

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

LPA No. 2154 of 2016 (O&M)
in CWP No. 18841 of 2016

Date of decision : 20.3.2018

Subhash Chander

.. Appellant

versus

State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice B.S. Walia**

Present: Mr. C. R. Dahiya, Advocate, for the appellant.
Mr. Samarth Sagar, Additional Advocate General, Haryana.

Rajesh Bindal, J.

Challenge in the present intra-court appeal is to the order dated 9.9.2016 passed by the learned Single Judge.

At the time of issuance of notice of motion, following contentions of the appellant were noticed:-

“This appeal is directed against the judgment dated 09.09.2016.

Before the writ court the appellant impugned a show cause notice dated 01.09.2016 issued to him by the Deputy Registrar Cooperative Societies, Kurukshetra to remove him from the post of Director/Chairman of Kurukshetra Central Cooperative Bank Limited, Kurukshetra. Order dated 02.09.2016 was also impugned which had the effect of suspending the appellant.

We notice from the impugned judgment that the learned Single Judge made the appellant alive to the situation that the writ proceedings were directed against a show cause notice and thus not maintainable as it gave

ample remedies to the writ petitioner to file appeal etc. in the event of an order emerging from the show cause notice. It is probably due to the insistence of the writ petitioner which resulted in the impugned order whereby while dismissing the writ petition on the ground of non-maintainability elaborate discussion has also been recorded on the merits of the issue.

This is now a cause of grievance to the appellant who contends that if the learned Single Judge had concluded on the issue of maintainability of the writ petition he ought to have remanded the matter back with permission to the writ petitioner to submit himself to the show cause notice and the proceedings emanating therefrom to invite an order with availability of remedy of appeal in the event of dissatisfaction, but by virtue of the order of the learned Single Judge all options in this regard have been foreclosed. That apart, learned counsel for the appellant also makes a grievance of the costs which have been imposed upon him.

We have heard the learned counsel for the appellant and have perused the impugned order and are of the opinion that once the learned Single Judge formed an opinion about the non-maintainability of the petition against a show cause notice it would have been only just if the writ petitioner had been left to his remedies in law.

The detailed discussion on the merits of the case would essentially foreclose all options as the competent authority under the law would certainly have no option but to go along with the judgment of the learned Single Judge on merits.

Issue notice of motion for 10.02.2017.

In the meantime, operative part of the impugned judgment imposing costs upon the appellant shall remain stayed.”

The grievance is that though the matter has been left to be dealt with by the departmental authority but still the learned Single Judge has opined to some extent on the merit of the controversy, which may prejudice the case of the appellant. Those observations should not be taken into consideration by the departmental authority while deciding the case of the appellant.

Learned counsel for the State does not dispute the fact that there are certain observations made by learned Single Judge while dismissing the writ petition, though the matter has been left to be decided by the departmental authority.

After hearing learned counsel for the parties, the present appeal is allowed to the extent that any observation made by the learned Single Judge on the merits of the controversy, which is left to be decided by the departmental authority will not prejudice the case of the appellant. The same shall be considered on its own merit, uninfluenced by the observations made in the order.

Part of the order passed by the learned Single Judge imposing cost on the appellant is also set aside.

(Rajesh Bindal)
Judge

20.3.2018
vs

(B.S Walia)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No