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## (2003) 1 CivCC 304 : (2003) 133 PLR 535 : (2003) 1 RCR(Civil) 270 High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 529 of 1986

Som Parkash Bansal APPELLANT

Vs

Managing Committee,

Hindu Higher

Secondary School and RESPONDENT

Another

Date of Decision: Sept. 3, 2002

**Acts Referred:** 

Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 17, Order 7 Rule 14#Constitution of India,

1950 â€" Article 12

Citation: (2003) 1 CivCC 304: (2003) 133 PLR 535: (2003) 1 RCR(Civil) 270

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: D.S. Bedi and D.V. Gupta, for the Appellant;

Final Decision: Dismissed

## **Judgement**

Satish Kumar Mittal, J.

This is plaintiffs Regular Second Appeal against the judgment of reversal. The Sub Judge 1st Class, Kaithal vide its

judgment dated 22.3.1983 decreed the suit filed by the appellant declaring the order dated 6.7.1980 passed by the Managing Committee, Hindu

Higher Secondary School, Kaithal (hereinafter described as respondent No. 1) and the other dated 14.10.1980 passed by the District Educational

Officer, confirming the said order, as illegal and against the principles of natural justice. The said judgment of the trial Court, in appeal by

respondent No. 1, was set aside and the suit of the plaintiff appellant was dismissed. Against the judgment and decree passed by the first Appellate

Court, this Regular Second Appeal has been filed by the plaintiff-appellant.

2. In this suit, the plaintiff-appellant had challenged the order dated 6.7.1980 passed by respondent No. 1 vide which a show cause notice was

issued to him by respondent No. 2 proposing quantum of punishment sought to be inflicted upon him after the completion of departmental enquiry

against him. He had also challenged the order dated 14.10.1980 passed by the District Education Officer, Kurukshetra vide which the proposal of

the Managing Committee to dismiss the appellant from service was approved. The learned first Appellate Court dismissed the suit of the appellant

on the ground that copies of both the aforesaid orders, which were challenged by the appellant, had not been produced on record by the appellant,

though he had challenged the legality of these orders. It was held that in view of the provisions contained in Order 7 Rule 14 of the Code of Civil

Procedure, it was mandatory for the appellant to produce the copies of the orders which were subject matter of challenge in the suit. Secondly, it

was held that the appellant did not challenge his dismissal order, copy of which is Ex.PA on the record. Rather, he had challenged the order vide

which a show cause notice was issued to him. A perusal of the order, which had been challenged in the suit, shows that it only contains proposal

for inflicting the punishment of dismissal on the appellant and he was further asked to submit his representation, if any, within seven days of the

receipt of notice against the proposed punishment of dismissal. The order of dismissal of the appellant from service is contained in Ex.P-1, which

was conveyed on 16.10.1980. The said order was not challenged by the appellant in the suit filed by him. It was held that though the trial court

declared the order dated 6.7.1980 as illegal and set aside the same, but this will not prove the case of the appellant because the order dismissing

him from service still stands and was not challenged by him. It was also held by the learned first Appellate court that the suit filed by the appellant

seeking declaration of the dismissal order as illegal and with consequential relief of reinstatement is not maintainable. The appellant can only file the

suit for damages and not for reinstatement.

3. Shri D.S. Bali, Senior Advocate assisted by Shri D.V. Gupta, learned counsel for the appellant made three-fold submission. Firstly, he

submitted that non-production of the copies of the impugned orders is of no consequence as there was a specific averment in the plaint challenging

these orders and there was also a specific denial by the defendants. Once, on the basis of the pleadings of the parties, an issue has been framed,

then it is immaterial whether the copies of the impugned orders have been placed on the record or not. In support of his contention, he relied upon

a decision of this Court in Faqir Singh v. Sadhu Singh and Anr. (1971)73 P.L.R. 608.

4. I have considered the submissions made by the learned counsel for the appellant and I do not find any substance in the same. In a suit for

declaration in which a specific order passed by an authority is challenged, the copy of the said order must be placed on record, particularly, when

the said copy is admittedly in the possession of the plaintiff. The requirement of Order 7 Rule 14 CPC is mandatory and if copies of the impugned

orders under challenge have not been produced, he suit filed by the plaintiff is not maintainable. I have gone through the judgment cited by the

learned counsel for the appellant. The said judgment is not applicable in the facts and circumstances of the present case. In that case, in a suit for

pre-emption the plaintiff did not file the sale-deed along with the plaint. In that situation, it was held that the plaint cannot be rejected, but in the

present case the position is entirely different. Here, the impugned orders have not been placed on record and exhibited by the appellant. This Court

is National Rice and Dal Mills v. The Food Corporation of India (1970)72 P.L.R. 778 has held that the documents, which are in the possession

and power of a plaintiff, upon which he sues, that is, which forms the basis of the suit, must be presented to the Court along with the plaint. The

consequences of non-observance of the provisions of Order 7 Rule 14 CPC are laid down in Sub-rule (I) of Rule 18, which states that documents

not produced or entered in accordance with the former Rule shall not be received in evidence at the hearing of the suit. The appellant neither

annexed these documents along with the plaint nor he had produced the same during the trial. The learned counsel for the appellant further argued

that by non-production of these documents, no prejudice has been caused to the respondents. There is no force in this contention also, as it is not

the question of prejudice which is to be caused to the respondents, but it is mandatory for the plaintiff at least to produce the documents which are

under challenge in the suit.

5. Regarding the finding recorded by the first Appellate Court about non-challenging of the dismissal order by the appellant, the learned counsel for

the appellant submitted that when the trial was going on, no such objection was raised by the respondents. He further submitted that if the appellant

has not challenged the dismissal order, then now he can be allowed to amend the plaint and challenge the said order. I am of the view that the

appellant cannot be allowed to amend the plaint at this stage, i.e., after 20 years of the passing of the order of dismissal. It is for the appellant to

challenge the right and appropriate order. If he has not challenged the order of dismissal from service, the said order stands valid. By challenging

the wrong order in the suit, the order of his dismissal from service cannot be set aside and the same will remain operative.

6. The learned counsel for the appellant further argued that the respondent-Managing Committee falls within the definition of instrumentality of the

State. Therefore, the suit for declaration and consequential relief of reinstatement in service is maintainable and the finding recorded by the first

Appellate Court that the appellant can only maintain the suit for damages is not correct. I have considered this submission, of the learned counsel

for the appellant and I am unable to accept the same. Respondent No. 1 does not construe any authority within Article 12 of the Constitution of

India, merely because some aid is provided by the Government to run the school. Respondent-Managing Committee is a private institution and

against such institution, no suit for declaration and reinstatement in service is maintainable and if the dismissal/termination is illegal, then only a suit

for damages can be filed.

7. No substantial question of law is involved in the present appeal. The judgment passed by the first Appellate Court is based on pure finding of

fact and there is no illegality or infirmity in the same.

For the aforesaid reasons, this Regular Second Appeal is dismissed.