

no writ should be issued in relation to its affairs. This argument is also without substance inasmuch as the petition seeks a writ quashing the action taken by an officer of the Co-operative Department of the Punjab Government in contravention of his statutory obligations, the enforcement of which cannot be said to lie outside the ambit of the writ jurisdiction of the High Court merely on account of the fact that the Mills in relation to the affairs of which all the questions in controversy have arisen is a private body and not a statutory institution.

(16) The next contention of learned counsel for the contesting respondents must also be turned down. It was that the Society not being a party to these proceedings, the petitioner was not entitled to a writ. No authority has been cited in support of it and it must be held to be without force inasmuch as no relief is sought against the Mills and although the petitioner seeks a declaration about the election of respondent No. 4 being void on the ground that his nomination papers were accepted by respondent No. 3 in contravention of a provision of a statute, such a declaration can be given to him without the Mills being a party to the petition.

(17) No other point was urged before me and, for the reasons stated, the petition succeeds and is accepted with costs. The impugned order is quashed and the election of respondent No. 4 to the Board is declared null and void. Counsel's fee Rs. 200.

N. K. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

DROPTI,—Appellant.

versus

CHINTA AND OTHERS,—Respondents.

Civil Miscellaneous No. 1396/C of 1971
and Civil Miscellaneous No. 1397/C of 1971
in R. S. A. No. 361 of 1961

September 13, 1971.

Code of Civil Procedure (V of 1908)—Order 41, Rule 21—Punjab High Court Rules and Orders, Volume V—Chapter 3-A, Proviso to Rule 2—Appeal

Dropti v. Chinta, etc. (Narula, J.)

pending in the High Court—Death of the counsel of respondents—Court not issuing actual date notice of hearing to the respondents—Appeal decided ex-parte—Such respondents—Whether entitled to get the appeal restored and re-heard.

Held, that where a respondent to an appeal files a vakalatnama of his counsel, it is the duty of the counsel to look after the case and when the counsel dies, it is the duty of the Court to inform the respondent directly that his counsel is dead and arrangement for another counsel may be made. If this is not done and the appeal is disposed of ex-parte, the respondent is entitled to get the appeal restored and re-heard under Order 41, Rule 21 of the Code of Civil Procedure. He should not suffer on account of an error of the office of the Court in not informing and serving him with an actual date notice of hearing.

(Para 3).

Application under Order 41, Rule 21 C.P.C. and s. 151 C.P.C. praying that the above mentioned Regular Second Appeal decided by Hon'ble Mr. Justice R. S. Narula on 1st April, 1971 ex-parte, be reheard and decree passed against the applicant-respondents be set aside.

Civil Misc. No. 1397/C of 1971: Application under Order 41, Rule 5, read with section 151 C.P.C. praying that dispossession of the applicants from the land in dispute, and the execution of the decree be stayed during the pendency of this application.

R. L. Batta, Advocate, for the applicants-respondents.

B. N. Aggarwal, Advocate, for the appellants.

ORDER

NARULA, J.—(1) This is an application under Order 41, Rule 21 of the Code of Civil Procedure for setting aside the *ex-parte* judgment and decree passed by me on April 1, 1971, in Regular Second Appeal 361 of 1961, on the ground that Mr. Amar Chand Hoshiarpuri, learned counsel for the applicants (who were respondents in the appeal) had died on January 23, 1970, and the applicants had thereafter become unrepresented in the case, and still no notice was issued to them by the Court informing them of the death of Mr. Hoshiarpuri and giving them an opportunity to make other arrangement for being represented in this Court.

(2) Provisio to rule 8 of Chapter 3-A, Volume V, of the Rules and Orders framed by this Court, requires that intimation of the actual date of hearing fixed in a case (pukka date) has to be sent by registered post (acknowledgement due) to such parties as are not represented by counsel after service of notice for a tentative date. Though

the applicants were represented by late Shri Amar Chand Hoshiarpuri, and, therefore, no question of issuing any actual date notice to them could consequently have arisen, they became unrepresented on and after January 23, 1970, when Mr. Hoshiarpuri expired, and the office should have sent actual date notice to the respondents in the appeal who had become unrepresented. It is not disputed that this has not been done.

(3) Mr. B. N. Aggarwal, learned counsel for the respondents, has emphasised that Mr. Om Parkash Hoshiarpuri Advocate, who is the son of late Mr. Amar Chand Hoshiarpuri, was called by me when nobody appeared for the respondents in the appeal and it was only after he had expressed his inability to represent the respondents for want of instructions that I had proceeded to hear the appeal *ex-parte*. That does not, in my opinion, improve matters to any practical extent. I think a salutary principle of procedure has been laid down by V. D. Bhargava, J. of the Allahabad High Court in *Trilok Chand v. Ram Gopal* (1), wherein it was held that where a respondent to an appeal files a *vakalatnama* of his counsel, it is the duty of the counsel to look after the case and when the counsel dies, it is the duty of the Court to inform the respondent directly that his counsel is dead and arrangement for another counsel may be made. The Allahabad High Court decided that if this is not done and the appeal is disposed of *ex-parte*, the respondent is entitled to get the appeal restored under Order 41, Rule 21 of the Code of Civil Procedure. I am in full agreement with that view of the law. The respondents in the appeal should not suffer on account of an error of the office of the Court in not informing them and not serving them with an actual date notice.

(4) I, therefore, recall and set aside my *ex-parte* judgment, dated April 1, 1971, allowing the Regular Second Appeal, and set aside the *ex-parte* decree passed by this Court on the basis of that judgment and restore the appeal (R.S.A. 361 of 1961) which shall now be listed for hearing on October 26, 1971. The records of the lower Courts which are stated to have been sent back should be recalled immediately. The appeal should be listed at the top of the daily board on October 26, 1971. The costs of this application shall abide the result of the appeal. The appeal having been restored, *status quo* as today may be maintained till the final disposal of the appeal.

B. S. G.

(1) A.I.R. 1959 All. 750.