

(1932) 04 AHC CK 0031
In the Allahabad High Court

District Board of Farrukhabad and Others	APPELLANT
Vs	
Ikhlaque Husain	RESPONDENT

Date of Decision : 14-04-1932

Acts Referred:

Citation : (1932) 04 AHC CK 0031

Hon'ble Judges : Niamatullah, J;Boys, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Boys, J.—This matter came before me first of all sitting alone, and I referred it to a Bench of two Judges, principally with the view to" take a more binding interpretation, than would be the case when I sit alone of Clause (c). Section 115, Civil P.C. It is a defendant's application in revision arising out of a suit by a plaintiff (a) for a declaration that the plaintiff was secretary of the District Board, and (b) for an injunction restraining the Board from interfering with the exercise by him of the duties of secretary. The plaintiff eventually withdrew his prayer for a declaration on an objection being taken that he had given no notice to the Secretary of State. The Munsif refused to grant a temporary injunction for which the plaintiff also asked. On appeal to the District Judge, that Court eventually gave the plaintiff a temporary injunction, and hence the defendant's present application in revision. The grounds are two-fold: first, that no appeal lay to the District Judge; secondly, that no temporary injunction should be given except in accordance with certain principles which were in effect stated to be capable of description as the principles applying to the grant of perpetual injunction. A third ground was pressed, largely no doubt in consequence of a suggestion made from the Bench, that there were some grounds for thinking that the learned Judge had not approached the case exercising a judicial discretion.

2. As to the first ground that no appeal lies the plaintiff's counsel in support of his right to file an appeal to the District Judge relies upon Order 39, Rule 2, Order 43, Rule 1(r), and Lachhmi Narain v. Ram Charan Das [1913] 35 All 425. I

am satisfied that an appeal did lie. As to the second and third points, a preliminary objection was of course raised that no revision lies. I say "of course raised" because it is raised in perhaps three out of four of the cases before this Court on the revisional side, and it was agreed before me by counsel on both sides, and has been agreed in numerous other cases before me, that it is utterly impossible to reconcile the various rulings, even by this Court, on the subject. In considering the scope of Section 115, I think it is important to appreciate the meaning of the word "jurisdiction" for it is very frequently used as if it and the word "power" connote the same. I had occasion in another case to make a careful study of the scope of these words "jurisdiction" and "power" and of the related phrases "Court of competent jurisdiction," "Court competent to try" and "not empowered by law," and I came to the conclusion, and I have not seen any reason to depart from that conclusion, that the characteristics of jurisdiction are merely: (a) power to deal with offences or matters of the class in question; (b) power to deal with persons of the class in question.

3. In some cases it has been suggested that the question of venue is also a determining factor of jurisdiction, but that is not the better opinion. The word "jurisdiction" has therefore in legal parlance a special signification though it is frequently used in judgments as if it connoted the same as power." Frequently the word "jurisdiction" is merely used loosely for "power" and the decision would be the same, if the word "power" were substituted. In other cases where a Court has found that a defect was so serious as to be normally incapable of remedy, it has been led to speak of the matter as if it was one of "jurisdiction." I may give a simple illustration of the distinction. A Court may have power to hear an appeal in a particular matter, and it may have power over the particular persons concerned, it has then jurisdiction to hear the appeal, but if it proceeds to allow the appeal without giving notice to the other side, it has here exercised a power not vested in it.

4. The first two Clauses (a) and (b), Section 115, have, so far as I am aware, seldom given rise to any difficulty, even where the distinction between "jurisdiction" and "power" has not been noted. It is the interpretation by the Courts of Clause (c) in an effort to restrict the scope of this clause which has given rise to difficulty. I have been referred by the opposite party here to a decision of their Lordships of the Privy Council in Balakrishna Udayar v. Vasudeva Ayyar AIR 1917 PC 71 where at p. 799 (of 40 Mad.) they say that the point taken exception to must be one "involving jurisdiction." Again, two Judges of this Court in Yad Ram Vs. Sunder Singh, have used phraseology to the effect that the irregularity must occur "in the matter of jurisdiction," "in relation to the question of jurisdiction." I trust that I am not failing in the respect that is due to these pronouncements when I point out that none of these phrases occur in Section 115. They are paraphrases of the words in the section. But at the same_ time I am manifestly bound to give effect to phrases used by their Lordships of the Privy Council, to the best of my ability. I confess that I am unable to understand, and therefore I am unable to apply, the distinction between a Court assuming

jurisdiction not vested in it [Sub-clause (1)] of failing to exercise jurisdiction vested in it [Sub-clause (b)] and on the other hand a Court committing an illegality or irregularity "involving" jurisdiction.

5. A Court must either have jurisdiction or not have it. If any of the elements of jurisdiction are missing, it has no jurisdiction. I am unable to appreciate how an irregularity can involve or effect jurisdiction or relate to jurisdiction without destroying that jurisdiction; it cannot destroy, so to speak, a percentage of the jurisdiction and not destroy it wholly. Nor is counsel for the respondent able to suggest any such case. He has suggested that if a Court is hearing a case under Order 41, Rule 11, which it has jurisdiction to hear, and considering the appeal to be a good one, instead of merely admitting and issuing a notice, decrees the appeal without issuing a notice, decrees the appeal without hearing the other side, it has committed a material irregularity involving its jurisdiction. I cannot accept this as a true proposition. The Court had full and complete jurisdiction and was exercising it, but in the exercise of its jurisdiction it was having recourse to a "power" which it was granted by statute. Its jurisdiction was in no way "involved." It was merely exercising its jurisdiction and was committing a material irregularity while exercising that jurisdiction. The case would come within Section 115, Clause (c), not because the irregularity "involved" jurisdiction but because it was a very material irregularity, though no complaint could be "made as regards jurisdiction. I would therefore hold that in considering Clause (c) all that the Legislature requires is, that the Court should consider whether the Court below having jurisdiction in the matter, did in the exercise of its jurisdiction act illegally or with material irregularity. All illegality or material irregularity may be a basis for revising the order of the lower Court, and it is left entirely to the Revision Court to determine whether there has been such illegality or material irregularity as will dispose it to interfere. If a question of jurisdiction is involved, the Court may act under Clause (a) or (b).

6. I have now to apply these considerations to the present case. The second point, as I have set out above, urged on behalf of the applicant here is that the lower appellate Court did not decide the question whether a temporary injunction should be granted on the basis of certain principles alleged to be applicable to the grant of temporary injunctions, and when counsel was asked what those principles are, he was forced to admit that the only principles which he could suggest were those which were applicable to perpetual injunctions. I am of opinion that there is no force in this contention. Order 39 provides for the granting of temporary injunctions, and Rule 2, Sub-rule (2) is particularly applicable:

The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

7. Now Ch. 9, Specific Relief Act, deals with injunctions generally. As regards temporary injunctions, Section 53 expressly provides that they are regulated by

the Civil P.C. Ch. 10 lays down a number of conditions involving a grant of perpetual injunctions. It would be strange indeed if the Legislature deliberately distinguished between temporary and perpetual injunctions in the Specific Relief Act, and yet it intended the very conditions which it applied to perpetual injunctions to be applied to temporary injunctions. In this contention therefore of the applicant here, I think there is no force. The last point to which it is necessary to refer is the contention that the learned Judge did not apply a judicial discretion to the determination of the matter before him. The judgment does bear indications of haste and that the learned Judge did not deal with the matter quite so carefully as is his habit. But taking the judgment as a whole, I am not prepared to go so far as to hold that he did not really exercise a judicial discretion. The appearances on the face of the judgment, which lent some support to the contention may be only due to haste. "In any event this does not call for a more careful examination, in view of the fact that the plaintiff has actually been reinstated to his position as Secretary of the District Board. This is apparently due to the fact that a new Board has been elected.

8. Mr. Gopal Sarup Pathak, who says that he- appears both on behalf of Chhotay Lai, the rival quondam secretary, and also on behalf of the District Board says that he was instructed by Chhotay Lal to pursue this revision, but he has no instructions at all, one way or other, from the District Board. Mr. Krishna Murari Lal says that he has heard definitely from his client, the plaintiff, that he has been reinstated in his position. If this is so, it would appear that the only reasonable course would have been for the plaintiff to withdraw his suit, in which case the present application would have automatically been struck: off. It may not be that the plaintiff and the new District Board have actually brought themselves into contempt, but they have apparently approached doing so in allowing this litigation to proceed, upon a false basis to the waste of public time and money. I would therefore dismiss this application, but I would, make the parties to pay their own costs-throughout.

Niamatullah, J.

9. The facts which have given rise-to this revision are stated in the judgment of my learned colleague and do not require to be supplemented for the purpose of my separate note on the question of law which emerges from them. It is not: disputed that the learned District Judge: had jurisdiction to pass the order which, he did. He cannot therefore be considered to have exercised a jurisdiction not vested in him by law. It is likewise admitted that he did not fail to exercise any jurisdiction vested in him. Section 115(a) and (b) have therefore no application. His order granting a temporary injunction in appeal can be interfered, with in revision only if Section 115(c) is applicable. The scope of Section 115(c), Civil P.C. has been the subject of consideration in numerous cases., and the-difficulty which exists in construing that part of the section is greatly accentuated by numerous judicial dicta which, have gathered around it. We are not however at liberty to disregard those dicta, some of which occur in the judgments of their

Lordships of the Privy Council and Full Bench decisions of this Court. The difficulty is, to my mind, minimised if judicial pronouncements are construed with reference to the facts of the particular cases in which they occur and not as if they are part of statutory provisions. Section 115(c) empowers the High Court to interfere with an order passed by a subordinate Court having jurisdiction to pass it, if it "acted in the exercise of its jurisdiction illegally or with material irregularity." These words were interpreted as far back as 1883 by their Lordships of the Privy Council in *Raja Amir Hasan Khan v. Sheo Bakhsh Singh* [1885] 11 Cal 6 as implying that a mere error of law in deciding a case cannot be said to be an illegal or irregular exercise of jurisdiction. Referring to the order passed by the subordinate Court in that case, their Lordships observed: " that they had perfect jurisdiction to decide the question which was before them and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity. "

10. In a later case, *Bal Krishna v. Vasudeva Ayyar* AIR 1917 P.C. 71, their Lordships again emphasised the view in the following words:

It will be observed that the section applies to jurisdiction alone, the irregular exercise of it or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

11. These cases afford instances in which though an error of law was committed in deciding a case, jurisdiction could not be considered to have been exercised illegally or with material irregularity. It has been held in numerous cases decided by the High Courts that even where a question of limitation or *res judicata* has been erroneously decided, the High Court has no power to interfere in revision u/s 115(c). The observations of their Lordships of the Privy Council in the two cases cited above were differently interpreted by different High Courts. We are bound to accept the view laid down by the Full Benches of this Court. I may refer to *Yad Ram Vs. Sunder Singh*, , in which it was laid down that if the Court was competent to determine a question of law and did determine it, the High Court cannot interfere in revision merely because it considers that decision to be erroneous in point of law. Applying the rule deducible from the cases mentioned above to the facts of the case before us, we have to accept that an appeal lay to the District Judge-from the order of the trial Court refusing to grant a temporary injunction,, that the learned District Judge had jurisdiction to hear the appeal and to decide it and that if he decided the case before him wrongly, he cannot be. considered to have acted in the exercise of his jurisdiction illegally or with material irregularity. The learned Munsif expressed an opinion on the merits of the case on more than one important, point in deciding the question whether a temporary injunction should be-granted. The learned District Judge...on the other hand, expressed himself as follows:

Further he (the Munsif) discussed the question whether under law the condition of probation was legal or not. I am not going to discuss whether the condition of

probation was legal or otherwise. The case is yet pending and in my Opinion the case is to be decided after recording.: some evidence. Some oral and perhaps documentary evidence must be produced in support of what happened on 26th July 1931. That question is an important one in this case. Even if the condition of probation was legal, it is to be seen whether the proceeding of non-confirmation by the Board on 26th July 1931 was legally conducted. Therefore at this stage I refrain from: expressing any opinion as to the question of law, because it would influence the learned Munsif in his decision of the case.

12. In other words, the learned District. Judge refused to pre judge the merits of the case and proceeded to decide the-case on a different ground, which he-enunciated in the following words:

In my opinion, in cases of interim injunction we should see whether the plaintiff has a right or not, and if he has got a right, status quo should be maintained. I do not agree that the plaintiff would not incur any irreparable loss. He was a practising veil. Now his practice,, whatever it was, is totally gone; and if he starts practice again, it will take a long time to gain the same practice as he had before.... So the has a right, he would be entitled in his case to an injunction, and therefore the interim injunction should be granted.

13. There is an apparent inconsistency in the judgment of the learned District Judge in so far that he noted as one of the questions for decision whether the plaintiff had a right or not, but based his decision on his view that, unless a temporary injunction were granted, the plaintiff would suffer an irreparable injury, without expressing any opinion as. regards the plaintiff's right. Reading: his judgment as a whole, including the-earlier part of it quoted above, he-seems to have been of opinion that the case should be decided on a consideration of the balance of convenience and that the merits of the case should not be pre-judged. " If this was his view, I do not think any error can be attributed to the learned District Judge. He might not have happily expressed himself ; but there can be no doubt that he deliberately refrained from expressing any opinion on the question whether the plaintiff had the right which he claimed in the suit.

14. In granting or refusing to grant a temporary injunction a Court has a wide discretion under Order 39, Rule 2, Civil P.C. The exercise of that discretion should be in a judicial manner, depending upon the circumstances of each case. No hard and fast rule can be laid down for the guidance of the Courts as regards the exercise of such discretion. If a Court grants or refuses to grant a temporary injunction on the ground of balance of convenience, it is not correct to say that the discretion has been exercised otherwise than judicially only because the Court of revision thinks that it would have passed a different order in the circumstances of the case. For the reasons stated above I agree with my learned colleague in dismissing the revision.