by concealing the material documents. Plaintiff never disclosed to the said authorities about his studying in a highly paid school and his mother having the income of Rs. 94,000/- per annum. Petitioner-defendant no.1 also filed the counter claim, wherein the relief of permanent injunction was sought restraining the plaintiff from taking admission in any school under Rule 134-A of the Rules.

6. Along with the written statement/counter claim, defendant no.1-petitioner also moved an application under Order 39 Rule 1 and 2 read with Section 151 CPC for seeking the *ad interim* injunction.

7. Defendant no.4, the Block Level Committee filed the separate written statement pleading therein that the documents produced by the plaintiff were duly checked and he was found eligible as per requirement of Rule 134-A of the Rules, whereupon he was selected for admission to defendant no.1/petitioner school, which is bound to admit him.

8. The counter claim filed by petitioner-defendant no.1 was also contested by the plaintiff and defendant no.4.

9. Aggrieved with the aforesaid order, petitioner-defendant no.1 preferred the appeal, which has also been dismissed by the learned Additional District Judge, Gurgaon, vide impugned order dated 11.04.2016. Hence this Revision Petition.

10. I have heard Mr. Sanjay Vij, Advocate, learned counsel for the petitioner, Mr. Gaurav Aggarwal, Advocate, learned counsel for respondent no.1, Mr. Anil Kumar Yadav, learned Addl.AG, Haryana and have carefully gone through the paper book.

11. Initiating the arguments, learned counsel for the petitioner contended that the impugned orders passed by the learned Courts below are against the settled principles of granting the *ad interim* injunction. He contended that plaintiff does not fall in the category EWS/BPL as his mother was employed as Aganwari worker and was drawing handsome salary. She also had rental income of Rs. 50,000/-. He contended that the sister of the plaintiff has been got admitted in another private school as general candidate, wherein huge amount is being paid as fees. Even, the plaintiff is the student of R.E.D. Sr. Sec. School, Chhuchhakwas and was paying the fees at the rate of Rs. 43,300/- per quarter, which cannot be paid by a person belonging to EWS/BPL category. Thus, he contended that the plaintiff does not fall in EWS/BPL category.

12. He further contended that as per the Rules, a candidate in the age group of 10 to 11 can only be admitted in Class 6th. But, as per the birth certificate of the plaintiff (Annexure P-3) his date of birth was 31.07.2003 and he has already crossed the age of 11 years on the relevant date. He contended that the false birth certificate mentioning different dates of the plaintiff have been produced and the learned Courts below have wrongly relied upon the fake and false birth certificate.

13. He further contended that plaintiff does not fall in the category of meritorious student as he had secured only 46.33 % marks in 5th class. In order to fall in the category of meritorious student, he should have secured 60 % or more marks in the preceding examination. Thus, he contended that none of the condition is fulfilled by the

plaintiff. He further contended that the plaintiff has also not come to the Court with clean hands and various material facts have been concealed from the Court. Thus, he contended that the plaintiff was not entitled for the relief of *ad interim* injunction.

14. On the other hand, Mr. Gaurav Aggarwal, Advocate, learned counsel for the respondent no.1-plaintiff contended that all the papers submitted by plaintiff were duly scrutinized by Block Level Committee, which were found genuine and plaintiff was found eligible for admission in the reserve category as per the requirement of Rule 134-A of the Rules and was duly selected for admission. He further contended that the date of birth of the plaintiff is 31.07.2004, which was recorded in his birth certificate. Even, this very date of birth is mentioned in the school which he was previously attending. He further contended that even if the income of the mother of the plaintiff is taken to be Rs. 95,000/-, still she will fall under the criteria of EWS category as her income was much below Rs. 2 lacs. He further contended that fees of the previous school was being paid by the maternal uncle of the plaintiff, which could not be a ground to deny him admission in defendant no.1 school. He further contended that as per overall grading of the plaintiff in his certificate of 5th class, he falls in B grading and thus will fall in the category of meritorious students. Thus, he contended that the learned Courts below have rightly directed defendant no.1 school to grant admission to plaintiff in the reserve category as per Rule 134-A of the Rules.

15. Mr. Anil Kumar Yadav, Addl.AG, Haryana, has raised the contentions as per the pleadings raised in the written statement filed by

respondent-defendant no.4, the Block Level Committee.

16. I have duly considered the aforesaid contentions.

17. The law is well settled that the scope of interference by the Appellate/Revisional Court in the orders passed by the learned trial Court in the matter of grant or non grant of *ad interim* injunction is very limited. The interference is only possible, where the order of the trial Court suffers from clear violation of law or the findings are perverse and the order has been passed in violation of the settled principle of law. Mere possibility of different opinion on the basis of the facts and evidence is no ground for interference by the Appellate/Revisional Court. Reference can be made to cases **Guru Nanak Education Trust Vs. Balbir Singh 1995(2) PLR 625** and **Mam Chand Vs. Kamla 1996(2) PLR 147**.

18. In order to secure the relief of *ad interim* injunction, the plaintiff-respondent no.1 was required to show the *prima facie* case and balance of convenience in his favour and that he will suffer irreparable loss in case the temporary mandatory injunction is not granted.

19. The plaintiff has claimed the admission in the reserve category in 6th Class of defendant no.1-petitioner school as per the amended provisions of rule 134-A of the Rules, which reads as under:-

“134-A the recognized private schools shall reserve ten percent seats for meritorious students belonging to Economically Weaker Section (EWS) and Below Poverty Line (BPL) categories. The school shall charge fee from these students at the same rate as charged in Government Schools.”

20. A Division Bench of this Court in case **Haryana Progressive Schools conference (Regd.) Vs. Union of India and others CWP No. 4925 of 2014 (O&M), decided on 01.04.2015** has

held the aforesaid rule as legal and valid. It was further laid down that in respect of admission in a private unaided schools to classes II and XII, the field is not covered by the Right of Children to Free and Compulsory Education Act, 2009 and Rule 134-A of the Rules, will have full play and admissions would be required to be made in accordance with that rule.

21. Rule 134-A of the Rules mandate all the recognized private schools to reserve 10 % seats for meritorious students belonging to EWS/BPL categories. In the instant case, the plaintiff had applied for admission to Class-VI. Petitioner-defendant no.1 had not placed on record any material to show that the said quota/seats were already exhausted and admissions were closed prior to application submitted by the plaintiff. It is also not disputed that plaintiff was selected for admission under rule 134-A of the Rules by the Block Level Committee. The documents produced before the said Committee were duly checked and plaintiff was found eligible as per the requirement of the said rule. Thereafter, he was selected for admission to defendant no.1 school.

22. Section 22 of the Haryana School Education Act, 1995 bars the jurisdiction of the Civil Court in respect of any matter to which the Government or the Director or any person authorized by the Government or Director or any other officer or authority appointed or specified by or under that Act is empowered by or under the said Act to exercise any power. Thus, the findings of the Block Level Committee, will be outside the domain of the Civil Court in the absence of any proof of the violation of any mandatory provisions of the Act or the

Rules made thereunder.

23. From the material placed on record, it was found by the learned Courts below that the mother of the plaintiff is an Aganwari worker and her monthly income is Rs. 7500/- i.e. Rs. 90,000/- per annum. This fact is not disputed that the parents who have income of Rs. 2 lacs or less falls in the category of EWS. Learned counsel for the petitioner could not point out any material on record to show that the income of the mother of the plaintiff exceeds Rs. 2 lacs per annum from all available sources. So, *prima facie* the plaintiff falls in the category of EWS/BPL.

24. The second condition to be fulfilled by the plaintiff was that he falls in the category of meritorious student. Learned counsel for the petitioner has contended that the plaintiff has obtained only 46.33 % marks in 5th Class. But, this plea raised by learned counsel for the petitioner is not based on any authentic document. It is not disputed that as per the letter dated 22.09.2011 issued by the Government, the 'meritorious students' is defined as under:-

“Meritorious student means a student who has secured 60 % or more marks in the preceding exams of Board or Institution itself. If the requisite quota of 25 % is not fulfilled, the head of the institution can relax the same upto 50 % or more, so as to enable him to complete the quota in right earnest. If there is no exam either at the level of the Board or school, in that eventuality, the grade obtained in CCE (Continuous Comprehensive Evaluation) or otherwise will be the decided factor at the level of the head of institution so as to ensure fulfilling the required quota completely.”

25. As per the aforesaid instructions, the meritorious students means a student who had secured 60 % or more marks in the preceding examination of the Board or institution itself. It is further provided that

if the requisite quota of 25 % is not fulfilled, the head of institution can relax the same up to 50 % or more so as to enable him to complete the quota in the right earnest. In the instant case, the learned First Appellate Court has mentioned that the mark sheet of the plaintiff for 5th Class revealed that only the grading was given. The percentage as provided in mark-sheet for different grades is as under:-

- | | | |
|----|---------|--------------|
| 1. | Grade A | 75 % to 89 % |
| 2. | Grade B | 56 % to 74 % |
| 3. | Grade C | 33 % to 55 % |

The learned First Appellate Court has observed that the plaintiff has secured either Grade A or B, the number of Grade C is less and his overall grading has been taken to be Grade B and the percentage will range 56 % to 74 %. The view taken by the learned First Appellate Court is quite reasonable and justified, which cannot be interfered into by this Court by exercising the limited revisional jurisdiction.

26. Learned counsel for the petitioner has also raised the controversy with respect to the age of the plaintiff. He has contended that date of birth of the plaintiff is 31.07.2003 and he was more than 11 years of age on the relevant date. But, in the affidavit filed by the mother of the plaintiff before the learned trial Court, the date of birth of the plaintiff has mentioned to be 31.07.2004. It is a disputed question of fact and the age of the plaintiff is to be determined by the learned trial Court on appreciation of evidence. Moreover, in Section 15 of the Haryana School Education Act, 1995 read with Rule 131 of the Rules, only the minimum age is prescribed. The maximum age is prescribed

only for admission to Class 10th and 12th. The maximum age is not prescribed for admission to Class 6th in the aforesaid Act/Rules. Moreover, section 14(2) of Right of Children to Free and Compulsory Education Act, 2009 provides that no child should be denied admission in a school for lack of age proof.

27. The plea raised by learned counsel for the petitioner that plaintiff has concealed the material facts and that he has relied upon the false documents is again a matter of evidence. The legal implication of Section 22 of the Haryana School Education Act 1995 which bars the jurisdiction of the Civil Court in these matters has also to be taken care of at the appropriate stage.

28. Thus, keeping in view my aforesaid discussion, there is no ground to conclude that the learned Courts below had violated the principles of law in appreciation of pleadings, material on record and grant of *ad interim* injunction or the said findings are perverse. So, no case is made out for any interference by this Court while exercising the limited revisional jurisdiction in the well reasoned orders recorded by the learned Courts below.

29. Resultantly, the present revision petition having no merits, is hereby dismissed.

CM Nos. 15423-24-CII of 2016

As the main revision petition has been dismissed, so the present applications have become infructuous.

(DARSHAN SINGH)
JUDGE

14.09.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No