
(2004) 02 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Revision Petition No. 1498 of 2000

Adarsh Vidhya Mandir Samiti and Another

APPELLANT

Vs

Dharmpal Sharma

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11
Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18, 19, 21,
27

Citation : (2004) 3 RLW 1852 : (2004) 3 WLC 82

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : C.P. Sharma, for the Appellant; Tej Kumar Sharma, for the Respondent

Judgement

S.K. Keshote, J.—This revision petition u/s 115 of the CPC is directed against the order dated 9.1.1999 of the learned Civil Judge (Jr. Div.), Kama, District Bharatpur in Civil Suit No. 77/1994. Under this order the application filed by the defendant petitioners under Order 7 Rule 11 of the CPC, was dismissed.

2. The facts of the case are that the plaintiff respondent filed civil suit against the defendant petitioners being Civil Suit No. 77/1994 for permanent injunction in the trial court. The plaintiff respondent prayed therein for grant of following reliefs.

"YAHA KI PRATIVAADIGAN KO JARIYA DIKRI HUKUM IMTANAI DIWANI PABAND KIYA JAVE KI PRATIVADIGAN VADIGAN KO AACHARYA PAD SE SEVAMUKT NA KAREN VA VADIGAN KI SEWAON KO NIYAMIT KAREN EVAM ESA KOI KARYA NA KAREN JIS SE VAADIGAN KE ADHIKARON PAR KISI PRAKAAR KA KUTHARAAGHAAT HON."

3. The suit was contended by the defendant petitioners. It was specially pleaded that the suit is barred under the Rajasthan Non-Government Educational Institution Act, 1989 (for short, "the Act, 1989") and the application was

submitted under Order 7 Rule 11 of the CPC on 21st of April, 1997 but that has been dismissed under the impugned order and thus this revision petition.

4. Heard learned counsel for the parties and perused the order of the learned trial court.

5. Section 27 of the Act, 1989 prohibits the Civil Court from entertaining the suit which falls thereunder. It bars the jurisdiction of the civil court. It provides that no civil court shall have jurisdiction to settle, decide or deal with any question which is, by or under this Act, is required to be settled, decided or dealt with by the Tribunal.

6. Section 19 of the Act, 1989 provides that the employee aggrieved from the order of the Managing Committee, made u/s 18 of the Act, 1989, can prefer an appeal to the said Tribunal within 90 days from the date of receipt thereof.

7. Section 18 of the Act, 1989 provides that no employee to a recognized institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken.

8. Section 21 of the Act, 1989 lays down that where there is any dispute between the management of a recognized institution and any of its employees with respect to the conditions of service, the management or the employee may make an application in the prescribed manner to the learned Tribunal and the decision of the learned Tribunal thereon shall be final,

9. Section 23 of the Act, 1989 provides that the Tribunal shall entertain, hear and decide the appeal preferred u/s 19 of the Act, 1989 and disputes referred u/s 21 of the Act, 1989.

10. Thus, from the scheme of the Act, 1989 it is clear that the civil court cannot entertain any dispute or issue or proceedings touching to the subject matter enshrined under Sections 18, 19 and 21 thereof.

11. As per the case of the respondents, the dispute between the parties squarely covered u/s 21 of the Act, 1989, and thus the civil court has no jurisdiction to entertain the suit,

12. Along with the suit the plaintiff respondent filed an application for temporary injunction. That application was accepted by the learned trial court against which the appeal is preferred by the defendant petitioner. The learned trial court has dismissed the application filed by the defendant petitioner under Order 7 Rule 11 of the CPC only on the ground that while deciding the application filed by the plaintiff respondent for grant of temporary injunction it is already decided that the civil court has jurisdiction to entertain the suit. The learned trial court further held that this issue now raised is barred by principles of res judicata. It is a perverse approach of the learned trial court. The decision given by the learned trial court while deciding the application for temporary injunction is net final and

conclusive. The proceedings drawn on the application filed under Order 39 Rules 1 and 2 of the CPC are only interlocutory. Interlocutory proceedings are incidental to the main proceedings. They remain alive till the decision of the main proceedings. The suit or other proceeding is likely to take some time before the suit is finally adjudicated more often interim orders have to be made for protection of the rights of the parties. Such interlocutory proceedings stand independent and aloof of the main dispute between the parties involved in the suit. They are the steps taken for facilitating the just and fair disposal of the main dispute.

13. Usually the prayer for grant of interlocutory injunction is at the stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The interlocutory remedy is intended to preserve in status quo, the right of the parties, which may appear on a prima facie case. Looking to the nature of the proceedings being interlocutory or interlocutory remedy, obviously no final verdict can be given at this stage of the decision in respect of the prayer for temporary injunction and any observation made during the disposal of such proceedings had no relevance whatsoever while giving the final verdict in the suit.

14. While determining the issues of the jurisdiction of trial court to try the suit it is not justified in making use of the order passed by it while deciding the application for temporary injunction.

15. The order passed in the interlocutory proceedings or remedy is the interlocutory order. Whatever the observations made by the court while passing the interlocutory order in interlocutory proceedings are only tentative for limited purpose and life and would not prejudice the case of either of the parties at the final stage of the suit. There cannot be two views that while deciding the application for temporary injunction the tentative views can be expressed by the court on the merits of the case of the parties.

16. At the stage the lis between the parties is not finally decided, whatever observations made, findings recorded and decision given, while passing the interlocutory order in the interlocutory proceedings/remedy, are only for the purpose of deciding the matter of grant of temporary injunction. These are not the observations, decision and findings on the merits of the matter. Thus, these observations made, decision given and findings recorded while passing interlocutory order in interlocutory proceedings/remedy, are not binding between the parties nor the court should take it a final decision in the suit and decide the issues relying on those findings and decision.

17. In this case leaving apart that the suit filed by the plaintiff respondent is barred u/s 27 of the Act, 1989, otherwise also the order of the learned trial court is perverse and cannot be allowed to stand.

18. As a result of the aforesaid discussion, this revision petition succeeds and the same is allowed. The order dated 9.1.1999 of the learned Civil Judge (Jr.Div.), Kama District Bharatpur, in Civil Suit No. 77/1999 is quashed and set aside. The application filed by the defendant petitioners under Order 7 Rule 11 of the CPC is allowed and the Civil Suit No. 77/1994 is dismissed with no order as to costs.