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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 07.03.2018

1.

RSA-2600-1988 (O&M)

Sunehra and others

... Appellant(s)

Versus

Hoshiar Singh and others

... Respondent(s)

2.

COCP-948-1989

Hoshiar Singh and others

... Appellant(s)

Versus

Sunehra and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate
for the appellant(s) in RSA-2600-1988 and
for the respondent(s) in COCP-948-1989.

Mr. Bikram Chaudhary, Advocate
for the respondent(s) in RSA-2600-1988 and
for the petitioner(s) in COCP-948-1989.

Mr. Rajbir Singh, AAG, Haryana.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of one appeal bearing **RSA No.2600 of 1988** titled as **“Sunehra and others V/s Hoshiar Singh and others”** and one contempt petition bearing **COCP No.948 of 1989** titled as **“Hoshiar Singh and others V/s Sunehra and others”**.

The appellants being third party are aggrieved of the dismissal of the application seeking leave to file appeal against the judgment and decree dated 12.01.1987 rendered by the trial Court, whereby in a suit bearing No.352 of 1985 titled as **“Hoshiar Singh V/s State of Haryana and another”** for permanent and mandatory injunction, the defendants were restrained from digging Padana Drain in the land other than the acquired land for this purpose and they were directed to close down the drain already constructed in the killa Numbers Khasra Nos.22/1, 22/2, 23, 24, 25/1 and 25/2 of Rectangle No.136,

The plaintiffs instituted the suit, aforementioned, on the premise that they were biswedars of Village Shamloo Kalan, Village Shamloo Kalan, which was flooded with rainy water every year and in the year 1979, a Padana Drain for drainage of the water was constructed as described in the head-note of the plaint and compensation was also paid to the biswedars. The officials of the Drainage Department colluded with some people of the village and started digging drain illegally from the land, which had not been acquired for the construction of the drain, on which, they did not have any right. A new drain was being dug in a haphazard manner without any alignment, therefore, cause of action accrued to file the suit, aforementioned.

The defendants contested the suit on the premise that previously approved alignment was changed in some portion and new revised alignment was approved, for which, the villagers did not have any objection except the plaintiff, therefore, new drain was dug.

Since the parties were at variance, the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to the mandatory and permanent injunction as prayed for? OPP.

2. Whether the suit is bad for mis-joinder of parties? OPD.

3. Whether the suit is bad for want of notice under Section 80 C.P.C. ? OPD.

4. Whether the suit has not been properly valued for the purposes of court fees? OPD.

5. Relief.”

The trial Court on the basis of the preponderance of evidence decreed the suit. The appellants filed an appeal along with application seeking leave of the Court for filing the appeal against the judgment and decree dated 12.01.1987, which has been dismissed vide order dated 08.08.1988 on ground that the third party has no right to file the appeal.

Learned counsel for the appellants submits that as per site plan (Ex.P-2), canal shown in yellow colour was already in existence. For the purpose of draining out the rainy water, the Department had earlier culled out a alignment, which was not accepted by the villagers. The villagers made a representation and on the representation, the area shown in red colour was aligned for the purpose of draining out the rainy water and the Executive Engineer submitted a report dated 08.01.1985 (Ex.D-2), but the same has been objected to by the appellants, resulting into, stoppage of the work. No other villager had come forward to vindicate alleged grievance. It is in that background, the appellants filed an appeal, but the same has erroneously been rejected. In support of his contentions, he relies upon the *ratio decidendi* culled out by **“Smt. Jatan Kanwar Golcha V/s M/s Golcha Properties Private Ltd.” 1971 AIR (SC) 374** to contend that the affecting party can always file an appeal.

Learned counsel for the respondent(s) submits that the third party appeal is not maintainable. The appellants had no cause of action, if they had any grievance, they could challenge the decree, but not by filing a third party appeal, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book as well as seen the record of the Courts below.

The impugned order dated 08.08.1988 passed by the lower Appellate Court rejecting the appeal is extracted herein below:-

“This appeal has been preferred against the judgment and decree dated 12.01.1987 passed by Ld. Sub Judge 1st Class, Jind in Civil Suit No.352 of 1985 by some persons, who were not at all party to the suit and along with appeal they had moved an application for permission to file the appeal. Vide separate detailed order dated today that application has been dismissed. Since the appellants were not at all party to the suit and their application for permission to file appeal under Section 96 C.P.C. has been dismissed, so they have no locus standi to prefer this appeal and therefore, the appeal is dismissed. However, the parties are left to bear their own costs. Decree sheet be prepared and the file be consigned to the record room.”

It is a settled law that a person, who is not a party to the suit, may prefer an appeal with the leave of the appellate Court, if he prejudicially affected by the judgment. This view of mine is supported by the *ratio decidendi* culled out by the judgment cited supra. For the sake of brevity, the relevant paragraphs of the judgment reads thus:-

“3. In the order of the High Court reference has been made to Rule 139 of the Companies (Court) Rules 1959 and it has been pointed out that since the appellant had not appeared before

the Company Judge she was not entitled to maintain the appeal. It was conceded that no notice had ever been sent to her either by the Official Liquidator or the Company Judge before the order appealed against relating to appellant's property was made. The High Court was of the view that the only remedy of the appellant was by way of a suit after obtaining leave of the Company Judge under s. 446 of the Act. Now an appeal lies under s. 483 of the Act from any order made or decision given in the matter of finding up of a company by the court and it lies to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction. There can be no manner of doubt that an appeal was competent against the order made by the Company Judge on July 21, 1969 in view of the terms of s. 483. The only question is whether because the Official Liquidator failed to discharge his duties properly by having a notice issued to the appellant, whose rights were directly affected by the order proposed to be made, the appellant was debarred from filing the appeal. In our opinion apart from Rule 139 to which reference has been made by the High Court the Official Liquidator as well as the learned Company Judge were bound by the rules of natural justice to issue a notice to the appellant and hear her before making the order appealed against. If there was default on their part in not following the correct procedure it is wholly incomprehensible how the appellant could be deprived of her right to get her grievance redressed by filing an appeal against the order which had been made in her absence and without her knowledge. It would be a travesty of justice if a party is driven to file a suit which would involve long and cumbersome procedure when an order has been made directly affecting that party and redress can be had by filing an appeal which is permitted by law. It is well settled that a person who is not a

party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.

4. *Rule 103 of the Companies (Court) Rules provide for taking out summons for directions not only with reference to the settlement of the list of contributories and the list of creditors but also the exercise by the Official Liquidator of all or any of the powers under s. 457(1) and any other matter requiring directions of the court. The exercise of the power under s. 457 (1) (c) of the Act to sell the immovable and movable property of the Company by public auction or private contract would certainly fall Within the ambit of the Rule. That Rule expressly provides for issuing of a notice of the summons to the petitioner on whose petition the order for winding up was made. It is implicit that if the directions which have to be given by the court would affect any person prejudicially he: must be served with a notice of the summons under the general rule of natural justice and that no order should be made affecting the rights of a party without affording a proper opportunity to it to represent its case. The High Court was thus clearly in error in not entertaining and deciding the appeal preferred by the appellant who was the owner of the land in which lease hold rights said to have been created by her in favour of the Company in liquidation were sought to be sold.”*

The aforementioned *ratio decidendi* could not be controverted by the counsel representing the respondents.

Keeping in view the aforementioned facts, the impugned order dated 08.08.1988 is not sustainable in the eyes of law and the same is hereby set aside. The matter is remitted to the lower Appellate Court to decide the the appeal by grating leave to file appeal against the judgment and decree dated 12.01.1987 passed by the trial Court.

Let this exercise be done within a period of six months from

the date of the receipt of the certified copy of this order.

The lower Appellate Court shall ensure the presence of the parties by effecting the service.

Record of the Courts below be sent back for the adjudication of the appeal.

With the aforesaid observations, the appeal stands disposed of.

COCP-948-1989

Since the main appeal is disposed of and the matter is remitted to the lower Appellate Court to decide the appeal, no cause of action survives in the contempt petition, accordingly, the Contempt petition disposed of having been rendered infructuous.

07.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**