

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

**RA-LP-54-2018 (O&M) in/and
LPA-1243-2017 (O&M)**

Reserved on : 08.02.2023

Pronounced on: 14.02.2023

S.K.Kaushal

.....Appellant(s)

Versus

District Bar Association (DBA) Ambala & others

.....Respondent(s)

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

Present:- Mr.S.K.Kaushal, Advocate, appellant-in-person.

Mr.Munish Kapila, Advocate, for respondent No.3.

G.S. Sandhawalia, J. :-

Consideration in the present Letters Patent Appeal, filed by the appellant-writ petitioner, is to the order dated 28.04.2017 of the Learned Single Judge passed in CWP-17116-2016 titled *S.K.Kaushal Vs. The District Bar Association (DBA) Ambala & others*, which was dismissed while noting that the Civil Suit was already pending and the writ petition is not maintainable against the District Bar Association Ambala (DBA) which is a society registered under the Societies Registration Act. The same was held not falling within the ambit of Article 12 of the Constitution of India and the writ petitioner having already availed the remedy, he could seek interim relief regarding stay of auction which had been declined and therefore, parallel proceedings could not be continued.

2. The challenge in the writ petition was to the order dated 26.02.2016 (Annexure P-8) wherein the DBA had cancelled allotment of the writ petitioner of Chamber No.S-104 as he had not occupied the same and also failed to deposit chamber charges till date. Resultantly, the said allotment of chamber was stated to be cancelled. Similarly, challenge was

also raised to the auction of the said chamber vide the subsequent communication dated 04.08.2016 (Annexure P-16) wherein persons interested in the auction had to deposit Rs.10,000/- as security and the remaining 75% amount was to be deposited within 15 days and the auction was to take place on 23.08.2016. Prayer was also made to restore the writ petitioner's membership and his lawyers chamber and grant stay against the said auction.

3. In the writ petition itself it was averred that the appellant had filed an application for staying the auction of the chamber in which the prayer was to adjourn the Civil Suit after staying the auction since there was a transfer petition pending in this Court which had been filed and diarized on 25.07.2016. The Civil Suit which was thereafter appended as (Annexure P-22) did not find mention in the pleadings of the writ petition. Prayer in the Civil Suit filed in December, 2011 would go on to show that directions were sought to allot the plaintiff a chamber on the ground-floor on account of his handicap since his chamber was on the second-floor. Apparently, the respondent-DBA had also filed an application under Order 7 Rule 11 CPC for rejection of the plaint whereas the present appellant had moved 9 applications in the said suit. The appellant had then filed CR-5947-2016 before this Court wherein it had been noticed that the suit was not being disposed of and status report was being called for on 09.12.2016 (Annexure P-31). The application under Order 7 Rule 11 CPC filed by the DBA was eventually dismissed by the Trial Court on 03.01.2017 (Annexure P-32) by holding that there was nothing to show that the suit was barred by law and/or had become infructuous.

4. Apparently the suit has now been got adjourned sine-die at his own asking though a Civil Appeal is pending before the Court of the

Additional District Judge, challenging the said order. The matter has though been adjourned before the Lower Appellate Court on 11.01.2023 on the request of the appellant himself whereby adjournment had been sought on the ground that he is not feeling well and for next few days, the cases were fixed before this Court. Another Civil Suit No.1706 of 2021 had also been filed claiming legal rights to the chamber No.S-104 and challenging the notice dated 26.02.2011 and the auction proceedings dated 23.08.2016. It is also pertinent to notice that the Civil Suit has been adjourned sine-die after the writ petition was dismissed on 28.04.2017 by learned Single Judge while giving a wrong statement that the matter was pending before this Court regarding the dispute of his membership. The said order dated 29.04.2017 reads as under:

“Plaintiff in person alongwith Sh.Rajesh Gupta, counsel for defendant no.1 have made joint statement that membership of the plaintiff from the District Bar Association had been terminated and the aforesaid matter is subjudice before the Hon’ble Punjab & Haryana High Court. Till the decision of Hon’ble High Court on the said point, the present case be adjourned sine die with liberty to plaintiff to revive the same after the decision of the Hon’ble High Court. Heard. In view of the aforesaid statement, present suit is hereby adjourned sine die. File be consigned to record room after giving a Red Ink Note on the file that it be not destroyed and be put up as and when application moved by either parties.”

5. It is thus apparent that the controversy was already pending before the District Court and the suit was filed on 19.12.2011 regarding his claim for allotment of chamber at ground-floor. During the pendency of the suit, certain new events had occurred and it was always open to the appellant to challenge the same by amending his petition rather than

approaching this Court by opening up a fresh chapter. The learned Single Judge was well justified to hold that parallel proceedings cannot be initiated at two different levels regarding the same issue. The Full Bench of this Court in **Sukhi Ram Vs. State of Haryana, 1982 PLR 717**, while examining similar proposition held that there is a principle of election and the litigant cannot resort to both the remedies and he has to choose one or the other. The relevant portion of the judgment reads as under:

“10. Coming now to the second distinct category where the right or obligation giving rise to the industrial dispute springs from a source other than the Act—that is, under the general law (including therein am other statutes) then under principle, (2) the workman is expressly given two alternative remedies. In such a case, it is in his discretion to either make resort to the ordinary jurisdiction of the civil courts or to seek the remedies under the Act. However, he must distinctly elect his remedy. It is now authoritatively settled that he cannot have both. He is to choose one or the other.

11. In the present case, as already noticed in paragraph-6, it is the common case that the dismissal or removal of workmen here raises dispute arising out of the rights or liabilities under the general or the common law. Once that is so, principle (2) of the Premier Automobiles Ltd. case (supra), would be at once attracted and the workmen would be entitled to elect either of the alternative remedies available to them. There is no dispute here that the workmen have not even remotely resorted to any of the remedies under the Act. No industrial dispute was sought to be raised on their behalf nor any reference claimed under section 10 of the Act. They had straight-away made their election and chosen to agitate their rights in the civil courts. Both on principle and binding precedent, therefore, they would be clearly entitled to claim relief by way of a civil suit.”

6. Thus, we are of the considered opinion that the learned Single Judge was well justified to relegate the appellant to his remedy before the Civil Court which he had already preferred 4 years earlier to the filing of

the writ petition and no fault can be found in the same. Keeping in view the said fact, we are of the considered opinion that since the writ petition was not maintainable, the Civil Suit should proceed and accordingly, we issue directions to the District & Sessions Judge, Ambala to ensure that the Civil Suit filed by the appellant is taken up and proceeded with which is apparently lying adjourned sine-die as it would also put an end to the controversy and also dispose of the appeal which has been filed by the present appellant.

7. It is to be noticed that the plaintiff is an Advocate who appears in person and is a cantankerous litigant who has not only been dealt by this Court on several occasions before various Benches but also by the Apex Court. One of the order passed by the Apex Court in proceedings with his relative, V.K.Kaushal, the Apex Court went on to hold on 07.09.2009 as under:

“Heard learned senior counsel for the appellant and the respondent, who has appeared in person.

This appeal has been filed against the impugned order of the Punjab & Haryana High Court at Chandigarh dated 05th March, 2008. The High Court was considering a revision petition against the order dated 10th May, 2007 passed by the learned trial Court in Civil Suit No.774 of 1994.

We have carefully perused the order of the learned trial Court dated 10.05.2007. It has been stated therein that the plaintiff-respondent has taken more than 17 adjournments in this case and he is playing tactics. Even on 10.05.2007, the learned trial Court waited up to 1.05 p.m. after calling the matter repeatedly but the plaintiff-respondent did not appear.

Hence, in our opinion, the learned trial Court was right in passing the order dated 10.5.2007, since the plaintiff-respondent was playing tactics and it appears that he wanted to linger on the proceedings on one pretext or the other.

Accordingly, we accept this appeal, set aside the impugned order of the High Court and restore that of the learned trial Court

dated 10th May, 2007. No costs.”

8. This fact was noticed by one of us (G.S.Sandhawalia J.) while dealing with CR-7481-2011 titled *S.K.Kaushal Vs. V.K.Kaushal & others*. Thus it is apparent that he likes to blow hot and cold and file various applications and inundate the Courts with his requests while concealing more and revealing less. Resultantly, we are also of the considered opinion that the learned Single Judge is well justified in not exercising his extraordinary writ jurisdiction to entertain the same.
9. With the above-said observations, the present appeal stands dismissed. All misc.applications stand disposed off.

(G.S. SANDHAWALIA)
JUDGE

14.02.2023
Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No