

non-matriculate Laboratory Attendant under the revision of pay scales, as has been paid to the Laboratory Attendants who are matriculates. A further direction is given to the respondents to create 20 per cent selection grade posts in the service of Laboratory Attendants and to give the same to eligible persons also considering the case of the petitioner. The arrears of pay would be given to the petitioner with 12 per cent interest. The respondents are directed to comply with the directions aforesaid within four months.

P.C.G.

Before : J. V. Gupta, J.

THE MORINDA CO-OPERATIVE SUGAR MILLS LIMITED,  
MORINDA,—*Defendant/Appellant.*

*versus*

KHEM SINGH AND OTHERS,—*Respondents.*

*Regular Second Appeal No. 210 of 1989.*

11th August, 1989.

*Punjab Co-operative Societies Act (Act 25 of 1961)—S. 30—Punjab Co-operative Societies Rules, 1963—Rule 8, By-law 21—Managing Director authorised under bye-laws to sue—Such Managing Director filing appeal—No such resolution for filing appeal by Society—Such appeal whether validly filed.*

*Held*, that bye-law 21 provides that the Managing Director shall have the powers to sue or be sued on behalf of the Mills etc. Clause (1) of Rule 8 provides powers and duties of the committee and the officers of the co-operative society. Thus, taking into consideration the provisions of the Act and the rules framed therein and the bye-laws framed by the Society, it is quite evident that the Managing Director has the powers to sue or to be sued on behalf of the mill. The question of a separate resolution by the society as such did not arise. Moreover, it is a question of fact as to whether a separate resolution is required for filing the appeal or not. There cannot be a general proposition in this behalf.

(Para 5)

*Regular Second Appeal from the decree of the Court of Sh. R. M. Gupta, Addl. District Judge, Rupnagar, dated the 11th day of October, 1988, affirming (dismissing the appeal as not maintainable) that of*

The Morinda Co-operative Sugar Mills Limited, Morinda v. Khem Singh and others (J. V. Gupta, J.)

*Shri Harchand Singh Maunder, PCS, Sub Judge 1st Class, Rupnagar, dated the 17th January, 1984, decreeing the suit of the plaintiffs and passing a decree for the recovery of Rs. 5,200 against defendant No. 1, with costs.*

**CLAIM :** *Suit for recovery of Rs. 5,200 the Plaintiffs 4/5 share of damages caused by defendant No. 1 to the Rabi crops 1979 and kharif 1979 in the land comprised in khewat/khatauni 46/54 khasra Nos. 4720 (0—2), 5257 (0—3), 5271 (0—1), 5274 (0—2), 5275 (0-1), 5276 (0-1), 5278 (0-1), 5280 (0-1), 5282 (0—2), 5283 (0—3), 5284 (0-1), 5285 (0-1), 5286 (0—3), 5287 (0-1), 5289 (0-1), 5290 (0-1), 5265 (0—2), 5261 (0-1), 5266 (0-1), 5264 (0—3), 5268 (0—2), 5262 (0-1), 5263 (0-1), khewat/khatauni 169/200 khasra No. 4719 (05—0), khewat/khatauni 350/492 khasra No. 5269 (0—3), 4718 (1—13), khewat/khatauni 440/589 khasra No. 5291 (2—16), 5292 (3—16), 5293 (0—11), 5294 (0—7), 5295 (0—4), 5296 (2—18), khewat/khatauni 735/937 khasra Nos. 5273 (0-1), khewat/khatauni 753/955 khasra No. 5268 (0—2), 5259 (0-1), 5267 (0—2), 5270 (0—2), 5277 (0-1), 5279 (0-1), 5260 (0-1), 5281 (0-2), khewat/khatauni 1557/2095 khasra Nos. 4720/1 (2—11), situated in the area of village Morinda, H.B. No. 254, Tehsil and District Ropar, as entered in the jamabandi for the year 1978-79 by discharging the waste water with sulphur and Sugar contents from the Sugar Mills towards the Railway track which entered the said land of the plaintiffs and defendant No. 2.*

**CLAIM IN APPEAL :** *FOR REVERSAL OF THE ORDERS AND DECREES OF BOTH THE COURTS BELOW.*

*Dharam Vir Sharma, Advocate, for the Appellant.*

*H. S. Toor, Advocate, for the Respondents.*

**JUDGMENT**

*J. V. Gupta, J.—*

(1) This is defendant's second appeal against whom suit for recovery of Rs. 5,200 has been decreed by the two courts below. The plaintiffs filed this suit for recovery of Rs. 5,200 on account of damages caused by the defendant — Morinda Cooperative Sugar Mills to their rabi 1979 and kharif 1979 crops by discharging the waste water with sulphur and sugar contents from the Sugar Mill towards the railway track which entered the suit land of the plaintiffs. The suit was contested, *inter alia*, on the pleas that no notice

under the provisions of Punjab Co-operative Societies Act, 1961, was served upon the defendant. Hence the suit as such was not maintainable.

(2) On merits, it was denied that the water of the Mill entered the fields of the plaintiffs and caused any damage to their crops. The trial Court after discussing the evidence, came to the conclusion that the plaintiffs had been able to prove that defendant No. 1 had discharged the waste water with sulphur and sugar contents from Sugar Mill to the suit-land belonging to them and caused damage to the same as alleged. As a result of this finding, the plaintiffs' suit was decreed for a sum of Rs. 5,200.

(3) In the appeal filed on behalf of the defendant — Morinda Co-operative Sugar Mills, a preliminary objection was raised on behalf of the plaintiffs that the appeal as such was not maintainable in the absence of any resolution of the Co-operative Sugar Mill taking a decision to file the appeal as such. This objection prevailed with the learned Additional District Judge and consequently, he dismissed the appeal as not maintainable.

(4) Learned counsel for the appellant submitted that the view taken by the lower appellate Court that a separate resolution was required by the Co-operative Sugar Mill as such for filing the appeal, was wrong and illegal. No such separate resolution was required in view of the bye-laws of the society which clearly provides that the Managing Director shall have the powers and responsibility to sue or to be sued on behalf of the Mills and sign all bonds and agreements in favour of or on behalf of the Mills. Thus, argued the learned counsel, the appeal filed by the Managing Director on behalf of the Morinda Cooperative Sugar Mills Limited, was competent and could not be dismissed as not maintainable.

(5) After hearing the learned counsel for the appellant, I find merit in his contentions. Section 2(c) of the Punjab Co-operative Societies Act, 1961 (for short the 'Act') defines "Co-operative Society" which means a society registered or deemed to be registered under this Act. Section 23 thereof provides that the final authority in a co-operative society shall vest in the general body of the members, provided that where the bye-laws of a co-operative society provide for the constitution of smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, the smaller body shall exercise such powers of the

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general body as may be prescribed or as may be specified in the bye-laws of the society. Section 20 of the Act provides that the Co-operative Societies will be a corporate body and will have the power to institute and defend suits and other legal proceedings etc. Under Section 85 of the Act, rules could be framed by the State Government, because clause (2) of Sub-clause (iv) of section 85 of the Act provides "the matter in respect of which the society may or shall make bye-laws and for the procedure to be followed in making, altering and abrogating bye-laws and the condition to be satisfied prior to such making, alteration or abrogation;" Consequently, the bye-laws were framed by the defendant-Society. Bye-laws 21 provides that the Managing Director shall have the powers to sue or to be sued on behalf of the Mills etc. Reference may also be made to Rule 8 of the Punjab Co-operative Societies Rules, 1963, which provides for framing the bye-laws by a Co-operative Society. Clause (1) of Rule 8 provides powers and duties of the committee and the officers of the co-operative society. Thus, taking into consideration the provisions of the Act and the rules framed therein and the bye-laws framed by the Society, it is quite evident that the Managing Director has the powers to sue or to be sued on behalf of the mill. The question of a separate resolution by the society as such did not arise. Moreover, under section 23 of the Act the final authority vests in the general body of the society. The annual meeting of the society is held under section 24 of the Act whereas special meetings are to be called under section 25 of the Act. Under bye-laws 13, the general body shall meet atleast once in every year and within a period of three months next after the date fixed for making up of its accounts for the year or within such time as may be extended by the Registrar in this behalf. It also provides that the general body of the mills shall comprise all the individual members and representatives of the affiliated member society duly authorised by their Managing Committee. That being so, it was not possible to hold meeting of the general body for passing a resolution before filing the appeal against the decree of the trial court. In these circumstances, the powers vest in the Managing Director under the bye-laws to file the appeal. The view taken by the learned Additional District Judge in this behalf was wrong. The authorities of 1986(2) PLR 1 and 1988 PLJ 240 relied upon by the learned lower Appellate Court are not applicable to the facts of the present case. Moreover, it will be a question of fact in each case as to whether a separate resolution is required for filing the appeal or not. There cannot be a general proposition in this behalf.

(6) In view of this finding, the appeal should have ordinarily been sent back to the lower Appellate Court for decision on merits, but in order to avoid any further delay, I heard the learned counsel for the appellant on merits. No meaningful argument could be raised on behalf of the appellant to challenge the findings of the trial Court in this behalf. In these circumstances, though it is held that the appeal as such was maintainable filed on behalf of the Morinda Co-operative Sugar Mills Ltd. through its Managing Director, yet since there is nothing on merit in favour of the defendant, this appeal is dismissed as such with no order as to costs.

P.C.G.

Before : S. S. Grewal, J.

SUKHWINDER SINGH ALIAS SUKHA,—*Petitioner.*

*versus*

STATE OF PUNJAB THROUGH HOME SECRETARY,  
CHANDIGARH AND ANOTHER,—*Respondents.*

*Criminal Writ Petition No. 2094 of 1988.*

4th October, 1989

*Constitution of India, 1950—Articles 226, 227—Code of Criminal Procedure (II of 1974)—Section 482—Conservation of Foreign Exchange Prevention of Smuggling Activities Act (52 of 1974)—Ss. 3(3), 14—Detenu arrested in a criminal case—Preventive Detention order passed 5½ months after such arrest—Validity of detention order—Delay in passing order—Effect of such delay.*

Held, that where an unreasonably long period has elapsed between the date of the incident and the date of the order of detention, an inference may legitimately be drawn that there is no nexus between the incident and the order of detention and the order of detention may be liable to be struck down as invalid. But there can be no hard and fast rule as to what is the length of time which should be regarded sufficient to snap the nexus between the incident and the order of detention. In the circumstances of the case it cannot be said that the orders of detention was passed after any unreasonable delay and the said order is not liable to be quashed on that score.

(Paras 7 & 8)