

(2024) 05 SHI CK 0073

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 49, 51, 65, 66, 67, 68, 69 Of 2024

Ambuja Cement Ltd And Others

APPELLANT

Vs

Bimla Devi & Another

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 43, Rule 1(r)
Himachal Pradesh Cooperative Societies Act, 1968 — Section 72, 92

Citation : (2024) 05 SHI CK 0073

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Neeraj Gupta, Kulwant Chauhan, Ram Krishan Sharma, Sanjeev Bhushan, Sohail Khan

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. All these petitions are being decided together as common questions of law arise from identical facts.
2. The first respondents in all these petitions are the original plaintiffs before the learned trial Court in their respective suits (hereinafter referred to as plaintiff). Petitioner herein has been impleaded as defendant No.1(hereinafter referred to as the Company) and respondent No.2 herein has been impleaded as defendant No.2 (hereinafter referred to as the Society) in all the suits.
3. By way of these petitions, the Company has assailed the orders passed by the learned Appellate Court under Order 43, Rule 1 (r) of the Code of Civil Procedure (for short "the Code") affirming the orders of ad- interim injunction passed by learned trial Court against the Company on the applications of plaintiffs in all the petitions.
4. Brief facts necessary for adjudication of these petitions are that the Society is

a 'Cooperative Society registered under Himachal Pradesh Cooperative Societies Act, 1968' (for short "1968 Act"). Plaintiffs are the members of the Society. The said Society has been formed by the residents of the area affected by acquisition of land for establishment of cement manufacturing plant(s) of the Company. As part of Relief and Rehabilitation Scheme formulated by the State Government for the persons affected by the aforesaid acquisition, agreement was executed between the Society and the Company to facilitate the obligation of the Company to provide direct or indirect employment to the project affected persons. As per the agreement, the Company required trucks for transportation for its raw material and final produce and the same was to be provided by the Society. In similarly fashion, few other cooperative societies have been formed and they also have entered into similar agreement with the Company.

5. Plaintiffs being members of the society have attached their respective trucks with the society for the purpose of fulfillment of object of the society. Their trucks since long have been plied by the society for the purpose of transportation of raw material and final produce of the Company.

6. On 28.08.2023, the company placed check on plying of trucks of plaintiffs for the business of the company, which means that the trucks of plaintiffs were barred from being operated for the business of the Company. Plaintiffs filed their respective suits with a prayer of restraining the defendants by way of permanent prohibitory injunction from placing any check or fetter in the plying of trucks by the company. In addition, decree for damages has also been prayed for.

7. Plaintiffs along with their respective suits also filed applications for interim injunction seeking restraint order against the company to place any check or fetter in plying of their trucks by society for transportation of raw material or final produce manufactured by the company.

8. Learned trial Court after hearing the parties had allowed the applications of the plaintiffs and the company has been restrained from causing obstruction in the transport business of plaintiffs and has further restrained the company from implementing the orders of check put on the vehicles of the plaintiffs till final adjudication of the main suit.

9. The company assailed the orders of interim injunction passed by the learned trial Court before the learned Appellate Court by invoking provisions of Order 43 Rule 1(r) of the Code. Learned Appellate Court has affirmed the orders passed by the learned trial Court. Hence these petitions.

10. I have heard learned counsel for the parties and have also gone through the record carefully.

11. Learned senior counsel for the company has contended that the impugned orders are bad in law for the reasons, firstly, that without the prayer of declaration as to legality and validity of action taken by defendant No.1, the plaintiffs could not maintain the simpliciter suit for injunction; secondly, the

impugned action of placing check on the operation of vehicles had already been completed and accomplished and for such reason the interim injunction order could not have been passed; thirdly, it has also been contended that the plaintiffs had no privity of contract with the company and as such they were not entitled to seek any relief against it; and lastly, the Civil Court could not have taken cognizance of the suits filed by the plaintiffs on account of specific bar of jurisdiction laid under the provisions of 1968 Act.

12. On the other hand, learned counsel for the plaintiffs has supported the impugned orders by asserting that the plaintiffs had qualified three-way tests prescribed for grant of injunction. It has been submitted that the plaintiffs had a valid cause of action to file the suits against the defendants as their rights as members of the society were being jeopardised by illegal acts of the company. On complaint of plaintiffs, the society had taken up the matter with the company but without any result.

13. Section 72 of the 1968 Act provided that any dispute touching the constitution, management or the business of cooperative society between the members and the society is liable to be referred to the Registrar for decision and the jurisdiction of the Courts to entertain the suit or any proceedings in respect of such dispute has specifically been barred. Section 92 of the 1968 Act further bars the jurisdiction of Civil or Revenue Courts in respect of any dispute required under Section 72 to be referred to the Registrar.

14. Sine qua non for barring the jurisdiction of Courts either under Section 72 or Section 92 of the 1968 Act is existence of a dispute touching the constitution, management or the business of cooperative society. In the facts of the case in hand, the specific case of the plaintiffs is that they are members of society, which has entered into an agreement with the company for providing trucks to transport the raw material and manufactured product of said defendant. Rather, it has been pleaded that the company as a part of its obligation under the Relief and Rehabilitation Scheme has entered into an agreement with the society and similar other societies with a purpose to provide indirect employment to the residents of project affected area.

15. As far as the society is concerned, it has supported the claim of plaintiffs.

16. The company has also not denied that the trucks of plaintiffs were being used by the society for the purpose of transportation of raw material and final product manufactured by the Company. However, it has tried to justify its action of placing check on the trucks of plaintiff by stating that the plaintiffs were not entitled to be the members of defendant No.2 society as they had obtained direct employment under the Company and were also gaining by getting indirect employment. It has also been alleged that plaintiffs did not fall within the definition of affected family as neither their land was acquired nor they were the original inhabitants of the area.

17. Further, the plaintiffs had simply alleged against the society that it had

responsibility to vouch for the rights of plaintiffs. Though, on the request of plaintiffs, the society had taken up the matter with the company, but no positive result could be achieved.

18. Faced with peculiar circumstances, plaintiffs have approached the civil court for the reliefs as noticed above. The dispute that gave occasion for filing of suits was necessarily a dispute between the plaintiffs and company and for that matter between the society and the company, but not a dispute inter-se plaintiffs and the society, which according to plaintiffs had already taken up the matter with the Company for the interest of plaintiffs. Hence, the jurisdiction of civil court to entertain the suits of the plaintiffs cannot prima facie be said to be ousted.

19. In addition, the facts suggest that the plaintiffs had been able to establish prima facie case in their favour.

Plaintiffs have a right of indirect employment from the company, though through the agency of the society as a part of agreement/understanding to fulfil the objects of R&R Scheme. On infringement of such right, for the reasons entertained by the company, the case of the plaintiffs for grant of interim injunction was made out. The society has admitted the plaintiffs to be its validly inducted members. The company has privity of contract with the society and in case of any violation of settled terms of contract, the company could have taken up the issue of discord, if any, with the society instead of taking direct action against the plaintiffs that too without affording any opportunity of being heard to them.

20. Further, the balance of convenience has also rightly been assessed to be in favour of the plaintiffs; as in absence of interim injunction the right to earn livelihood of plaintiffs would have been seriously prejudiced. In such circumstances, even the compensation will not be adequate remedy. Till adjudication of right of compensation, the families of the plaintiffs are likely to suffer adversely. The effect on livelihood, education of the children and possible financial adversity by non-payment of EMIs of financial institutions who have financed the trucks, are foreseeable situations.

21. As regards the contention of learned senior counsel for the company that since the said defendant had already completed the action of stopping the vehicles of the plaintiffs from plying, injunction order could not have been passed during the pendency of the suit, the same deserves to be rejected. The stoppage of plying of vehicles of plaintiffs was not such an act which was permanent or otherwise in such nature that restraint placed could not be lifted. The action of the company was having continuous adverse effect on the rights of plaintiffs and its removal by way of impugned orders cannot be said to an illegal exercise of jurisdiction by learned trial and the appellate courts.

22. By the instant petitions, the jurisdiction of this Court has been invoked under Article 227 of the Constitution by alleging serious illegality committed by the learned trial Courts in judicial proceedings.

23. Article 227 of the Constitution reads as under:-

"227. Power of superintendence over all courts by the High Court.

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may--

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision or any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

24. The scope of jurisdiction of High Court under Article 227 of the Constitution has been expounded by the Hon'ble Supreme Court as under:

(i) In *Sadhana Lodh vs. National Insurance Co. Ltd. & another*, (2003)3 SCC 524, it has been held as under:-

"7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re -weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision."

(ii). In *Radhey Shyam & Another vs. Chhabi Nath and others*, (2009)5 SCC 166, the Hon'ble Supreme Court rendered the following exposition of law:-

"31. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and

Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.”

(iii). In *Garment Craft vs. Prakash Chand Goel*, (2022)4 SCC 181, it has been held as under:-

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute conclusion, for its own that of decision the on facts inferior court and or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, *Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others*, (2010) 1 SCC violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

25. Thus, from the above stated exposition of law, it is clear that this Court has restrictive and limited jurisdiction to interfere under Article 227 of the Constitution of India, except to set right the grave dereliction of duty or flagrant abuse or violation of fundamental principle of law or justice. On appraisal and analysis of available material, I have not found the cases in hand to be calling for any interference under Article 227 of the Constitution.

26. In light of above discussion, there is no merit in these petitions and the same are dismissed accordingly.

27. Pending applications, if any, also stand disposed of.