

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 7805 of 2014 (O&M)

Date of decision: February 3, 2016

Sacred Heart Charitable Society and another

.....Petitioners

VS.

Ravinder Kumar Sharma and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Parvinder Singh, Advocate
for the petitioner.

Mr.Sapan Dhir, Advocate
for respondents No. 1 and 2.

Mr. H.S.Lalli, Advocate
for the respondent Nos. 3 and 4.

1. **Whether Reporters of local papers 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?**

K.KANNAN,J (Oral)

1. The revision is against the order passed by the courts below at the interlocutory stage in the application and the Order 39 Rules 1 and 2 CPC. The plaintiff came with an averment in the plaint that he was the President of the Society described in the plaint as the 1st plaintiff as Sacred Heart Charitable Society with registered office at Ludhiana. The plaintiff had a grievance that the

defendants had purported to have removed him from the office of President through a meeting alleged to have been held on 12.12.2012. According to him, there was no meeting of the society on that day and he had not been served with any notice of suspension from his office. There was no agenda circulated and the so-called extract of the meeting which was served to the Registrar's Office later was a fabrication. On the other hand, the 1st defendant who was admittedly the Secretary of the Society was removed from the office of secretaryship through a notice issued on 13.12.2012. According to him, the plaintiff had a power of removal of the defendant and that the 1st defendant cannot pose himself as an office bearer of the society to disturb his management of the Society. The relief was also sought against the 2nd respondent- Saroj Sharma, who incidently was the wife of the 1st defendant. Respondents No. 3 and 4 were the Vice-President and the member of the Society. Admittedly, at the time when the suit was filed they had not lost the membership or nor the office of the Vice-President lost to the 3rd respondent.

2. The defendants filed a written statement and contested the suit by taking a plea that even in the suit filed by the plaintiff on 24.12.2012, they had not made any reference to the removal of the 1st defendant as the Secretary and the plaint contained no reference to the notice of removal relied on by the plaintiff. He withdrew the suit on 03.01.2013, prepared some document on 10.01.2013, ante dated it as if the notice was issued on 13.12.2012, informed the Registrar and filed a suit on 10.02.2013. The defendants would contend that the suit on a claim that the 2nd plaintiff was the President was not tenable since the 2nd plaintiff had been removed through a meeting held on 12.12.2012 and 5 members out of total 9, took a decision to suspend the 2nd plaintiff from the post of the President. Kewal Garg and Rama Garg, who were defendants No. 3 and 4 respectively filed a statement

contesting the plaintiff's claim but the 2nd plaintiff has manoeuvred to secure affidavits from them subsequently disowning the signatures. Francis K.M was admittedly not in India either on 12.12.2012 or 13.12.2012 but at all times in the past his participation has been through oral communications and e-mail affirmation and that is how Francis K.M had even participated with the decision to suspend the plaintiff as the President by e-mail sent on 13.12.2012.

3. The trial Court dismissed the injunction application and said that the respective resolutions relied on by parties were required to be established only at the time of trial and, therefore, no interim relief was possible. The Appellate Court went one step more and found that the plaintiff had been guilty of several irregularities and operation of account without authority and he cannot claim a prima facie case of his continuance as a President. It, therefore, dismissed the plaintiff's appeal.

4. There is an objection by the respondent as the issues of territorial jurisdiction of the court at Ludhiana. The suit relates to a prayer for his continuance as a President and his right of management in his capacity as such. The resolution that purported to remove him has been taken at the residence of the 3rd defendant at Ludhiana gives a proper cause of action at Ludhiana.

5. On the issue of whether the plaintiff has a prima facie case as a President of the Society at the time of institution the suit, in my view, the Appellate Court was not justified in holding that there were financial irregularities and notices had been sent by the defendants on 4.12.2012 and 5.12.2012 to the Principal of the school and the President. If a decision of suspension or removal were to be supported, it can be only by following such procedure as is possible under the Bye-laws of the Society. A president has to be a member and if there is any attribution of mismanagement, the governing consideration shall be Clause

7(d) which reads as under:

“If a member of the Governing Body mismanages he or she shall be asked to resign. In case he or she does not resign and continue to be a hurdle, the topic can be put for voting and majority decision will prevail.”

In all meetings, it shall be the President who can be a Chairman as per Clause 12 of the Society. Clause 13 which prescribes the quorum necessary for the meeting provides that it be fixed by the Governing Body and for the transactions to be carried out as fixed by the Governing Body or if it is not so fixed by the President or one another member of the Society. There has been no attempt even before me to show that there was any meeting called on 12.12.2012. Even in the notice alleged to have been sent on 4.12.2012, there is no reference to the meeting proposed to be called on 12.12.2012. There was even an admission by the counsel appearing on behalf of the respondent that minutes were not actually drawn but, however, extract were prepared as it is usually done. I must observe that an extract is only a replication of what is contained in the original. If there was nothing like original, an extract is a smoke screen to conceal the obvious, that some document is prepared for the purpose of the case. In the present case, this extract is made use of even to dispatch to the Registrar to act on.

6. There is also a case made that five persons were present constituting the majority to take a decision on suspension of the President. If there was no meeting at all 12.12.2012, it is irrelevant to examine the genuineness of the signature. It could be just true, as contended by the respondent, that defendants No. 3 and 4 were signatories in the so called extract of Minutes but by no stretch of imagination a person residing in a foreign country could be a signatory to a document that bears reference in the document signed by Francis K.M. The document dated

13.12.2012 as an extract of minutes, when the minutes book is not before the court and admitted as not to exist and the so-called removal of the President is simply not possible and such a contention taken by the defendant cannot be accepted.

7. If the defendants could not displace the plaintiff's status as President, the relief of injunction is not merely that his activity as such President shall not be interfered with but the injunction is for the relief that the defendants shall not pose themselves as office bearers and members of the Society. The 1st defendant's status as a Secretary up to 13.12.2012 is an admitted fact. The power of the President to remove him must be seen as what is contained under Clause 16 of the Bye-laws that the Secretary and other members could be appointed and retired by the President. A position as office bearer of the Society is an important civil right and it cannot be denied without following the rules of natural justice. An unilateral decision to remove simply does not arise from the power which the President has under the Bye laws of Society. By his own showing, the plaintiff only wants to contend the 1st defendant was removed without any prior notice. There is no prima facie case for the plaintiff to deny to the 1st defendant such a status. The 2nd defendant's position as a member was also not denied or put to challenge at any time by the plaintiff himself. Her position as a member also cannot be denied. I make no observation about defendants No. 3 and 4 since the counsel appearing on behalf of defendant No. 3 and 4 says that he wants no recognition of position even as the members of the society.

8. In the ultimate bargain, it would be seen that the plaintiff who had sought for the relief of injunction cannot have the benefit of injunction against the defendants No. 1 and 2, for, they had, at the time of the institution of the suit, status as the Secretary and member of the Society. They will perform such functions as it is competent as such office bearer and member respectively. I also observe that the

2nd plaintiff's position as a President could not be said to have ceased by the defendants so-called suspension through an alleged meeting dated 12.12.2012. Consistent with my finding that there was no such meeting, the 2nd plaintiff shall continue as a President on the date of suit.

9. I confirm the decisions of the two courts below denying the relief of injunction against the defendants but I will modify the judgments to the effect that the 2nd plaintiff will be taken as having been made as the President and continued as such on the date of institution of the suit. How the future course of action will be piloted, for the benefit of the society is anybody's guess. The parties will act with such responsibility as members that proclaim allegiance to the Sacred Heart of a Godhead and if only they have true concerns of the Society and for the children who are studying in the school which has been established and that they are not using it merely as a tool for personal aggrandisement, they shall do their own heart searching and their own religious convictions must make possible a just conduct for the benefit of the students.

10. The revision petition is disposed of with the above observations.

FEBRUARY 03, 2016

Rajeev

(K.KANNAN)
JUDGE