

PETITIONER:
THE PUNJAB STATE CO-OPERATIVE BANK LIMITED

Vs.

RESPONDENT:
MILKHAN SINGH (DECEASED) BY LRS. AND ANR.

DATE OF JUDGMENT: 24/09/1997

BENCH:
G. N. RAY, G. B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. RAY, J.

Leave granted. Heard learned counsel for the parties.

The predecessor-in-interest of the respondents Sri Milkha Singh since deceased was a senior accountant in the Gurdaspur Central Co-operative Bank Ltd. For alleged misconduct of the said employee in misappropriating the finds of the appellant Bank, Sri Milkha Singh was placed on suspension on 6.5.1974. A Criminal Case under sections 409, 467, 468, 477A and 120B and 120B IPC was registered against the said employee but he was discharged in the said case by the Chief Judicial Magistrate Gurdaspur on 26.11.1977. Sri Milkha Singh was allowed to join duties on 19.4.1978. Subsequently, a departmental proceeding was initiated against Sri Milkha Singh and a penalty for stopping promotion for two years was imposed on the said employee vide order dated 13.7.1984. The period from 6.5.1974 to 19.4.1978 was also regularised against leave vide dated 6.2.1985.

Sri Milkha Singh challenged the order of punishment and order regarding regularisation of the period under suspension in a Civil Suit initiated on 23.4.1986. Such suit was decreed with cost on 15.10.1990. The Managing Director of the appellant Bank thereafter preferred an appeal against the said decree before the learned District Judge. such appeal was dismissed as time barred on 9.9.1991. The Judgment of the lower appellate court was challenged by the appellant in revision petition filed before the High Court. The High Court allowed the revision petition and the delay in preferring appeal was condoned and the was remanded for disposal on merits. The appeal was, however, dismissed with cost of affirming the decree of the trial court on merits. The Managing Director of the appellant Bank thereafter preferred a second appeal before the High Court. By the impugned order such second appeal has been dismissed on a finding that the Managing Director was not competent to prefer the said appeal without the approval by the Board of Directors of the Bank Such decision of the High Court is impugned in this appeal.

The short question that arises for decision in this

appeal is whether the Managing Director on its own had the authority to prefer appeal against a decision of the Court in the absence of any resolution by the Board of Directors or by the Bank on the general body of the society deciding to prefer such appeal. It may be stated here that the learned counsel for the respondent has also contended that in any event, the decision for file a special leave petition before this Court can not be taken by the Managing Director of the appellant Bank even if it is assumed for argument's sake that such Managing Director was competent to prefer first or second appeal.

The learned counsel for the appellant has contended that the appellant Bank is an Apex Bank under the Punjab Co-operative Societies Act 1961. According to Section 23 of the said Act, the final authority vests in the general body of the members of co-operative society. The appellant Bank has framed bye-laws which are duly registered with the Registrar of the Societies of Punjab. Section 24 of the Punjab Co-operative Societies Act provides that the general body meeting of the co-operative societies is to be held at least once in a year. The Bank has framed bye laws which provide powers of the Board of Directors and of the Managing Director of the appellant Bank. Bye law 29 provides for the Constitution of the Board of Directors. There is nothing in bye law 37 which empowered the Board of Directors to take a decision for instituting any suit or for filing any appeal or revision petition. The High Court has failed to appreciate that the Board of Directors have not been authorised to take decision regarding institution of suit or preferring appeal or revision petition in a court and it has erroneously held that unless a decision is taken by the Board of Directors, no appeal can be preferred by the Managing Director.

The learned counsel for the appellant has referred to bye law 46 and has submitted that the said bye law provides for appointment of Managing Director and also the powers conferred on such Managing Director. It is contended by the learned counsel for the appellant that the Managing Director is the principal executive officer of the appellant Bank and has been given wide powers to run the Bank by taking various decisions for running day to day business including decision to transfer, suspend, reinstate or punish an employee of the Bank. Similarly, the Managing Director is empowered to incur expenditure with the sanctioned budget. In exercising all such powers as enumerated in various clauses, of bye law 46, the Managing Director is not required to take my sanction of any other authority. The learned counsel has referred to clause 8 of bye law 46 which runs as follows:-

"To institute, conduct, defend, compound or abandon any legal proceedings by or against the Bank or its officers or otherwise concerning the affairs of the Bank". It is contended by the learned counsel that the Managing Director has been empowered to take the vital decision about institution of suit and to compound or abandon such suit or any legal proceeding by or against the Bank. The appeal is continuation of suit in a higher forum and basically there is no difference in taking decision to institute, abandon or compound a suit and to take a decision to take up the list in a higher forum by way of appeal. The learned counsel has submitted that the Board of Directors have no authority to take decision regarding filing of suit or appeal and other legal proceedings. The general body is undoubtedly the supreme body which can take any decision relating to the co-operative society. But such general body cannot and do not meet very often to take various decisions required to be

taken urgently. Therefore, the Managing Director the highest executive officer of the Bank had been clothed with wide powers in various in clauses of bye law 46.

In this connection, reference has been made to the decisions of this Court in Civil Appeal No. 14568 of 1996 (Punjabi University, Patiala Vs. M.R. Garg) decided on 1.11.1996. The question that arose for decision in the said appeal was whether the Registrar of the University was competent to take a decision to prefer an appeal in the absence of any resolution by the Syndicate of the University to prefer appeal. The High Court held that Registrar was not competent to take a decision to prefer appeal. This Court has held in the said decision that the Syndicate having resolved authorising the Registrant to defend cases instituted against the University and to file suits in the law courts on behalf of the University, except in cases relating to examination matters, and authorising the Registrar to sign, verify complaints, written statements, petitions, applications and to do all acts necessary for the prosecution of the cases, the appeal filed by the Registrar was maintainable. The learned counsel for the appellant has submitted that the bye laws have been passed by the Co-operative Society and such bye laws are also registered with the Registrar of Societies. The provisions of bye laws therefore must be held to be decision of the Co-operative Society itself. Hence, the appeal was maintainable and the High Court has erred in holding to the contrary.

The learned counsel for the respondent has, however, disputed the aforesaid contentions. It has been contended by the learned counsel for the respondents that the Managing Director of the appellant Bank is a statutory authority and therefore has only such power as has been conferred on such Managing Director by the Co-operative Society. The Managing Director can not have any power which has not been conferred on it. There is no mention in the bye laws that the Managing Director may prefer appeal or special leave petitions. Under order 29 Rule I.C.P. Code, any pleading may be signed or verified on behalf of the Co-operative Society by the Secretary or by any Director or Principal officer of the Society who is able to dispose about the facts of the case. Therefore, Managing Director being a Principal Officer of the Co-operative Society is competent to sign or verify the pleadings on behalf of the Society. But such authority does not confer on the Managing Director any power to take an independent decision as to whether against an adjudication of a court of law an appeal should be preferred. The power to institute legal proceedings and to defend the same is entirely different from the power to take decision for preferring any appeal or special leave petition against an adjudication made by a law court against the co-operative society. Such decision being a matter of policy decision, can not be exercised by the Managing Director in the absence of specific authority in that regard in bye law 46.

The learned counsel for the respondent has also contended that the decision of this Court in Punjabi University's case since relied on by the learned counsel for the appellant is distinguishable. In Punjabi University's case, the Syndicate had authorised Registrar to take all decisions regarding legal proceedings, excepting cases relating to examination matter. In view of such wide authorisation, this Court has held that the Registrar was competent to prefer appeal even in the absence of specific authorisation by the Syndicate to prefer an appeal. The learned counsel for the Respondent has also contended that even if it is assumed that appeal may be included within the

authority to institute legal proceedings, special leave petition before this Court is not a statutory appeal. The special leave petition is within the absolute discretion of this Court and a petitioner cannot claim leave to appeal as of right. Hence, special leave petition before this Court stands entirely on a different footing and unless any specific authority is given by the co-operative society to the Managing Director to file special leave petition, the Managing Director cannot take any independent decision to file such special leave petition. Therefore, this appeal must fail on that ground alone. The learned counsel has also submitted that in equity also, the appellant does not deserve any leave from this Court. The poor employee was sought to be harassed for no good reasons. The said employee being dead, his legal heirs have been dragged before this Court for no just cause. Therefore, the appeal should be dismissed with cost.

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that the Managing Director of the appellant bank is the Principal Executive Officer of the Bank. The Board of Directors have not been authorised to take decisions regarding institution of suits and legal proceedings and to defend and compound the same. The Co-operative Society has given such powers to its Managing Director in the bye laws. Bye law 46 is quite wide in its amplitude and it encompasses all powers relating to institution of legal proceedings and consequential actions required to be taken in connection with such act legal proceedings by or against the Society. It is not necessary to specifically mention filing of appeal by the Managing Director. In our view, bye law 46 is wide enough to include powers to prefer appeal and to take steps in such appeal as a consequential measure in connection with a suit or legal proceeding. If the Managing Director has been clothed with the authority to institute a suit and abandon or compound a suit or legal proceedings, there is no reason to hold that decision to prefer appeal is something so solemn and important that the Managing Director should not and cannot take such decision on its own. It is not a practical feasibility that the general body may meet frequently to take various executive decision. As a matter of fact, the general body of a Co-operative Society usually take broad policy decisions on one or two occasions. As it is not practicable to take various executive decisions, some of which require urgent decisions and implementations, the bye law has given wide powers to the Managing Director. The Managing Director, in our view, has authority to take decision in the matter of preferring appeal within the scope and ambit of bye law 46. The said Managing Director has also the authority to take a decision to prefer an appeal before this Court by praying for leave to appeal by filing special leave petition. We, therefore, allow this appeal and set aside the impugned judgment and direct the High Court to dispose of the appeal preferred by the appellant Bank on merits as early as practicable preferably within a period of six months from the date of communication of this order. As the High Court is directed to decide the appeal on merits, we do not think that any observation on the merits of the case should be made by this Court even though the respondents invited the court's attention on the merits of the case. There will be no order as to cost.