

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

CR No. 434 of 2013 (O&M)

Date of decision: 08.01.2016

Vijay B. Verma

... Petitioner

versus

**Ludhiana Oil Expellers Cooperative House Building Society and
others**

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. C.B. Goel, Advocate for the petitioner.

Mr. Om Pal Sharma, Advocate for respondent No.1.

K.Kannan, J. (ORAL)

CM No. 23587-CII-2015

CM is allowed.

The civil revision petition is restored.

CR No. 434 of 2013

With the consent of the parties, civil revision petition is itself taken up for hearing and disposed of.

The petitioner is an Advocate who was representing 3 persons Neelam, Maya Wati, Neelam Devi in a complaint filed before the Dispute Redressal Forum seeking for an allotment of certain plots in the Model Town Extension at Ludhiana. The Ludhiana Oil Expellers Cooperative House Building Society had been the original owner and it was stated that it had been acquired by the Improvement Trust and that respondent Nos. 1 and 2 were bound to make allotments amongst the bonafide members of the society. The plaintiffs, were, therefore, seeking for a direction against the beneficiaries of acquisition for allotment as members of the cooperative society. The complaint was ordered and the proceedings which were challenged at the instance of the Improvement Trust before the State Commission failed and the order became final.

When the order of the District Forum was confirmed by the State Commission, the execution petition was filed for arrest against the officer of the Improvement Trust as well as the office bearer of the Society. The Court had issued coercive process and this order reached up to the Hon'ble Supreme Court. At the Supreme Court, however, at the stage of execution, the society was not made a party since the plaintiffs were prepared to secure compliance of the directions against the officials of the Improvement Trust. After the proceedings were completed the suit was filed by the Society which was party to the complaint before the District Forum and the State Commission. The suit is brought on a plea that the Society which was represented through Secretary and President had played a fraud in connivance with the counsel for the complainants who is the present petitioner and they have secured favourable order although they were not even the Members of the society. There were other grounds stated to contend that the proceedings before the Consumer Forum were null and void. The suit was filed not merely against the plaintiff but also against the lawyer and a petition for rejection of the complaint was filed at the instance of the lawyer who is now the present petitioner. His contention was that he cannot be personally made liable and in any event the suit itself was barred by law particularly to the finality of the decision before the Consumer Forum. The Court dismissed it holding *inter alia* that the Society was not a party before the Hon'ble Supreme Court and that further the issue regarding the competency of the Society will be dealt later at the time of the suit.

Admittedly, the Society was a party before the Consumer Forum. It is also not a dispute that the Society was described correctly as being represented through Secretary/President who were competent to represent the Society. They had been common defence before the Forum through the lawyer and the decision was delivered on merits on

24.05.1996. If it were to be contended that the order passed by the Consumer Forum was not competent or it was erroneous on account of the fact that the plaintiffs were not members of the Society, the said objection must have been taken only before the Consumer Forum and the merits of the contentions raised by the plaintiffs to secure an order cannot be brought through an independent civil action. Apart from making it appear in the complaint that the judgment was obtained by mis-conduct, fraud and impersonation, there is nothing brought out in the complaint as to how the representation of the Society had been in any way vitiated and that the decision rendered in the presence of the Society will not bind them. The gravamen of complaint is that the counsel for the complainant was also the counsel for the Improvement Trust and he had played the fraud. It is also the contention that he plaintiffs were real members of the Society and that they could not have been given the benefit of allotment. It appears that the complaint has been given to the police which is registered in FIR 140 of 2006 to the effect that the counsel for members of the society had illegally enrolled the plaintiffs as members of the society to secure them the benefit of allotment. None of these allegations can be a justifiable ground to assail the decision taken already by the Consumer Forum even assuming all the averments to be true. As far as the petitioner is concerned, the members of the legal profession enjoys the immunity against being prosecuted for acting on behalf of the claimants and it shall be impermissible for the suit to be filed also against the lawyer who represented the plaintiffs that the suit did not make a full disclosure of all facts and the plaint was allowed on a fake contest. If there is any error in the judgment of the Consumer Forum, the proper remedy will be only to approach the higher forum of adjudicatory tier and cannot be brought by means of a challenge through the civil suit. The civil suit is incompetent to be entertained and with no specific

avermment of how and why the judgment of the District Forum could not be set aside in appeal. The order passed by the Forum have been admitted the plaintiff's case to be true, I hold that the Court below was not justified in merely looking at the fact that the society or its members were not parties at the execution stage before the Supreme Court and hence the case could go through a gamut of trial. The Hon'ble Supreme Court affirmed the order passed by the State Commission relieving the coercive process issued against the officials of the Improvement Trust but otherwise maintained the other reliefs sought in the execution. It will be an absolute waste of time to allow the benefit to a fanciful litigation brought by the Society. The resources of the Society will be better kept by the saner advice not to prosecute an impermissible suit.

The order passed by the Court below is set aside and the plaint is ordered to be rejected and taken out of the file.

The revision petition is allowed with costs of Rs. 3,500/- against the respondents.

(K.KANNAN)
JUDGE

08.01.2016

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