

SCJ 1062/19

Indian Society Of Extension Education (Division of Agricultural Extension)
Vs.
Dr. U.S. Gautam

28.09.2020

ORDER

1. Vide this order, I propose to dispose of the application moved by the plaintiff under Order 39 Rule 1 and 2 CPC seeking ad interim injunction against the defendants thereby restraining them or their agents from holding / organizing Seminar to be held at Chaudhary Charan Singh Haryana Agricultural University from 20-22 November, 2019; from using illegal and unlawful website ie. www.iseeindia.org.in; from circulating information related to functioning or any other activity to/among the members of the plaintiff; from raising fund or from carrying out any other activities on behalf of the plaintiff including usage of letter head, logo, registration, address etc.

2. During arguments the question as to the maintainability of the present suit was raised which finds mention in the reply to the application under Order 39 Rule 1 and 2 CPC as well as in written statement of the defendants. It is argued on behalf of the defendants that the present suit has been instituted by Sh. Kartar Singh who was the Returning Officer for holding elections and not an authorized person to instituted the present suit on behalf of the plaintiff. It is further argued that as the final relief sought cannot be granted as the present suit is not maintainable, no interim relief under Order 39 Rule 1 and 2 CPC can be given to the plaintiff. To this, Ld. counsel for the plaintiff argued that since the proclamation of the election of 17th May, 2019

till the declaration of result, the governing council have become powerless and could not have institute the present suit. The only person with whom all the powers of the plaintiff society vested during the process of election was the Chief Returning Officer i.e Mr. Kartar Singh. The present suit has been instituted by Sh. Kartar Singh during the process of election and therefore, the present suit is maintainable.

3. I have heard the arguments and perused the record.

4. It is trite that a suit can be instituted on behalf of the society by an authorized person. It is meant that either the statute or the memorandum of association of the society or by any other law, a specific authorization has been conferred upon such person to institute the suit on behalf of the registered society like plaintiff. Institution of the suit is not a casual thing. In such cases in fact the entire Order 29 of CPC lays down as to who is competent in case of a company / society etc. to institute a suit. The reason is that in case the suit fails, certain consequences may ensue like imposition of cost by the court, the suit against the such society for malicious prosecution or recovery of damages. If the suit is not filed by a competent person on behalf of the society, the society cannot be held responsible for such failure or malicious prosecution. In fact such person who instituted the suit on behalf of the society cannot be held liable because he did not institute the suit in his individual capacity. So, in present case, the court must satisfy itself that the suit has been instituted by an authorized and competent person only.

5. Undisputedly, no law or the memorandum of association of the society empowers the Returning Officer to have instituted a suit on behalf of the society on its own without obtaining approval of the governing council. Ld. counsel for the plaintiff has argued that the governing council did not have

any power and all the powers had vested with the Returning Officer, hence, there is no need for the Returning Officer to have sought permission or mandate from governing council. I do not agree with the contention raised by Ld. counsel for the plaintiff. The reason is plain and simple. The Returning Officer is appointed for the limited purpose only i.e for conducting the elections and declaring the result thereof. By no stretch of imagination, merely by its duty or authority, the Returning Officer becomes competent to institute the suit on behalf of the society. The role and responsibility of the Returning Officer cannot be extended beyond the scope of his work. It is neither primary nor incidental to the performance of his duty to institute a suit in the name of the society. Manifestly, the suit is filed by the person who did not have the requisite competence/ authority to institute the present suit on behalf of the plaintiff society. For this count only, I find that the relief sought by the plaintiff under Order 39 Rule 1 and 2 CPC cannot be granted. Application is accordingly dismissed.

(Vikrant Vaid)
Senior Civil Judge-cum- Rent Controller
Patiala House Court, New Delhi/28.09.2020