

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

**RSA No.1292 of 1992 (O&M)
Date of Decision.27.09.2018**

The Punjab Wakf Board

.....Appellant

Vs

Sat Pal Gupta (since deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Bhatia, Advocate
for the appellant.

Mr. Kunal Vinayak, Advocate for
Mr. S.K. Bansal, Advocate
for the respondents.

-.-

AMIT RAWAL J. (ORAL)

The Punjab Wakf Board is in appeal against the concurrent finding of fact whereby the suit seeking possession by way of ejectment of the respondent has been dismissed on technical ground of not having valid resolution or authority.

The facts as pleaded in the suit and defence of the defendants are not disputed. However, brief facts are described herein below.

Wakf Board claiming ownership of the suit property sought possession of the same by way of ejectment on the premise that tenancy of defendants was terminated.

The suit aforementioned was filed through Secretary Sh. K. Sheikh Ahmad. It was averred that the suit property/plot comprising of khasra No.3923 situated in the area of Patti Musalmanan, Sonapat was rented out to defendants on monthly rent

of ₹20/- per month.

The defendants contested the suit by raising the plea of tenancy to be of permanent nature, much less, the same was not terminated in a legal manner. Even the suit was not filed by duly authorized person. It was averred that in the year 1952, the suit property was leased out to Faquir Chand, father of the defendant No.1, who had constructed a portion of Sarang Cinema and two shops, which was never objected to by the Wakf Bard. A sum of ₹20,000/- was invested by his father. Later on, another sum of ₹40,000/- was invested.

Replication was filed by the plaintiff denying the tenancy to be permanent in nature but stated that it was month to month and the suit was said to be filed by duly authorized person.

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

- “1. Whether the present suit has been filed by a duly authorized person? OPP*
- 2. Whether the property in question was let out to the defendant at a monthly rent of ₹20/- as alleged? OPP*
- 3. Whether the tenancy of the defendant was validly terminated by legal notice as alleged? OPP*
- 4. Whether the suit is not maintainable? OPD*
- 5. Relief.”*

On preponderance of evidence brought on record i.e. notification dated 19.08.1987, the trial Court found that the Wakf Board was superseded by the Department and super-session was

extended from 1.9.1987 to 22.2.1988 whereas the suit was filed on 10.11.1987, therefore, it was the Principal Secretary, who was authorized to exercise the power, thus, the suit was held to be not filed by competent authority. The appeal filed before the lower Appellate Court was also dismissed.

Mr. G.S. Bhatia, learned counsel appearing on behalf of the appellant in support of the memorandum of appeal submitted that both the Courts below erred in giving finding on issue No.3 against the appellant by relying upon the provisions of Section 106 of the Transfer of Property Act. In fact, provisions of Section 106 of the Transfer of Property Act are not applicable to Punjab and Haryana. The defendants admitted the tenancy and the only point to be considered was whether there was a valid termination of the tenancy. The suit was filed by the then Secretary and therefore, there is gross illegality and perversity.

Per contra, Mr. Kunal Vinayak for Mr. S.K. Bansal, learned counsel appearing on behalf of the respondents-defendants supported the judgments and decrees of the Courts below on the premise that the finding of fact and law arrived at by the Courts below leaves no manner of doubt that the Secretary, K. Sheikh Ahmad had no authority or power to institute the suit, owing to the super-session of the Wakf Board whose control was taken over by the Principal Secretary to the Chief Minister, Government of Haryana. The super-session continued during the filing of the suit and therefore, the Principal Secretary of the Government had power to file the suit. The suit was, therefore, not filed by the competent

person and had rightly been dismissed. The provisions of local Rent Act were applicable as the plaintiff miserably failed to prove that property was not governed by the provisions of Section 106 of the Transfer of Property Act, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Bhatia. Provisions of Order 29 Rule 1 of the Code of Civil Procedure, 1908 as amended in 1976 are no longer in dispute. There is a possibility of ratification on the basis of record and circumstances specially during the trial. It is settled law that substantive rights should not be defeated on a technical ground or procedural irregularity so that no injustice is done to any party. A person may be expressly authorized to sign the pleading on behalf of a particular company but the fact remains that the property remained of the Wakf Board. The control and management of the Wakf Board vested with the Secretaries working under the control and aegis of the Principal Secretary. No evidence has been led on behalf of the defendants to belie the stand of the plaintiff that Secretary of the Wakf Board had no authority or at the best, they could have summoned the witness from the concerned Department of Haryana Government. In the absence of the same, adverse inference is liable to be drawn.

Therefore, in my view, both the Courts below have abdicated. Interpretation of the provisions of Order 6 Rule 14 read with Order 29 Rule 1 CPC has already been pondered upon by

Hon'ble Supreme Court in **United Bank of India Vs. Naresh Kumar and others (1996) 6 SCC 660**. Paragraphs 9, 11 and 12 of the same are reproduced herein below:-

“9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

11. The courts below could have held that Shri L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant-Bank must have ratified the action of Shri L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could

have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.

12. The courts below having come to a conclusion that money had been taken by Respondent 1 and that Respondent 2 and the husband of Respondent 3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non-suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.”

As regards termination of tenancy, a notice was served upon defendants, which had not been denied.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100

of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act

was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgments and decrees passed by the Courts below suffer from illegality and perversity and the same are hereby set aside.

Two months' time is granted to the defendants to vacate the premises.

The second appeal is allowed.

(AMIT RAWAL)
JUDGE

September 27, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No