

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserved: 22.02.2021

Date of Decision: 06.04.2021

+ CM(M) 70/2021

SH. VIRENDER SINGH Petitioner
Through Dr.Amit George, Mr.Nitesh
Mehra, Mr.Ankit Kumar,
Ms.Amita Singh, Advs.

versus

THE DELHI STATE COOPERATIVE BANK LTD.
.....Respondent
Through Mr.Anand Yadav &
Mr.Pradyumn Rao, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner challenging the order dated 18.01.2021 passed by the learned Senior Civil Judge (Central), Tis Hazari Courts, New Delhi in appeal, being MCA No.13/2020 titled *The Delhi State Cooperative Bank Ltd. v. Sh. Virender Singh*, allowing the appeal filed by the respondent herein and dismissing the suit of the petitioner as pre-mature and without any cause of action.

2. The appeal had been filed before the learned Appellate Court challenging the *ad interim* order dated 30.09.2020 of the learned Civil Judge-07, Central, Tis Hazari Courts, New Delhi in suit, being CS SCJ

1234/2020, restraining the respondent from proceeding further with the inquiry/departmental proceedings against the petitioner.

3. The petitioner has challenged the Impugned Order on the ground that the appeal having been filed only against an *ad interim* order of injunction, the learned Appellate Court has erred in dismissing the suit itself of the petitioner.

4. In the present case, the petitioner had filed the above suit praying for the following relief:

“1. Pass a decree of Permanent & Mandatory Injunction in favor of the Plaintiff and against the Defendants thereby restraining the Defendant from initiating/continuing any enquiry/departmental proceedings against the Plaintiff;

2. Pass a decree to declare the Show Cause Notice dated 16.09.2020 and Chargesheet dated 23.09.2020 as null and void in favor of the Plaintiff and against the Defendants.”

5. Alongwith the plaint, the petitioner had filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘Code’) praying for an order restraining the respondent from initiating/continuing any inquiry/departmental proceedings against the petitioner till the disposal of the suit.

6. The suit was listed before the learned Trial Court on 30.09.2020 for consideration of the application of the petitioner under Order XXXIX Rule 1 and 2 of the Code and the application of the respondent under Order VII Rule 11 of the Code.

7. The application of the petitioner was partly heard and the following order was passed therein:

“Present: None.

Vide separate order passed today, the application u/o 7 Rule 11 CPC has been disposed of as dismissed.

Regarding the injunction application, it has been the argument of the plaintiff that he is not able to prepare the written statement of defence in reply to charge-sheet dated 23.09.20 as no document has been provided to him alongwith the said charge-sheet. The counsel for the defendant has not specifically denied this claim.

Accordingly, the defendant is directed to supply the copy of all the requisite documents to the plaintiff within 7 days so as to enable him to prepare reply to the aforesaid charge-sheet. Copy of the said documents be also filed in the court within 7 days.

The defendant is restrained from proceeding further with the inquiry/departmental proceedings in question till the next date of hearing.

Adjourn the matter for arguments on injunction application for 09.11.2020.”

8. On the same day, by a separate order, the application of the respondent under Order VII Rule 11 of the Code was rejected by the learned Trial Court, holding therein that the suit was not barred under Section(s) 70, 129 and 132 of the Delhi Cooperative Societies Act, 2003.

9. The respondent challenged the order of *ad interim* injunction before the learned Appellate Court in form of the above referred appeal.

10. It is noted that the order dismissing its application under Order VII Rule 11 of the Code remained unchallenged.

11. By the Impugned Order, however, the learned Appellate Court dismissed the suit of the petitioner itself, holding that the suit is premature and without any cause of action. The learned Appellate Court in the Impugned Order has observed as under:

“24. Thus, the crux is that the SCN and the charge sheet per se do not give any cause of action and court can interfere only if the disciplinary action is being taken by someone who is not authorized to do so or principles of natural justice are not being followed.

In the case at hand, the SCN had been issued on 16.9.2020 and the plaintiff had got an opportunity to reply to the same. Thereafter charge-sheet has been served upon the plaintiff on 23.9.2020, along with certain documents. The plaintiff himself had stated that he was supplied with statement of charges, statement of allegations, statement of imputation and documents. He had stated that he had not been supplied with a single document reflecting his involvement. It is further held that the bank is holding one sided enquiry. The only ground taken by the plaintiff in the plaint is the non supply of documents. However, it has been held in Chandrama Tewari Vs. UOI, 1988 AIR (SC) 117, that it is not necessary that each and every document must be given to the delinquent official and it is further not necessary that non supply of any document per se would lead to violation of natural justice and interference by the court. If a document, even though mentioned in the memo of charges, is not relevant to the charges or if it is not referred to, or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the official, no exception can be taken

to the validity of the proceedings or the order. If the document is not used against the party charged of, principles of natural justice would not deemed to have been violated.

In a nutshell, reading of the abovesaid cases and the ratio laid down by our Hon'ble courts, reflects that there are stages in disciplinary proceedings

- a. Show Cause Notice*
- b. Explanation of charge*
- c. Enquiry proceedings*
- d. Final result of the enquiry proceedings.*

Stage a and b, as enumerated above, does not per se give any cause of action, and the court cannot interfere at these stages. It is only at stage c and d, that the court can interfere, that too only when the principles of natural justice are shown to have been violated.

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25. ...In the case in hand, the inquiry proceedings are yet to be started. Furthermore, the respondent herein has already submitted his reply to the charge-sheet.

Hence, the above stated judgment is not applicable to the case at hand.

26. In view of the above, it is held that the present suit is premature, there is no cause of action and civil court cannot interfere at this premature stage. Hence, plaint itself is not maintainable. Accordingly, appeal is allowed. Suit is dismissed for being not maintainable."

12. The learned counsel for the petitioner submits that the learned Appellate Court has erred in passing the Impugned Order inasmuch as the application of the respondent under Order VII Rule 11 of the Code had been dismissed by the learned Trial Court vide its order dated 30.09.2020. The said order remained unchallenged by the respondent. The scope of the appeal before the learned Appellate Court was

therefore confined only to the *ad interim* injunction granted by the learned Trial Court in a separate order passed on an application filed by the petitioner under Order XXXIX Rule 1 and 2 of the Code. Placing reliance on the judgment of the Supreme Court in ***Jawahar Bharti Education Trust & Ors. v. S.Y. Mairappa & Anr.***, [JT 1988 (1) SC 67], the learned counsel for the petitioner submits that the Supreme Court has deprecated such practice and held that the question of maintainability of the suit should be left to be adjudicated by the learned Trial Court on its own merit.

13. He submits that the reliance placed by the respondent on Order XLI Rule 33 of the Code in support of the Impugned Order, is also ill-founded inasmuch as the said provision cannot be used to abrogate the other provisions in the Code with regard to the filing of the appeals, cross objections, etc. He submits that the order passed by the learned Trial Court dismissing the application under Order VII Rule 11 of the Code, not having been challenged by the respondent, the respondent cannot invoke provision of Order XLI Rule 33 of the Code in support of the Impugned Order. In this regard, he places reliance on the judgment of the Patna High Court in ***Bir Singh v. Budhu Ram & Ors.***, AIR 1950 Pat 346.

14. The learned counsel for the petitioner submits that even otherwise, the appeal being against an *ad interim* order of injunction, the provision of Order XLI Rule 33 of the Code would not apply.

15. On merit of the order, he submits that the learned Appellate Court has erred in not appreciating that there is no complete bar on a suit challenging the Show Cause Notice or Inquiry Proceedings. Once

it is established that there is no complete bar on the said suit, the suit itself cannot be held to be not maintainable.

16. On the other hand, the learned counsel for the respondent submits that though there was no challenge of the respondent to the order passed dismissing the application under Order VII Rule 11 of the Code, the learned Appellate Court by its order dated 04.11.2020 had listed the appeal for arguments on the maintainability of the suit. The petitioner had also filed his written submissions on maintainability of the suit before the learned Appellate Court and therefore, the learned Appellate Court was competent to adjudicate on the said issue. Merely because the finding of the learned Appellate Court has gone against the petitioner, the petitioner cannot be heard in challenge to the same.

17. The learned counsel for the respondent submits that the learned Appellate Court is empowered to consider the issue of the maintainability of the suit in terms of Section 107 read with Order XLI Rule 33 of the Code. He further submits that, even otherwise, the present petition would not be maintainable inasmuch as the order dismissing the suit is appealable and therefore, the proper remedy available to the petitioner is in form of an appeal.

18. On merit, the learned counsel for the respondent submits that the learned Appellate Court had rightly concluded that the issuance of Show Cause Notice and/or charge sheet *per se* does not give rise to any cause of action as it does not amount to adverse order which affects the rights of any party. In support, he places reliance on the following judgments:

- ***Paruchuru Thirumala Satyanarayanacharyulu & Anr. v. Vannava Ramalingam & Ors.***, 1951 SCC OnLine Mad 17;
- ***Syed Wajidullah Hussaini (Died per LR's 2 to 7) & Ors. v. Yousuf Begum (Died Per Lrs. R-2 and R-3) & Ors.***, 2017 SCC OnLine Hyd 650;
- ***Chandrama Tewari v. Union of India***, 1988 AIR (SC) 117;
- ***Secretary, Min. of Defence v. Prabhash Chandra Mirdha***, (2012) 11 SCC 565; and
- ***A M Seenuvasan v. The Chief Executive Officer, Tamilnadu Khadi Board***, [Judgment dated: 17.05.2017, of the Madras High Court in WA(MD) No.534 of 2017]

19. I have considered the submissions made by the learned counsels for the parties.

20. As is evident from the narration of facts, the respondent had filed an application under Order VII Rule 11 of the Code challenging the maintainability of the suit contending that there was a bar against the same under the Delhi Cooperative Societies Act, 2003. The said application was dismissed by the learned Trial Court vide its order dated 30.09.2020. There is no challenge made to the said order and therefore, the order gained finality. In fact, the learned Appellate Court in its order dated 14.10.2020 records the submission of the learned counsel for the respondent that he would not be leading any arguments against the order passed under Order VII Rule 11 of the Code and will confine his arguments only against the order restraining the respondent from further inquiry. It is correct that in the order dated

04.11.2020 the learned Appellate Court had directed listing of the appeal for arguments on the maintainability of the suit itself, however, the same was clearly beyond the scope of the appeal.

21. In ***Jawahar Bharti Education Trust*** (supra) the Supreme Court, faced with the similar situation, had passed the following order:

“2. Heard learned counsel for the parties. The Trial Court had entertained the suit and had granted an interim order of injunction against which an appeal was carried to the High Court. The High Court has come to the conclusion that the suit was not maintainable. There appears to be force in the submission on behalf of the appellants that on the basis of the finding of maintainability, the question of injunction has not been examined by the High Court while disposing off the matter.

3. The question as to whether the suit lay would be an issue for examination at the trial and, therefore the observation that the suit is not maintainable while disposing of the appeal in the miscellaneous matter would not be appropriate. We direct that the question of maintainability of the suit should be left to be adjudicated by the trial court and so far as the question of injunction is concerned the matter should go to the High Court for disposal on its own merit. Both the parties have agreed that they would appeal before the High Court on 16 Nov. 1987, when the matter would be listed before the appropriate bench. In view of what we have said the order of the High Court will stand set aside. The appeal is disposed of accordingly. No costs.”

22. Even otherwise, a perusal of the judgments sought to be relied upon by the respondent against the maintainability of the suit, do not support the proposition that a suit challenging the Show Cause Notice or an inquiry is not maintainable under any circumstances or would always be liable to be dismissed as being premature. There is no complete bar on the maintainability of the suit, though, the scope of interference in such a suit by the Court in a disciplinary inquiry or Show Cause Notice is highly limited.

23. In *Secretary, Min. of Defence* (supra), the Supreme Court had summarized the law to the effect that charge sheet cannot ‘generally’ be a subject matter of challenge. The Supreme Court further observed that a charge sheet can be challenged even on account of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, albeit, the scope of interference of the Court on this ground is highly limited.

24. In *Union of India & Anr. v. Kunisetty Satyanarayana*, (2006) 12 SCC 28, again the Supreme Court, while emphasising that a mere Show Cause Notice or charge sheet does not infringe the right of an employee, held that in some very rare and exceptional cases, a charge sheet or Show Cause Notice may also be quashed by the High Court.

25. The above judgments clearly show a distinction between the maintainability of a suit challenging the Show Cause Notice as against the scope of interference by the Court in such a suit. While the suit may be maintainable, the scope of interference by the Court is highly limited. It would be for the petitioner to satisfy the learned Trial Court and the learned Appellate Court as to whether the case of the

petitioner falls within the ambit of such limited scope of interference. However, the suit could not have been said to be not maintainable by the learned Appellate Court when it was exercising its jurisdiction only against the *ad interim* order of injunction granted by the learned Trial Court during the pendency of the application under Order XXXIX Rule 1 and 2 of the Code filed by the petitioner.

26. The Impugned Order having been passed by the learned Appellate Court in excess of its jurisdiction, the remedy of the petitioner, therefore, cannot be relegated to a remedy of appeal.

27. In view of the above, the Impugned Order is set aside and the matter is remanded back to the learned Appellate Court by reviving the appeal pending before it, to be adjudicated on merit. The parties shall appear before the learned Appellate Court on 19.04.2021.

28. The petition is allowed. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 06, 2021/Arya/G/P