

**HIGH COURT OF ORISSA : CUTTACK**  
**SAO NO.4 OF 2021**

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment/order dated 27.09.2021 passed by learned 2<sup>nd</sup> Additional District Judge, Berhampur in RFA No.27 of 2018.

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Ramani Ranjan Mohanty :::: Appellant.

-:: VERSUS ::-

W.V. Raja :::: Respondent.

**Advocate(s) who appeared in this case through virtual mode.**

For Appellant ... M/s. P.K. Rath, A. Behera,  
S.Das & S. Rath, Advocates.

For Respondent ... Mr. Y. Das, Sr. Advocate  
M/s. Rajeet Roy, S.K. Singh, S.  
Sourav & T.P. Tripathy,  
Advocates

**CORAM :**

**MR. JUSTICE D. DASH**

**Date of Hearing: 07.01.2022 :: Date of Judgment: 25.01.2022**

The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment/order passed by the learned 2<sup>nd</sup> Additional District Judge, Berhampur in RFA No.27 of 2018.

By the said judgment/order, the Appeal filed by the Respondent (Defendant No.2) under section 96 of the Code has been allowed in remanding the matter to the Trial Court for carrying out certain directions given thereunder.

The Association i.e. Ganjam District Cricket Association (for short, 'the GDCA'), registered under the Societies Registration Act, 1860 represented by the President (as stated) had filed the suit i.e. C.S. No. 297 of 2013. The present Appellant had been arraigned therein as the Defendant No. 1 being described as the former Secretary of Plaintiff-Association whereas this Respondent had been arraigned as the Defendant No.2.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff-Association said to have been represented by one Ramesh Chandra Patra filing the suit has prayed for the declarations that (i) the revised by-law of the Society is valid and binding on the office bearers of the Plaintiff-Association; (ii) that the Defendant No. 1 is not the Secretary and is a removed member of the Plaintiff-Association; and (iii) that the election of the office bearers of the Plaintiff-Association held on 10.11.2013 is void.

It has been further prayed that the Defendant Nos. 1 and 2 and other office bearers and their henchman be restrained from interfering in the affairs of the Plaintiff-Association and bring any liaison or contract with the Apex Association of the State i.e. Odisha Cricket Association (in short, 'the OCA').

It is stated that on 18.9.1988 the Plaintiff-Association was formed to promote cricket playing activities in the District of Ganjam. It has been affiliated to the OCA. The Plaintiff-Association was registered under the Societies Registration Act, 1860 on 14.10.1988, with its own by-laws for the organization, control of its activities and other things. One Sri Ramesh Chandra Patra and the Defendant No. 1 had been elected to the posts of President and Secretary respectively of the

Plaintiff-Association in the election held on 6.3.2005. This election was challenged in Civil Suit No. 124 of 2008 in the court of learned Civil Judge (Senior Division). The court upheld the said election. In the said election, the following persons were the office bearers:-

- (i) Ramesh Chandra Patra (President)
- (ii) Suresh Chandra Mohapatra (Vide President)
- (iii) Ashok Kumar Sahu (General Secretary)
- (iv) Ramani Ranjan Mohanty (Joint Secretary)
- (v) Trilochan Panigrahi (Joint Secretary)
- (vi) Laxmi Kanta Patra (Treasurer).

It is stated that on account of resignation of Ashok Kumar Sahu (iii), the elected General Secretary, the Defendant No. 1 being the Joint Secretary took charge of the said office. There being several discrepancies and loopholes in the by-laws of the Association, the President decided to draft the revised by-law and that was finally approved in the General Body Meeting held on 23.10.2011. It had been sent to the District Magistrate-cum-Collector, the Registering Authority, OCA and the Additional Registrar of Societies-cum-Additional District Magistrate, Ganjam for approval. The Sub-Collector submitted his enquiry report on 31.12.2011 to the said revised by-laws, whereafter it was approved by the Additional Registrar of Societies and President Ramesh Chandra Patra circulated a notice with agenda of different items on 15.1.2012 convening the Special General Body Meeting on 5.2.2012. Revised by-laws being apprised to the members present to the General Body Meeting; it was decided to conduct the election by the end of April, 2013. In the said meeting, the voter list has been prepared and finalized. Accordingly, letters were issued to the Authorities. Finally, after observing all the formalities, the election was conducted on

8.4.2012. In the said election the following persons were elected as the office bearers of the Plaintiff-Association:-

- (i) Ramesh Chandra Patra (President).
- (ii) Y. Rabindranath (Vice President-1).
- (iii) Prakash Ch. Panda (Vice President-2).
- (iv) Ramani Ranjan Mohanty (Secretary).
- (v) Trilochan Panigrahi (Joint Secretary-1).
- (vi) Debendra Biswal (Joint Secretary-2).
- (vii) P.Prasad Rao (Treasurer).

It is next stated that the dissention arose between the parties thereafter regarding non-submission of the audited bank account of the Plaintiff-Association by the Treasurer and Secretary. Thus, the differences between the President and Secretary arose. In the next Special General Body Meeting on 30.12.2012, membership of one Manikeswar Prasad Dev and Debabrata Dev had been ceased. In the Special General Body Meeting on 7.4.2013, the Secretary and the Treasurer were removed and in their place Manoj Kumar Singh was made the Secretary-in-charge and one Pradip Kumar Das was kept as Treasurer in-charge by an election in the said meeting and they were to remain in-charge till the next election. The Secretary and Treasurer then were directed to handover all the books of accounts and other documents in their custody which they did not. So in the next meeting, the primary membership of the Secretary, Treasurer and two others were ceased. The Defendant No. 1 as the Secretary then sent letters questioning the said Annual General Body Meeting held on 28.7.2013 and called for a General Body Meeting to be held on 18.9.2013 which was resisted by the President. However, despite such objection by the President, the meeting was held on 15.9.2013 and in that meeting, revised by-laws were rejected by restoring the old by-laws; the Secretary

and the Treasurer stood restored to their position and an Ad hoc Committee was constituted of five members to run the day to day affairs of the Plaintiff-Association and take further call to conduct the election within two months. Pursuant to the said agenda, the election was conducted on 10.11.2013 by nominating an Election Officer as per the provision of old by-laws. The Plaintiff-Association represented by said President asserted that the said election was illegal and thus not binding. It has been further stated that the Office bearers so declared to have been elected in that meeting have no right or authority over the functioning of Plaintiff-Association in carrying out any such activity.

With all these pleadings, the suit was filed for the reliefs as already indicated in the previous paragraph.

4. The Defendants in their written statement while traversing the plaint averments have mainly stated that said Ramesh Chandra Patra who has filed the suit representing the Society as its President has no authority to institute the suit. They have asserted the election held on 10.11.2013 to be valid and approved by General Body of the Plaintiff-Association. It is next stated that the President Ramesh Chandra Patra has misappropriated a sum of Rs.2,46,000/- by withdrawing the same from the account of the Plaintiff-Association without any authority and that the office bearers of the Plaintiff-Association so elected by the election held on 10.11.2013 have been recognized by the OCA. With such pleadings in countering to the plaint averments, they prayed for dismissal of the suit.

5. The Trial Court on the above rival pleadings framed in total seven issues. Proceeding to answer issue no. 3 as to the validity of the election held on 8.4.2012 as per the revised by-laws, the answer has been recorded that the election held as per the provisions of the said revised by-law on 8.4.2012 is valid.

Next coming to answer issue no. 4 on the status of Defendant No. 1 as the Secretary and Defendant No. 2 as a member of the Plaintiff-Association and the question as to the removal of the Defendant No.1 (Secretary) by resolution dated 7.4.2013; it has been said that the removal of the Defendant No. 1 from his post and duties vide resolution dated 7.4.2013 is illegal. Both the Defendants are held to be the members of the Plaintiff-Association and it has been held that the Defendant No. 1 is the Secretary of the Executive Council of the Plaintiff-Association. On the other issue, the election conducted by the Ad hoc Committee on 10.11.2013 has been held to be illegal. Further taking into account the developments from time to time, the Trial Court has taken a view that there are several lacunas and deficiencies in the original by-laws and those are to be amended in order to meet the present situation. Having held as above, the Trial Court observed that the office bearers of the Executive Council elected as per the election held on 6.3.2005 which has been earlier upheld in the previous suit, has asked for conducting election.

6. The Trial Court at the end in answering issue nos. 1 and 2 as to the maintainability of the suit and cause of action for filing the same has concluded that the Plaintiff has miserably failed to establish his case and he has no cause of action for filing the suit. Accordingly, the ultimate decision has gone for dismissal of the suit holding the Plaintiff not entitled to any of the reliefs claimed.

7. The suit thus being dismissed by the Trial Court; that Ramesh Chandra Patra who had instituted the suit in his capacity as President of Plaintiff-Association, as claimed did not file any Appeal.

However, the dismissal of the suit was called in question by the Defendant No. 2 in carrying an Appeal under section 96 of the Code.

It may be stated here that the said Defendant No. 2 had been arraigned in the suit as the Secretary of the Ad hoc Committee of the Plaintiff-Association and he was contesting the suit by filing the written statement jointly with the Defendant No.1. He had examined himself as D.W.1 when the Defendant No.2 has been examined as D.W.2. One set of documents had been proved from the side of the Defendants and they were thus contesting the suit althrough.

8. The Lower Appellate Court referring to its earlier order dated 08.04.2021 has said that Ramesh Chandra Patra who had instituted the suit on behalf of the Plaintiff-Association asserting himself to be the President having died during pendency of the Appeal; the suit against him stood abated. It is better that the said portion of the sub-para of paragraph-6 of the judgment/order of the Lower Appellate Court be noted:-

“In the meantime, the President who was the Plaintiff in the above case Sri Ramesh Chandra Patra died and as per the order dated 8.4.2021, the suit against him stood abated. However, the Association was represented by the Secretary”.

9. It may be stated at the stage that the Appeal had been filed arraigning Sri Ramesh Chandra Patra as the former President of the Plaintiff-Association and the Defendant No. 2 as the former Secretary of the Plaintiff-Association. In that situation, it is not understood as to how it would be observed that the suit against that Plaintiff would abate. Moreover, the lower Appellate Court is not further indicating about any impact of the same over the progress of the Appeal and nothing is stated in that light.

In view of all these above, this Court no more feels to discuss that aspect any further.

10. Be that as it may, before the lower Appellate Court, the maintainability of the Appeal was contested upon. It has been contended that the suit having been dismissed as against the Defendants declining the Plaintiff to grant any relief as prayed for; the Defendant No. 2 has no right to prefer the Appeal as he cannot be said to have been in any way aggrieved by the ultimate result recorded in the suit when as against mere finding or findings or observation/ observations; no Appeal under section 96 of the Code lies. This contention has been negated and the Appeal has been allowed with certain observations as would be seen from the ordering portion. The Appellate Court has then again directed the Trial Court to make an interim arrangement by hearing the parties in the best interest of the Plaintiff-Association regarding running of the Plaintiff-Association till a new body is elected including the member of the elected body of the year 2012-13. A course which appears to be totally foreign to the scope and beyond the purview of the Appeal.

11. This Appeal has been admitted on the following substantial questions of law:-

“1. Whether the Lower Appellate Court has fallen in error of law in entertaining the First Appeal under section 96 of the Code of Civil Procedure filed by the Respondent (Defendant No.2.) in questioning the finding/observation of the Trial Court in its judgment when he has not been affected by the result in the suit standing dismissed?; and

2. Whether the Lower Appellate Court has failed to appreciate the judgments cited on the question of maintainability of the Appeal in their proper perspective and as such the impugned judgment is vitiated?”

12. Mr. P.K. Rath, learned counsel for the Appellant (Defendant No.1) submitted that the learned lower Appellate Court simply should

have dismissed the Appeal as not maintainable as the Defendant No. 2 who had contested the suit with the Defendant No. 1 by filing one written statement and leading evidence together had no right of Appeal. According to him, when the very suit filed by Ramesh Chandra Patra claiming himself to be the President of the Plaintiff-Association has been dismissed and the Trial Court has declined to grant any relief as prayed for, the Defendant No. 2 had no right of Appeal as per law.. He further submitted that the learned lower Appellate Court has not carefully gone through the provision of law in this regard and thus has fallen in grave error by holding that the observation made by the Trial Court being adverse to the interest of Defendant No. 2, he has the right of Appeal against such observation. In support of the same, he has relied upon the decision of the Apex Court in case of *Banarasi & Others Vrs. Ram Phal*; (2003) 9 SCC 606. He further submitted that even on merit the judgement/order passed by the learned lower Appellate Court is not sustainable.

13. Mr. Y. Das, learned Senior Counsel submitted all in favour of the judgment/order passed by the learned lower Appellate Court. He submitted that the learned lower Appellate Court having found it proper to make an interim arrangement till the new election of the office bearers of the Plaintiff-Association is held did commit no error in remanding the matter to the Trial Court for passing an order in that regard.

14. Keeping in view the submission made, I have carefully read the judgments passed by the Trial Court as well as the Lower Appellate Court. I have also gone through the rival pleadings.

15. At the outset, it may be stated that the Lower Appellate Court has not found any fault with the findings/ conclusions of the Trial Court and has also not so recorded in the entire judgment/order impugned herein.

Nor the ultimate decision of the Trial Court in dismissing the suit has been held to be unsustainable. This Court being not in a position to cull out the gist, and unable to follow as to what the lower Appellate Court has meant, thereby, feels it apposite to straightway reproduce those relevant paragraphs 13 and 14 of the judgment of the Lower Appellate Court which read as under:-

“13. The suit was dismissed on contest against W.V.Raja who was the defendant no.2 in the suit and now the appellant. In a way defendant no.2 in the C.S. 297/2013 was successful. However in the R.F.A he challenges only para-10 which is the observation asking the body of 2005 to manage and control the affairs of the association till a new body of office bearers are elected as per original bye-laws.

14. From an affidavit filed by the respondent no.2 R.R. Mohanty, it reveals that after the judgment in C.S. 297/2013 was passed by the learned lower Court in February, 2008, election notice was issued to all valid members of 2005, to begin the election process and its procedure was completed with due legal formalities. He added that the result would be announced six days later i.e., 22.7.2018 and persons likely to be elected were not the office bearers of the election of 2012 & 2013.

From his affidavit it became clear that the observation made by the lower court in para-10 was implemented. Again reverting back to the decision of the Apex Court in Ramesh Chandra vrs. Shiv Charan Das and applying its test, this court feels that though the defendant No.2/appellant was successful in the suit in C.S. No. 297/2013 since no relief was granted to the plaintiff (Ramesh Patra, dead now), but the observation

made in para-10 of the judgment was carried out in letter and spirit. So, defendant no.2 W.V. Raja being appointed the Secretary by the Adhoc Committee in 2013 to run the association with other office bearers was naturally affected by the observation being given effect to though not reflected in the decree. So this appeal though not against any order, but against such observation made would be maintainable.”

16. At this stage before proceeding further, the decision of the Hon’ Apex Court in *Banarasi & Others* (supra), being carefully gone through; it is seen that the legal position on the point has been set at rest that section- 96 ad 100 of the Code make provision for an Appeal being preferred from every original decree or from every decree passed in Appeal respectively. None of the provisions enumerates the person who can file an Appeal.

Keeping in view the authoritative pronouncements of Hon’ble Apex Court, this Court also in case of *Golok Bihari Mohanty Vrs. Umesh Chandra Mohanty and another*; 2018 (II) CLR 766 has held that no Appeal against a finding lies. *सम्बन्धित न्यायो*

It is settled by the long catena of decisions that to be entitled to file an Appeal, the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree, he is not entitled to file an Appeal. No Appeal lies against a mere finding. Section-96 and 100 of the Code provide for an Appeal against decree and not against judgment. No Appeal lies against a finding / observation when the decree has not gone in any way against that person coming to file the Appeal.

17. In view of the aforesaid, this Court is of the view that the lower Appellate Court has not examined and appreciated the contention as to the maintainability of the Appeal filed by the Respondent (Defendant

No.2) and its entertainment at its end when the suit has been dismissed disentitling the Plaintiff from the reliefs claimed through correct legal lens.

Therefore, the answers to the substantial questions of law are hereby returned in favour of acceptance of the contention raised by the learned counsel for the Appellant (Defendant No.1) in holding that the Appeal filed by the Defendant No.2 before the lower Appellate Court against the dismissal of the suit was not maintainable.

Accordingly, the judgment/order passed by the lower Appellate Court in RFA No. 27 of 2018 which has been impugned in the present Appeal is found to be vulnerable.

**18.** Resultantly, the Appeal stands allowed. The judgment and decree passed by the lower Appellate Court are hereby set aside.

The parties are however directed to bear the respective cost of litigation all throughout.

**19.** As the restrictions due to resurgence of COVID-19 situation are continuing, learned Counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587 dated 25<sup>th</sup> March, 2020 as modified by Court's Notice No.4798 dated 15<sup>th</sup> April, 2021 and Court's Office order circulated vide Memo Nos.514 and 515 dated 7<sup>th</sup> January, 2022.

**(D. Dash),  
Judge.**