

CR Nos.5638, 4219, 4220 & 6346 of 2017 (O&M)

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

Date of decision : 09.01.2019

1. CR-5638-2017 (O&M)

Vijay Singh and others

... Petitioners

Versus

Vasu Dev Goyal and others

... Respondents

2. CR-4219-2017 (O&M)

Mahender Sharma

... Petitioner

Versus

Vasu Dev Goyal and others

... Respondents

3. CR-4220-2017 (O&M)

Sanjay Bindal

... Petitioner

Versus

Vasu Dev Goyal and others

... Respondents

4. CR-6346-2017 (O&M)

Vasu Dev Goyal

... Petitioner

Versus

Vijay Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Attariwala, Advocate and
Mr. Kapil Khanna, Advocate
for the petitioner in CR Nos.5638, 4220 of 2017,
for respondent Nos.3, 4, 7, 11 & 16 in CR-6346-2017.

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Mr. Pawan Kumar, Senior Advocate with
Mr. Rohit Kumar, Advocate
for the petitioner in CR-6346-2017 and
for respondent No.1 in CR Nos.4220, 4219 & 5638 of 2017.

Mr. Brijender Kaushik, Advocate
for respondent Nos.2 and 3 in CR-4220-2017,
for respondent Nos.2 to 4 in CR-4219-2017
for respondent Nos.22 & 23 in CR-6346-2017 and
for respondent Nos.2 and 3 in CR-5638-2017.

AMIT RAWAL, J.

This order of mine shall dispose of four revision petitions bearing CR No.5638 of 2017 titled as “Vijay Singh and others V/s Vasu Dev Goyal and others”, CR No.4219 of 2017 titled as “Mahender Sharma V/s Vasu Dev Goyal and others, CR No.4220 of 2017 titled as “Sanjay Bindal V/s Vasu Dev Goyal and others and CR No.6346 of 2017 titled as “Vasu Dev Goyal V/s Vijay Singh and others”.

The revision petitions bearing No.4219 and 4220 of 2017 are directed against the impugned orders dated 05.06.2017 (Annexure P-8), whereby the civil appeal accompanied by an application seeking leave to appeal with interim application under Order 41 Rule 5 of the Code of Civil Procedure against the judgment and decree dated 24.03.2017, has been entertained and despite the judgment and decree has been stayed, subsequent direction has also been issued to the Administrator to hand over the possession of the Management Committee, Sanatan Dharam Mahila Mahavidyalaya Society, Hansi, to the respondent-Vasu Dev Goyal, erstwhile President, in case, the election are not held by 22.06.2017.

Civil Revision No.5638 of 2017 has arisen out of the impugned order dated 01.08.2017 passed in Civil Appeal No.12 of 01.08.2017

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accompanied by an application seeking leave to appeal preferred against the order dated 30.06.2017 under Order 39 Rules 1 & 2 of CPC, whereby the direction was issued to the Administrator to stay the election process till further orders. An application under Order 41 Rule 5 of the Code of Civil Procedure, without leave to appeal, has been allowed.

Civil Revision No.6346 of 2017 has been preferred by Mr. Vasu Dev Goyal, against the order dated 19.08.2017 (Annexure P-12), whereby the application under Order 1 Rule 10 of CPC (Annexure P-10) for impleadment as party in a Civil Suit No.246-C of 2017 titled as "*Vijay Singh and others v/s Sanatan Dharam Mahila Mahavidyalaya Society (Regd.) through SDM, Hansi-cum-Administrator and others*", has been dismissed.

The Civil Suit No.22-C of 2013 titled as "*Sanjay Bindal and others V/s Sanatan Dharam Mahila Mahavidyalaya Society (Regd.) through SDM, Hansi-cum-Administrator and another*", for declaration that they are eligible for becoming the life members of the defendant-Society and had right to cast the vote and contest the election, was decreed by the trial Court, vide judgment and decree dated 24.03.2017. The operative part of the decree reads as under:-

"This suit coming on 24th day of March, 2017 for final disposal before me (Anil Kumar Yadav), Civil Judge (Jr. Division), Hansi, in the presence of Shri S.K. Rajpal, Advocate for plaintiffs and Shri S.K. Gujjar, Advocate for defendants.

It is ordered that the present suit is hereby decreed partly with costs to the effect that proposed amendment made by the defendant society qua terms and conditions for becoming life members is declared to be null and void and the applicants are held entitled to be considered for life membership according to

the provisions of the constitution of society Ex.P2 which came into effect on 12.10.1980. Administrator of the defendant society is directed to consider the applications of the applicants/plaintiffs along with fresh applications accordingly and decide their candidature for becoming life members within a period of two months strictly and he shall make sincere efforts to hold the elections thereafter keeping in view the aim and objective of this society within a period of three months from the date of disposal of applications for life membership."

As per decree, the Administrator of the defendant-Society was directed to consider the application of the plaintiffs along with fresh application and decide the candidature for becoming life members within a period of two months and to make sincere efforts to hold election thereafter. The aforementioned judgment and decree was not assailed by the defendants, but Vasu Dev Goyal, erstwhile President of the Society, being aggrieved, preferred the appeal, as indicated above, accompanied by an application seeking leave to appeal.

During the pendency of the appeal, Vasu Dev Goyal, appellant before the lower Appellate Court, also filed a CR No.3642 of 2017 for staying the operation of the judgment and decree dated 24.03.2017 with a further prayer to issue time bound direction to decide the interim stay application. The aforementioned revision petition was disposed of by this Court, vide order dated 18.05.2017, with the following direction:-

"Without expressing any opinion on the merits of the case, the instant petition is disposed of with direction to lower Appellate Court to consider ad interim injunction application within a period of 10 days from the date of receipt of certified copy of this order."

In terms of the aforementioned direction, the lower Appellate

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Court without granting leave to appeal, entertained the application under Order 41 Rule 5 of CPC and stayed the judgment and decree with further order, as indicated above.

This Court vide order dated 21.06.2017 in CR-4220-2017, while issuing notice of motion had stayed directions in the impugned order qua handing over charge to respondent No.1. For the sake of brevity, the operative part of the order reads as under:-

"Notice of motion to respondents No.1 to 3 only for 12.7.2017. Meanwhile, the directions in the impugned order qua handing over charge to respondent No.1 by the Administrator if elections are not held by 22.6.2017 shall remain stayed till the next date of hearing.

A copy of this order be given to learned counsel for the petitioner under the signatures of Special Secretary of this Court. "

By interpretation of the aforementioned order, few of the plaintiffs instituted a Civil Suit No.246-C of 2017 seeking following prayer and interim order was passed regarding stay of the elections:-

"Suit for declaration to the effect that the plaintiffs are legal life-members of the defendant institution and for declaration that the Agenda regarding the Election Programme for June-July, 2017 issued vide No.2552-2755 dated 16.06.2017 issued by SDM, Hansi-cum-Administrator is null and void-ab-initio, against law, against facts, highly illegal, nonest in the eyes of law, without authority, in violation of the Haryana Registration & Regulation of Societies Act, 2012 and not binding on the rights of the plaintiffs and the defendants have no right to conduct the elections of the defendant society without affording the plaintiffs and other such members an opportunity to cast votes in the aforesaid elections with a consequential relief of permanent injunction restraining the

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defendants from conducting the elections as per the impugned Agenda of the Election Programme noted above without allowing the plaintiffs and other such members to cast their votes in the aforesaid elections and the defendants be further restrained from receiving any nominations from the candidates intending to contest the elections. On the basis of oral and documentary evidence of all kinds."

In those proceedings, Vasu Dev Goyal/defendant moved an application under Order 1 Rule 10 of CPC, which has been dismissed and therefore, Revision Petition No.6346 of 2017.

In Civil Revision No.5638 of 2017, as indicated above, the plaintiffs in Civil Suit No.246 of 2017, have assailed the impugned order dated 01.08.2017 (Annexure P-18), whereby the interim application without granting leave to appeal, has been entertained and the order dated 30.06.2017 passed by the Vacation Judge, Hansi, was stayed.

Mr. G.S. Attariwala, learned counsel appearing on behalf of the petitioner submitted that learned Additional District Judge could not have stayed the judgment and decree dated 24.03.2017 as well as vacated the stay order dated 30.06.2017 passed in a subsequent suit bearing No.246-C of 2017, without entertaining or passing an order in the application seeking leave to appeal. The third party appeal at the instance of the aggrieved party against the judgment and decree is permissible, but not without leave to appeal.

Mr. Pawan Kumar, learned Senior Counsel assisted by Mr. Rohit Kumar, learned counsel appearing on behalf of the respondent(s) submitted that the impugned orders have been passed in pursuance to the direction dated 18.05.2017 passed by this Court in CR No.3642 of 2017 and

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therefore, there is no illegality and perversity in the impugned orders. The petitioner was seriously effected to the interim order and the pendency of the suit bearing No.246 of 2017 as being the member of the society, was aspirant to contest the suit. Stay of the election seriously prejudiced his rights as the appointment of the Administrator was also without jurisdiction. Both the suits were barred under Section 89 of the Haryana Registration & Regulation of Societies Act, 2012. In such circumstances, Vasu Dev Goyal was compelled to file miscellaneous appeal against the order dated 30.06.2017 passed in second suit, thus, supported the impugned orders.

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. Attariwala.

From the perusal of the interim order passed by this Court, in fact the direction contained in the order impugned, entertaining the appeal under Order 41 Rule 5 of CPC without granting any leave to appeal, the direction of handing over the charge to the erstwhile President, in case of non-holding of election by 22.06.2017 was stayed. In my view, no cause of action accrued in favour of the affected parties, who were allegedly claiming to be member of the society, to file the second suit and seek the stay of the elections. They were ill-advised.

Faced with the aforesaid situation, Mr. Attariwala, on instructions from his client, seeks indulgence of this Court to withdraw the suit. In such circumstances, the application under Order 1 Rule 10 of CPC is rendered infructuous as there is no grievance. Accordingly, the revision petition No.6346 of 2017, is disposed of having been rendered infructuous.

Concededly the appeal can be filed by third party, but not

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without leave of the Court. The lower Appellate Court had no other option, but to decide the application in view of the directions. The impasse only occurred owing to the directions passed by this Court in CR No.3642 of 2017, perhaps this Court was not apprised with regard to the fact that application for leave to appeal was still pending consideration. In view of such circumstances, I am of the view that interim application, in the absence of the leave to appeal, could not have been entertained by the Court below.

Mr. Attariwala, at this stage, submits that this point was argued, but not touched by the Court below. Be that as it may, without commenting further on the impugned order, I am of the view that the impugned order entertaining the application under Order 41 Rule 5 of CPC preferred against the judgment and decree dated 24.03.2017 as well as interim application dated 30.06.2017, was not maintainable and could not have been passed, thus, the same is fallacious and without jurisdiction and set aside. Accordingly, **CR Nos.5638, 4219 and 4220 of 2017** are allowed.

Before parting with the judgment, I deem it appropriate to direct the lower Appellate Court to decide the application as well as the appeal as early as possible preferably within a period of two months from the date of the receipt of the certified copy of this order.

In the meantime, interim order dated 21.06.2017 shall continue.

09.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**