

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

CR No.103 of 2019 (O&M)

Date of decision: 20th February, 2020

Romesh Lal Khajuria

... Petitioner

Versus

Sanjeev Dhir & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Balwant S. Billowaria, Advocate for the appellant.

Mr. Piyush Kant Jain, Advocate for respondent No.1.

Mr. Ferry Sofat, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

The plaintiff Sanjeev Dhir one of the partners of M/s Puneet Knitwear filed a suit against the present petitioner Romesh Lal Khajuria partner of M/s Vikram Exports and Wool & Woollens Export Promotion Council (hereinafter referred to as, 'the Council') seeking a decree for mandatory injunction directing the defendant No.1 (the Council) to declare the vote casted by the Chairman/ Acting Chairman for election to the post of Vice Chairman of the Council and further a decree for permanent injunction restraining defendant No.2 (present petitioner), his attorneys, agents, representatives and associates etc. from illegally obstructing or interfering in or stalling the election process to the post of Vice Chairman of the Council.

During the course of proceedings in the suit, an application under Order VII Rule 11 CPC was moved by the present petitioner defendant No.2 for rejection of the plaint. It is by the impugned findings dated 09.10.2018 the Court of learned Civil Judge (Junior Division), Ludhiana holding that the application was without any merits, dismissed the same. The instant revision is an outcome of the same.

Heard at length Mr. Balwant Singh Billowaria, Advocate for the appellant; Mr. Piyush Kant Jain, Advocate on behalf of respondent No.1; Mr. Ferry Sofat, Advocate representing respondent No.2 and perused the records of the case.

Wool & Woollens Export Promotion Council also popularly known as 'WWEPC' had come into being for the promotion and export of all types of wool and woollens/acrylic blended products of India and to facilitate the achievement of this objective, the functioning of the Council is under the administrative control of Ministry of Textiles, Government of India, New Delhi. The Council being a non-profit organization under the Societies Registration Act, 1860 is governed by the Memorandum and Articles of Association, which is even duly the legally constituted body under the Societies Registration Act, 1860, and its administration is through elected representatives from the export trade, ex-officio members and nominated Government officials. The Council is headed by a Chairman, Vice Chairman with other functionaries and the office of

Director General of Foreign Trade (DGFT), Government of India which is primarily a registering authority to issue registration-cum-membership certificate to its members, who are dealing in the exports of wool and woolen blended products and the primary function of the Council is to implement the policies and programs of the Government of India and act as a bridge between the private individuals dealing in such products and the Government to carry on with the policies and programs for enhancement of trade in such products and which is very much varied from building exports/imports offering guidance and motivating the dealers in such products for the economic upliftment of the country. The Council has its registered head office at New Delhi with Sub Offices at various other cities including Ludhiana.

Plaintiff Sanjeev Dhir filed the suit and his preliminary grouse is directed against defendant No.2 (present petitioner) Romesh Lal Khajuria claiming that the plaintiff was a qualified person to be the member of the Council and that the Council had notified the election process to the post of Vice Chairman of the Council through its letter dated 26.02.2018 as provided by virtue of Article 22(a) of the Articles of Association for which it was permissible to have voting and polling through electronic means. The dates were slated between 15.03.2018 to 26.03.2018 for E-voting and polling at the venue was fixed for 28.03.2018. The voting process was to be presided over by the Acting

Chairman of the Council. The persons interested in participating in this election were to submit their nominations by 09.03.2018 and which nominations were to be scrutinized on 12.03.2018 and postal ballots were to be issued on 13.03.2018 and result was to be declared on 28.03.2018. The same was as per the provisions of Articles 32 and 52 of the Articles of Association.

Under the Articles of Association, the Chairman had a right to cast his vote. Upon filing of the nominations, papers of the plaintiff, one Ravinder Chand Khanna and defendant No.2 Romesh Lal Khajuria (present petitioner) were found valid and postal ballots were issued to them. The voting was accomplished by 28.03.2018 and it is claimed by the plaintiff that the present petitioner had polled and so the plaintiff 51 votes each. Claiming that the Acting Chairman of the Council was obliged to cast his vote but instead of the doing so and declaring the results, the plaintiff claims that the Acting Chairman Sandeep Thapar at the behest of defendant No.2 were intentionally dilly-dallying the matter for declaration of results, and frustrated and defeated the very election process to the Council. It is with this end in view the present suit has come about.

It is when after appearance of the defendants the matter was to be slated for filing of written statements/replies, an application under Order VII Rule 11 CPC was moved by the present petitioner defendant

No.2 Romesh Lal Khajuria for rejection of the plaint. The primary grouse of the applicant is that all Election Rules were approved on 03.03.2017 by the administration known as Election Rules 2015 whereby all legal matters shall be subject to jurisdiction of Delhi Courts only and therefore, the Court at Ludhiana did not have the territorial jurisdiction to entertain, try and decide the present matter and further the provisions of Articles 32 and 52 of the Articles of Association were in utter disregard to Rule 28(c) of the Election Rules and that the decision was to be arrived at by declaring elected the candidate and not by casting vote of the Chairman/ Acting Chairman and in case of a tie, lots shall be drawn and whichever candidate wins the lot would be declared as elected, and further that on account misjoinder and non-joinder of necessary parties, the plaint ought to be rejected.

In its reply the plaintiff besides taking usual preliminary objections as to maintainability, being with an ulterior motive to delay and scuttle due process of law, on merits though accepted the status of the Council and the election process but denied the averments of the application that the suit was not maintainable and it was with a motive to harass and humiliate the plaintiff by the defendant and that the proper procedure for election to the post of Vice Chairman of the Council had been duly adopted. In the response, the plaintiff denied the claim of the applicant that no cause of action has accrued to the plaintiff to institute

the suit at Ludhiana holding out that the Council has its office at Ludhiana as well and therefore, territorial jurisdiction vests in the Courts at Ludhiana. Denying each and every averment of the application, sought its dismissal. The trial Court through impugned findings delivered on 09.10.2018 dismissed the application and that is what has led to the invocation of the jurisdiction of this Court through this civil revision.

After giving a thoughtful consideration to the lengthy arguments that have come about from the learned counsel for the two sides and deeply going through the records of the case. Before venturing into the relative merits of the case of the two sides, the very statutory provisions of Order VII Rule 11 CPC needs to be perused and which are reproduced as below:-

“11. Rejection of plaint – The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*

- (d) *where the suit appears from the statement in the plaint to be barred by any law;*
- (e) *where it is not filed in duplicate;*
- (f) *where the plaintiff fails to comply with the provisions of rule 9;*

PROVIDED that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

A plain reading of these provisions shows that the plaint can be rejected only in the eventuality where it does not disclose the cause of action, the claim is under-valued and the party fails to rectify it within the timeframe or on grounds of insufficiency of the stamp when the plaintiff fails to affix requisite stamp-papers within the timeframe, further that from the very averments in the plaint the same is barred by the Law of Limitation or non-fulfillment of the subsequent provisions incorporated by amendment which had come about with effect from 01.07.2002 in not filing the plaint in duplicate and when the plaintiff fails to comply with Rule 9. However, with subsequent amendment with effect from 01.02.1977, a proviso had been made to these provisions that the Court

for the correction of the valuation or supplying of the requisite stamp-papers may extend time after satisfying the reasons for the same and affording the party requisite opportunity to do the needful and on refusal to do so, may invite appropriate orders of rejection.

The very scope of these provisions is with a specific motive to provide the Courts to scrutinize the averments made in the plaint and to ensure that on account of some mischievous/misadventure, there has been wrong drafting bestowing the Court right to decide the matter which otherwise it was not permissible and therefore, to nip the mischief at the bud rather than unduly wasting time of the Courts. Thus, from it all emancipates that these provisions are merely tools in the hands of the Courts to have a preliminary scrutiny of the suit whether it satisfies all the requirements of the law or not. Such powers though need to be exercised at the very threshold of the invocation of jurisdiction of the Court by filing plaint but the law does not restrict at what stage it may exercise and may be wherever the Court feels it convenient and in the interest of justice can reject the plaint. It is further clarified that filing or non-filing of written statement to the plaint is not a prerequisite for invocation of these powers of the Court.

To the specific query of the Court, neither Mr. Balwant Singh Billowaria, Advocate for the petitioner nor Mr. Piyush Kant Jain, Advocate representing respondent No.1 could differ over the fact that the

Memorandum and Articles of Association of the Council are binding on these members and the very election process is ruled by the Election Rules, 2015 as also that the rules and regulations governed by virtue of the Memorandum and Articles of Association form a contract amongst the members of the Society (Council in the present case) and they are necessarily required to follow the same. Rule 29 of the Election Rules under the head 'General' is reproduced below to lay emphasis:-

"29. General:

- (a) The record of the elections shall be kept in the Office of the Wool & Woolens Export Promotion Council duly sealed for six months after the election and then destroyed.*
- (b) The dates of all postings on web, sending and receiving nomination papers, postal ballot papers withdrawal and all notices and papers etc. shall be taken to be authentic and final as per records of the Office of the Wool & Woolens Export Promotion Council.*
- (c) In case of any dispute about the interpretation of any of Rules of Election, the decision of the Election Committee shall be final and binding.*
- (d) In case of variations, if any, in the number of days in the schedule of election, the days and time given in the notice of schedule of the election will be final. In the event of any need arises, the Returning officer is authorized to issue necessary corrigendum about such*

date(s)/day(s)/time. In such case, no fresh notice is required to be issued and the notice(s) be placed on Website/Notice Board of W&WEPC.

- (e) Any appeal on matter pertaining to election shall be filed within 15 days from the declaration of result with the Joint Secretary (Wool), Ministry of Textiles, Government of India and the decision of latter shall be final and binding.*
- (f) All legal matters shall be subject to jurisdiction of Delhi Courts only.*

Thus, Rule 29 (e) of these Election Rules provides for an appeal on matters pertaining to election and which needs to be filed within 15 days of the declaration of results with the Joint Secretary (Wool), Ministry of Textiles, Government of India and the decision of the latter shall be final and binding.

Since the present dispute envisages over the election to the post of Vice Chairman of the Council and therefore, falls within the ambit of “**matter pertaining to election**” and for which the own rules applicable to the parties to this Council provides a specific remedy by way of appeal to the Joint Secretary (Wool), Ministry of Textiles, Government of India. Learned counsel for the respondent plaintiff could not bear out and show to this Court if the plaintiff before invoking the jurisdiction of the Civil Court at Ludhiana has had resort to this provision

under its own Election Rules, which govern these elections and the members of this Council, of which the private individuals to this suit cannot escape the rigor. Since the Council is a society under the Societies Registration Act, 1860 and has framed its own rules and regulations of which Election Rules are part and parcel, it is incumbent upon these members contesting over the election to first exhaust the remedies provided under their rules and even otherwise need to have exhausted all the remedies available to them under their own rules and regulations and thereafter to invoke jurisdiction of the Courts. This Court without feeling the necessity to further advert on to the merits over the very legality, validity and propriety of the findings under assail in this revision, which has come about by invoking jurisdiction of this Court by virtue of Article 227 of the Constitution of India, feels it expedient, just and in the interest of justice to direct the parties to first invoke jurisdiction of the authority under this remedy available to them by virtue of Election Rules and thereafter, come up before this Court. The learned Sub Judge 1st Class though had made valiant efforts in passing this order but failed to take notice and cognizance of these essentialities governing the Council regarding whose election the parties have come up before that Court.

In view of the fact that the Election Rules of the Council were framed as per the provisions of the Articles of Association and duly resolved and approved in its 170th meeting of the Committee of

Administration held on 24.06.2015 purely for the purpose of election of elected heads and members of the Committee of Administration and therefore, being approved by the administrators of which the State is part and parcel and certainly carries a statutory value and enforcement and thus, the Court below has fallen into an error necessitating intervention by this Court thereby setting aside the impugned order dated 09.10.2018 and directing the parties as well as the trial Court to ensure due invocation of jurisdiction of the authorities under the Election Rules and after availing off this specific remedy under their own Rules to chose their legal remedy as per law. The present petition stands disposed off accordingly. The entire proceedings before the trial Court having been rendered otiose debars the trial Court from proceeding with the suit.

(FATEH DEEP SINGH)
JUDGE

February 20, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No