

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

**LPA-2454-2016 (O&M)
Decided on: 18.01.2023**

The Kapurthala Jalandhar Self Supporting Cooperative Cold Store Ltd. &
othersAppellant(s)

Versus

State of Punjab & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Ashwani Prashar, Advocate, for the appellants.

Mr.Abhay Pal Singh Gill, DAG, Punjab.

Mr.Iqbal Singh Saggu, Advocate, for respondent No.7.

G.S. Sandhawalia, J. (Oral) :-

CM-5124-LPA-2016

The appellants have filed the present application under Rule 2 Chapter 1 Part-C of the High Court Rules & Orders Volume V, to file the present appeal as they were not party before the learned Single Judge and it is stated that the order dated 17.11.2016 has adversely affected their rights. It is submitted that under Rule 2(d), they were not a party to the proceedings and therefore, desire to present the Court by a memorandum of appeal.

Keeping in view the issue which is subject matter of consideration, we are of the considered opinion that a case is made out to allow the application as their interest is prejudiced by the said order. Accordingly, the present application is allowed.

CM stands disposed of.

LPA-2454-2016 (O&M)

The present appeal arise out the judgment dated 17.11.2016 passed by the learned Single Judge in CWP-12799-2016 titled *The Bal Cooperative Fruit Fruit & Vegetable Growers Marketing Society Ltd. Vs. State of Punjab & others*, which was filed by respondent No.8.

The appellant-writ petitioners were challenging the order dated 21.06.2016 (Annexure P-12) passed by the Joint Registrar Cooperative Societies, Jalandhar wherein objection filed by Upkar Singh, President of the writ-petitioner/ Society had been overruled. The claim was that the present appellants namely the Kapurthala-Jalandhar Self Supporting Cold Storage Ltd. and the Jalandhar Self Supporting Garden Cooperative Society Ltd. had been included in the voters list made for the purpose of Zone No.9 by the Jalandhar Central Cooperative Banks Ltd., Jalandhar, respondent No.7 herein. It was the objection that the present appellants had gone out of the purview of Punjab Cooperative Societies Act, 1961 (for short the '1961 Act') as they were registered against the Punjab Self Supporting Cooperative Societies Act, 2006, as per letters dated 10.03.2015 and 31.03.2015 issued by the Assistant Registrar, Cooperative Societies.

The said objections were dismissed by the impugned order on the ground that the shares of the said Society were still lying deposited with the bank and the 2 Societies along with Jalandhar Cooperative Cold Store were still members of the Bank and therefore, their names could not be deleted from the list of zones prepared by the Bank for the election of the Board of Directors of the Jalandhar Central Cooperative Bank Ltd. Jalandhar.

Writ petition was thus filed without impleading the present appellants against whom the report was being sought for exclusion from the list of zones of the Bank for the election. Reply was filed before the learned Single Judge by the Jalandhar Central Cooperative Bank Ltd. on the same day when the writ petition was allowed and an objection had been raised that there was an alternative efficacious remedy under the provisions of Sections 55/56 of the 1961 Act.

Mr.Saggu has also pointed out from the impugned order that as per by-laws of the Bank, Self Supporting Cooperative Societies cannot remain members of the Jalandhar Central Cooperative Bank being the Central Societies registered under the 1961 Act.

Learned Single Judge, however, did not take into consideration the fact that there was an alternative remedy available and came to the conclusion that the natural consequence of the registration of all the 3 Societies under the Act of 2006 would mean that they would cease to be registered under Section 15 of the 1961 Act and cease to be members of Central Society. Resultantly, a finding was recorded that these material facts have gone undisputed by the Jalandhar Central Cooperative Bank itself. Directions were issued to the District Manager of the Jalandhar Central Cooperative Bank Ltd. to take appropriate action and pass appropriate orders in view of the observations made and by suitably amending the voters' list for Zone No.9.

We are of the considered opinion that the order is not sustainable on 2 accounts, firstly, an alternative remedy had been put-forth by respondent No.6 itself and therefore, the learned Single Judge should have stayed his hands while entertaining the writ petition and should have

relegated the writ petitioner to the alternative remedy as opposed. It is settled principle that if there is statutory remedy provided, the Writ Court would not exercise its extraordinary writ jurisdiction. Reliance in this regard can be placed upon the judgment of the Apex Court in **United Bank of India Vs. Satyawati Tondon & others(2010) 8 SCC 110**. The principles laid down read as under:-

“24. xxxx xxxx xxxx

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

xxxx xxxx xxxx

27. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the [DRT Act](#) and [SARFAESI Act](#) and exercise jurisdiction under [Article 226](#) for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

The second account on which the writ petition is liable to be dismissed is that the appellants were not impleaded and were never made

party and directions had been issued to amend the voter’s list made for Zone No.9 that they would cease to remain members of the Jalandhar Central Cooperative Bank Ltd.

Mr.Parashar has referred to the statutory provisions to submit that it would not be so.

However, we are of the considered opinion that it would be matter of adjudication of the Appellate Authority in view of the above-said observations. Accordingly, we allow the present appeal, set aside the impugned order dated 21.06.2016 (Annexure P-12) and relegate respondent No.8 who has not chosen to appear before this Court, to avail his alternative remedy as had been objected to, within a period of 3 months from the receipt of certified copy of this order. Office shall ensure that copy of this order is sent to it.

The present appeal stands allowed, in the above-said terms.

(G.S. SANDHAWALIA)
JUDGE

18.01.2023
sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes