

the procedure provided under section 18-A of the Act contemplates filing of the affidavit containing the grounds for leave to contest. Shri Sarin has further relied upon the decision of this Court in *Shivshankar Lal and another v. Surender Nath* (4). Again ratio of this decision is not applicable to the case in hand. No doubt, petition under section 13-A of the Act was filed but it contained other grounds as well. Summons were not issued in the prescribed form to enable the tenant to take up the pleas on affidavit. The order of eviction was passed which was set aside by the High Court remanding the case.

(10) For the reasons recorded above, this revision petition is dismissed. No order as to costs. One month's time is allowed to vacate the building in dispute.

J.S.T.

Before : S. S. Grewal & G. R. Majithia, J.

SHAROMINI GURDWARA PARBANDHAK COMMITTEE,  
AMRITSAR,—Appellant.

versus

MOHINDER KAUR,—Respondent.

First Appeal from Order No. 52 of 1979.

9th August, 1991.

*Sikh Gurdwaras Act, 1925—S. 34(1)—Right of Appeal—Creation of the Statute—Right of appeal granted only against a final order on merits—Order of dismissal in default—Appeal against such order incompetent.*

*Held*, that under sub-section (1) of Section 34 of the Act only party aggrieved by a final order passed by Tribunal determining any matter decided by it under the provisions of the Act, is entitled to file appeal. The impugned order, in the instant case, is not a final order. Nor the Tribunal had determined the rights of the parties concerning real matters in controversy on merits after affording adequate opportunity to the parties to lead evidence.

(Para 5)

**Sharoinini Gurdwara Parbandhak Committee, Amritsar v.  
Mohinder Kaur (S. S. Grewal, J.)**

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*First Appeal from the order of the Court of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh, dated 28th November, 1978, dismissing the Civil Miscellaneous Application No. 392 of 1978 with no order as to costs.*

*Claim : Application under Section 151, Code of Civil Procedure for restoration of petition No. 259 of 1963 which was dismissed in default on 18th December, 1963.*

*Claim in Appeal : For reversal of the order of lower court.*

*Gurbachan Singh, Advocate, for the Appellant.*

*T. S. Mangat, Advocate, for the Respondent.*

**JUDGMENT**

*S. S. Grewal, J.*

(1) This appeal is directed against the order of the Sikh Gurdwara Tribunal, Punjab, dated 28th November, 1978, whereby, holding that the impugned order of the Tribunal dated 18th December, 1963 was not a nullity and that application for setting aside the order of dismissal under Section 151 of the Code of Civil Procedure was incompetent and that order dated 20th September, 1974 dismissing Civil Misc. No. 213 of 1974 operates as *res judicata*, Civil Misc. No. 392 of 1978 filed by the Shiromani Gurdwara Parbandhak Committee (hereinafter referred to as the S.G.P.C.) was dismissed.

(2) In brief, facts relevant for the disposal of this petition are that Mahant Bishan Dass filed composite petition under Sections 8 and 10 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act) asserting that the institution in dispute, namely, Gurdwara Sahib Dharamshala Androoni situated in the revenue estate of Jalaldiwal, Tehsil Barnala, District Sangrur, belonged to Udasi sect was a Dharamshala and not a Sikh Gurdwara. Petition No. 259 of 1963 relates to claim under Section 8 of the Act. The Tribunal issued notice to Bishan Dass for 28th August, 1963 and as per report of Process Server Bishan Dass died on 2nd of February, 1963. The case was adjourned to 28th October, 1963 on which date Dial Dass moved an application for being impleaded as legal representative of Mahant Bishan Dass and notices of the said application were issued to the parties concerned including S.G.P.C. for 18th December, 1963. Dial Dass did not appear before the Tribunal on that day and the petition was dismissed in default. On 28th January, 1974, S.G.P.C. filed Civil Misc. application No. 213 of 1974 alleging that the impugned

order dated 18th December, 1963 dismissing the petition under Section 8 of the Act was without jurisdiction. It did not exist in the eye of law, was a nullity and the Tribunal was legally bound to finally dispose of the main petition under Section 8 of the Act. Notice of this application was sent to Dial Dass and as per report on the summons Dial Dass was already dead. Thereafter S.G.P.C. filed Civil Misc. application No. 241 of 1974 on 11th March, 1974 for impleading Mohinder Kaur widow of Dial Dass as his legal representative and subsequently she was allowed to be impleaded as legal representative of Dial Dass. Another Civil Misc. application No. 248 of 1974 was filed before the Tribunal, and, on its basis four **minor** daughters of Dial Dass, namely, Surinder Pal Kaur, Amarjit Kaur, Paramjit Kaur and Inderjit Kaur were also impleaded as legal representatives through their mother Mohinder Kaur. All the legal representatives of Dial Dass pleaded that the order of the Tribunal dated 18th December, 1963 is perfectly legal and valid; it did not suffer from inherent jurisdiction and the application was time barred. On 20th September, 1974, S.G.P.C. filed Misc. application No. 280 of 1974 alleging that after the death of Bishan Dass his legal representatives were not brought on the record in time; that the main petition had already abated and that application No. 213 of 1974 filed on behalf of the S.G.P.C. for restoration of the said application may be allowed to be withdrawn. On the statement of counsel for S.G.P.C. dated 20th September, 1974 Civil Misc. No. 213 of 1974 was dismissed as withdrawn. Second application No. 392 of 1978 under Section 151 of the Code of Civil Procedure was filed by the S.G.P.C. for restoration of the main petition, which was dismissed by the Tribunal on 18th December, 1963. It was mainly contended in this petition that the order dismissing the petition under Section 8 of the Act was without jurisdiction and a nullity and that Tribunal was legally bound to decide the main petition on merits. This petition was contested on behalf of Mohinder Kaur and others on the ground that the said order was legal and valid and was not a nullity and that the application was barred by limitation.

(3) From the pleadings of the parties, the following issues were framed by the Tribunal :—

1. Whether this application under Section 151, Civil Procedure Code, for setting aside the order of dismissal for default dated 18th December, 1963 of petition No. 259 of 1963 is incompetent ? OPR

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2. Whether the order dated 20th September, 1974, whereby Civil Miscellaneous No. 213 of 1974 was dismissed, operates as *res judicata* and the present application is incompetent? O.P.R.
3. Whether this Civil Miscellaneous application is not competent for the reasons given in para 3 of the preliminary objections raised in the written statement ? O.P.R.

All these issues were decided against the S.G.P.C. and prayer for restoration of the main petition (dismissed in default on 18th December, 1963) was dismissed.

(4) The learned counsel for the parties were heard.

(5) The learned counsel for the respondent raised the preliminary objection that the impugned order passed by the Tribunal is not a final order. It had not determined the rights of the parties on merits with regard to real matters in controversy and as such no appeal against the said order is maintainable. There is considerable merit in the contention raised by the learned counsel for the respondent. "Under sub-section (1) of Section 34 of the Act only party aggrieved by a final order passed by Tribunal determining any matter decided by it under the provisions of the Act, is entitled to file appeal. The impugned order, in the instant case, is not a final order. Nor the Tribunal had determined the rights of the parties concerning real matters in controversy on merits after affording adequate opportunity to the parties to lead evidence. The impugned order, in the instant case, was passed as far back as 18th December, 1963. Thereafter application moved by the S.G.P.C. for restoration of the main petition and for setting aside the order of dismissal of the main petition in default, too has been dismissed as withdrawn. The second application for this purpose too has been dismissed. The present appeal has been filed against the order of dismissal of the second application referred to above.

(6) In view of the specific prohibition contained in sub-section (2) of Section 34 of the Act, no appeal or application for revision lies against the order of the Tribunal which is not a final order as contemplated under Section 34(1) of the Act. We find support in our view from the Full Bench decision of this Court in *Bhagwan Singh v. Shiromani Gurdwara Parbandhak Committee, Amritsar (1)*,

where in relying upon the judgment of the apex Court in *M/s Jethanand and Sons v. State of Uttar Pradesh* (2), it was held that none of the orders passed by the Tribunal allowing the amendment of the appellant's petition was a final order within the meaning of Section 34(1) of the Act and that the appellant cannot, in the circumstances of this case, cross even the second hurdle provided by Section 34(1) of the Act, namely, that the order against which an appeal lies must be one whereby any matter has been determined under the provisions of this Act.

(7) It was further observed in the aforesaid authority in *Bhagwan Singh's case* that the decision to permit amendment or not to do so is one under the Code of Civil Procedure as applied to the proceedings under the Act. It is a mere procedural matter and does not by itself decide the real matter in controversy between the parties.

(8) For the foregoing reasons, we are of the considered view that no appeal lies against the impugned order passed by the Tribunal before this Court under the Act. The present appeal is not maintainable and is dismissed as such with no order as to costs.

S.C.K.

Before : S. S. Sodhi & Ashok Bhan, JJ.

M/S HOSHIARPUR EXPRESS TRANSPORT COMPANY LTD.,  
HOSHIARPUR,—Appellant.

*versus*

THE STATE OF PUNJAB,—Respondents.

General Sales-tax Reference No. 8 of 1985

13th August, 1991.

*Punjab General Sales Tax Act, 1948—S. 5 (1-A)—Punjab General Sales Tax Rules, 1949—Rl. 29 (xi) & (xii)—Notification dated March 30, 1966—Sale of old buses—Chasis and buses are different and distinct commodities—Purchase value of Chasis cannot be deducted from the gross turnover of the Assessee—Chasis is not the same thing*

(2) A.I.R. 1961 S.C. 794.