
(1994) 05 KL CK 0011
In the High Court Of Kerala
Case No : C.M.A. No"s. 87 to 90 of 1993

D.L. Walton

APPELLANT

Vs

Cochin Stock Exchange Ltd. and Others

RESPONDENT

Date of Decision : 31-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 39 Rule 1, 9, 91, 91(1)
Securities Contracts (Regulation) Act, 1956 — Section 12, 13, 18, 18(2), 19

Citation : AIR 1995 Ker 106

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : S. Parameshwaran, Thomas M. Jacob and K.N. Chandra Babu, for the Appellant; Mathew Zachariah, K. Ramakumar, C. Pius Kuriakose, S. Ananthasubramanyan and S. Shyam, for the Respondent

Judgement

P.K. Balasubramanyam, J.—These appeals by the various defendants in O.S. No. 175 of 1993 on the file of the Subordinate Judge's Court of Ernakulam challenge the order of injunction granted by the trial court restraining defendants 1 to 5 from starting, functioning or organising dealings or from functioning in securities in any manner from building Nos. 36/1602 to 36/1605 in Elamkulam Village, Kanayannur Taluk, Ernakulam District till the disposal of the suit. Defendant No. 1 in the suit is a company incorporated under the Companies Act and defendants 2 to 5 are its Directors: The various appeals are filed by the Directors challenging the order of the court below. No appeal as such has been filed by the first defendant company. As noticed these appeals directed against the interim injunction granted by the trial court came up before the vacation court on 13-4-1993. The plaintiff in the suit, the Cochin Stock Exchange Limited had filed caveats before this Court and opposed the application for stay of operation of the order made by the defendants these appeals. Counsel appearing in all these appeals at that stage requested the court to hear and dispose of the Civil Miscellaneous Appeals themselves and consequently the appeals themselves were heard during the vacation by consent of parties and are being disposed of

by this judgment.

2. The suit O.S. 175 of 1993 is filed by the Cochin Stock Exchange Limited, a company incorporated under the Indian Companies Act and recognised as a Stock Exchange within the meaning of the Securities Contracts (Regulation) Act, 1956 for a declaration that the defendants are not authorised to carry on or establish or organise or assist in organising dealings in securities in any manner within Ernakulam District and for a decree of permanent injunction restraining the defendants from establishing or carrying on or permitting dealings with in stocks, shares and securities from building Nos. 36/1602 to 36/1605 of the Corporation of Cochin situated within the Ernakulam District. According to the plaintiff the plaintiff company was established in the year 1976 with the main object of functioning as a Stock Exchange. The Government of India had granted recognition to the Exchange and the said recognition is being renewed from time to time and at present the recognition is valid till 9-5-1994. The trading activities of the plaintiff are regulated by the Memorandum and Articles of Association of the plaintiff company. The provisions of the securities Contracts (Regulation) Act and the bye-laws of the Cochin Stock Exchange. It is the further case of the plaintiff that Sections 13 and 19 of the Act have been brought into force in Ernakulam District through a Gazette Notification dated 10-5-1979. The said Notification has been marked as Ext. A4. It is the case of the plaintiff that in the light of this position no one other than the plaintiff is authorised to permit or organise dealings in securities in Ernakulam District. Defendants 2 to 5 who are also members of the Cochin Stock Exchange Limited along with others had established another Public Limited Company M/s. Mayura Securities Ltd. impleaded as defendant No. 1 in the suit with a view to give membership to large number of persons to function as stock brokers and permitting dealings in securities in their business premises. It is also averred that the first defendant company is maintaining a trading floor in its place of business. According to the plaintiff the activities carried on by the first defendant company are illegal and are against Sections 13 and 19 of the Securities Contracts (Regulation) Act, 1956. According to the plaintiff the various advertisements issued by the first defendant company clearly make out that it proposes to function as a parallel Stock Exchange which is prohibited by law in view of the existence of the plaintiff company as a recognised Stock Exchange and that therefore the first defendant company is liable to be prevented from functioning as a parallel Stock Exchange or from establishing or carrying on or permitting dealings in Stocks, Shares and Securities in their premises situate in Ernakulam District. In effect the plaintiffs claimed relief on the footing that the plaintiff as a recognised Stock Exchange is alone entitled to carry on business in securities or permit others to carry on business in securities or shares in its premises and is entitled to prevent any other rival from carrying on the said activities in Ernakulam District. Along with the suit the plaintiff also filed I.A. 1357 of 1993 for an interim injunction restraining the defendants from carrying on their activities pending the suit.

3. There is some controversy before me as to whether the first defendant

company was properly served in the suit or not. Defendants 2 to 5 take the stand that there was no proper service of notice on the first defendant in the trial court. But according to the learned counsel for the plaintiff since the summons taken out to the first defendant company in the address of its Registered Office was returned, the plaintiff applied for service of notice on the first defendant on its Managing Director, the second defendant by invoking Order 29, Rule 2 of the CPC and that the same was allowed and notice was hence served on the second defendant on behalf of the first defendant company. Notice was accordingly served on the second defendant for and on behalf of the first defendant company and according to the learned counsel for the plaintiff the said service of notice is sufficient in the eye of law. Anyway in these appeals before me the first defendant was served with notice and the first defendant has entered appearance in the various appeals. I do not therefore consider that anything much turns on the question as to whether there was proper service of summons on the first defendant in the court below. I do not think it necessary or proper to go into the technicalities of that question in view of the fact that the first defendant has entered appearance in these appeals.

4. The application for injunction was resisted by the defendants contending that the suit as framed is not maintainable, that the plaint does not disclose a cause of action, that the plaintiff has no monopoly in carrying on trading in securities, that the plaintiff is only rival establishment and cannot prevent another from carrying on or permitting trading in securities, that there was no violation of any of the provisions of the Securities Contracts (Regulation) Act, 1956, that the first defendant was only doing "spot delivery contract" business which is not hit by anything contained in the Securities Contracts (Regulation) Act, that the plaintiff has no prima facie case, that the defendants have invested substantial amounts in acquiring the premises in Ernakulam and have made all arrangements for the carrying on of their business, that the balance of convenience was not in favour of the grant of injunction claimed by the plaintiff and that the application for injunction is liable to be dismissed.

5. In support of its case the plaintiff produced Exts. A1 to A5 showing its recognition as a Stock Exchange and the Notification regarding the enforcement of Sections 13 and 19 of the Securities Contracts (Regulation) Act, the Memorandum of Association and Articles of Association of the plaintiff, company bye-laws and regulations of the plaintiff company and various advertisements and paper reports claiming to show the nature of the business that is sought to be organised and carried on by the first defendant and a copy of a letter addressed by the securities Exchange Board of India to the plaintiff showing that already a request has been made to the Government of Kerala to prevent the activities of the first defendant company. The defendants in their turn produced Exts. B1 to B9 essentially attempting to show that they are entitled to carry on business and "spot delivery contract", that they had applied u/s 12 of the Securities Exchange Board of India Act for registration and that they are entitled to carry on their business. The court below found that the suit is maintainable,

that the plaintiff has made out a cause of action for preventing the defendants from carrying on their proposed activities in their premises in Ernakulam, that the defendants are liable to be prevented from violating Section 19 of the Securities Contracts (Regulation) Act and that the plaintiff is entitled to an order of injunction as claimed by it. It is the correctness of this order that is challenged before me by the various appellants who are defendants 2 to 5 in the suit.

6. The question of the maintainability of the suit was rather elaborately argued before me by the learned counsel for the appellant appearing in C.M.A. 87 of 1993 and was reiterated by counsel in the other appeals. According to the learned counsel the suit is not maintainable for various reasons. Firstly the suit is not one in a representative capacity under Order 1, Rule 8 of the CPC and since the right put forward by the plaintiff is a right enjoyed by it in common with the others the suit ought to have been under Order 1, Rule 8 of the Code. Secondly the suit was one for vindication of a right in the public and was likely to affect the public, the suit could not be maintained without sanction u/s 91 of the Code of Civil Procedure. Thirdly it was contended that the Securities Contracts (Regulation) Act on the basis of which the plaintiff is claiming relief is a special right created by a special statute and the plaintiff can have his remedy only by moving the authorities under that statute and not by seeking to get his grievances on the basis of the rights alleged to be conferred by that Act through the civil court. Fourthly it was submitted that the plaintiff had no locus standi to maintain the suit since no legal right of the plaintiff was infringed and the plaintiff suffered no legal injury. Fifthly it was stated that the plaintiff was at best a rival in trade and could not maintain a suit to restrain a rival in trade from carrying on his business. I shall deal with these aspects one by one.

7. The present suit is filed by the plaintiff claiming to be a recognised Stock Exchange to enforce a right in itself to prevent another organisation from carrying on a similar business within the area of its operation. The suit is filed on the basis that by attempting to carry on similar operation within the area of Ernakulam District the defendants are violating the provisions of the Securities Contracts (Regulation) Act and thereby interfering with the exclusive right of the plaintiff and that therefore the defendants are liable to be restrained by a decree of injunction from so doing. It cannot be said that the plaintiff is only one among the numerous persons having an interest in the subject-matter of the suit. I am not therefore in a position to accept the argument based on Order 1, Rule 8 of the CPC to the effect that the plaintiff ought to have obtained sanction under that provision so as to enable it to maintain the suit. The plaintiff is an incorporated company under the Indian Companies Act and is suing another incorporated company under that Act and its Directors. In my view there is no impediment in the plaintiff maintaining the suit for itself without recourse to Order 1, Rule 8 of the Code of Civil Procedure. It is also not possible to accept the argument that when the plaintiff is seeking to restrain the defendants from running a parallel exchange they are claiming an interest in common with others within the meaning of Order 1, Rule 8 of the Code of Civil Procedure. The argument based

on Section 91 of the CPC is also to some extent sought to be linked with the contention based on Order 1, Rule 8 of the Code of Civil Procedure. According to the learned counsel when the plaintiff seeks to prevent the defendants from carrying on their business they are in fact seeking a relief in respect of an act that is likely to affect the public. In my view there is no question of any public right involved in the nature of the present suit and therefore Section 91(1) of the CPC will also have no application. On the other hand it appears to me that even assuming that Section 91(1) of the Code Civil Procedure is attracted this would be a case where the plaintiff itself may have a right of suit existing independently of Section 91(1) of the Code of Civil Procedure. I am of the view that in any view this will be a case coming u/s 91(2) of the CPC and the argument based on Section 91(1) of the CPC and Order 1, Rule 8 of the CPC have only to be overruled.

8. It was strongly urged on behalf of the appellants that what the plaintiff is seeking to do in the present case is to enforces right created by the Securities Contracts (Regulation) Act, 1956 and by Sections 13 and 19 thereof in particular. According to the learned counsel right conferred by Sections 13 and 19 and the other provisions of the Securities Contracts (Regulation) Act are merely rights created by a statute and could be enforced only by invoking the procedure laid down by that statute. It is the submission that if the plaintiff feels aggrieved by the violation of anything, contained in the Securities Contracts (Regulation) Act, the plaintiff has to move the authorities under that Act to prevent the defendants from violating the right of the plaintiff if any conferred by that Act. The plaintiff not having resorted to such a course, it is contended that the suit would not be maintainable in the civil court. The well-known principle recognised by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and followed by it in subsequent decisions like *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, . *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, ; *Munshi Ram and Others Vs. Municipal Committee, Chheharta*, ; *Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others*, and the various decisions of the High Courts were brought to my notice in support of this contention. I do not think it necessary to refer to all the authorities cited by the learned counsel for the defendants except to quote the observations in paragraph 12 of the judgment of the Supreme Court reported in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, .

"It is now well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J. in *Wolver Hampton New Water Works Co. v. Hawkesford* (1859) 6 CB (NS) 336, at p 356 in the following passage:

"There are three classes of cases in which a liability may be established founded

upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.* (1919) AC 368 and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tabago v. Gordon Grant & Co.* (1935) AC 532 and AIR 1940 105 (Privy Council) and it has also been held to be equally applicable to enforcement of rights (See *Hurdutrai v. Off. Assignee of Calcutta* (1948) 52 Cal WN 343, at p 349. That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

It is urged by the learned counsel for the appellants that the present case comes under the third class referred to in the said decision namely where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it, then the remedy provided by the statute must be followed, and it is not open to the party to approach the civil court direct. The question then is whether there is any machinery provided by the Securities Contracts (Regulation) Act for redressal of a grievance like the present wherein the plaintiff is claiming that there is a violation of Sections 13 and 19 of the Act. On going through the provisions of the Securities Contracts (Regulation) Act, I do not find any machinery provided for an adjudication of a grievance that any of the provisions of the Act has been violated. The mere fact that the plaintiff could complain to the authorities created by that Act and hope that the authorities under that Act would take action cannot be said to bar the right of the plaintiff to approach the civil court for the redressal of its grievances. It appears to me that even assuming that the plaintiff is seeking to enforce a right created by the Securities Contracts (Regulation) Act alone, this would be a case which would come under the second class of cases referred to in the passage quoted above that is a case where the statute gives the right to sue but provides no particular form of remedy thus relegating the aggrieved person to the civil court. I am therefore of the view that there is no express or implied bar created by the Securities Contracts (Regulation) Act regarding the maintainability

of the suit in the civil court, Great reliance was placed by the learned counsel on the decision reported in K.K. Subramoniam Vs. M.P. Sreenivasan and Another, and particularly to paragraph 5 of that decision. In that case it was held by his Lordship Justice Subramonian Poti (as he then was) that:

"If a person has a right at common law and in regard to this matter a statute is enacted which statute provides a machinery for working out the remedy if the right is infringed, still such person will be entitled to resort to a civil court to seek his remedies in regard to the infringement of his rights unless the statute excludes such resort to the civil court and confines his remedies to that provided by the statute. That is because even de hors the statute such a person had a civil right and unless the provisions of the statute are to be so read as excluding resort to the civil court for vindicating such civil right ouster of jurisdiction of civil courts cannot be assumed. But this rule does not hold good where the statute creates rights for the first time. In such cases it is the machinery prescribed by the statute which creates such rights that will be available to the person. In such a case unless right is conferred on the civil courts it will not be open to a person to resort to such civil remedies."

It is the submission of the learned counsel for the appellants that since in this case the right is created by the Securities Contracts (Regulation) Act for the first time and since no right is conferred on civil court for enforcement of that right, the plaintiff is not entitled to maintain the present action. With respect to the learned counsel, it appears to me that this question in the form will arise only in a case where the statute that creates the rights also creates a machinery for the enforcement of that right and not in cases where the statute merely creates a right and does not create any specific machinery for its enforcement. The mere fact that the plaintiff could bring to the notice of the authorities created by the Securities Contracts (Regulation) Act that the defendants are violating the prohibition contained in Sections 13 and 19 of that Act could not be understood as an express or implied ouster of the jurisdiction of the civil court. As observed in Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, there is also an equally well settled principle governing the scope of the Civil Court's jurisdiction in a case where a statute created a liability and provided a remedy. Even in such a cases, the Civil Court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions". Since in my view the statute does not even provide a machinery through which the said remedy can be obtained, it is not possible to find that there is an ouster of the jurisdiction of the civil court to entertain a complaint that the provisions of the Securities Contracts (Regulation) Act are being violated by the defendants and that they are liable to be prevented from violating that statute. I have therefore no hesitation in overruling the contention raised on behalf of the appellants that the only remedy available to the plaintiff is to move

the authorities under the Securities Contracts (Regulation) Act.

9. The next contention was that the plaintiff has no locus standi to maintain the suit in view of the fact that no legal right of the plaintiff has been infringed and no legal injury has been suffered by the plaintiff. According to the appellants no legal injury has been suffered by the plaintiff because the defendants have not in any way interfered with the working of the plaintiff as a Stock Exchange. It is contended that the first defendant as an incorporated company has a right to carry on its business in accordance with its Memorandum and Articles of Association and even if by the carrying on of such business by the first defendant the plaintiff suffers some loss in its business it cannot be said that the plaintiff sustains a legal injury so as to enable it to seek reliefs from a court of law. In this connection it was pointed out that a rival in trade has no right to sue to restrain another from carrying on his business. The cases relating to objection by a rival mill owner or a rival licensee under the Cinema Regulations Act objecting to the grant of licence to a rival theatre or a rival rice mill were referred to. It was said that the plaintiff at best is only a rival running a Stock Exchange and in the light of the legal position that such a rival claimant cannot object to another carrying on his trade or business the plaintiff could not maintain the suit. The plaintiff has laid this suit on the ground that the plaintiff was the only recognised Stock Exchange entitled to carry on the business in securities and that any rival is precluded from carrying on such business within the district of Ernakulam by virtue of the Notification issued under the Securities Contracts (Regulation) Act. There is a further contention that in the light of Section 19 of the Securities Contracts (Regulation) Act which had been brought into force in the area in question, the activity by the first defendant would be in violation of the statute and that anyone can sue for preventing the first defendant from violating the statutory prohibition. Counsel for the plaintiff relied on the decision of this court reported in *B. Govinda Rao Vs. District Collector, Ernakulam and Others*, ; *P. Saina and Others Vs. Konderi and Others*, *Godavari Bai v. Cannanore Municipality*, 1984 Ker LT 1103 : (AIR 1985 Kerala 2) and *Secretary, K.S.E.B., Trivandrum Vs. M. Sainaba and Others*, to point out that a suit could be maintained by a citizen complaining of violation of a statute by another citizen even if he is not personally affected by the act of the defendant. In the light of the principles noticed by this court in the decisions referred to above, it is not possible to accept the argument raised on behalf of the plaintiff (defendant?) that the plaintiff cannot maintain the suit in view of the fact that the plaintiff has not suffered any legal injury which can be redressed in a court of law. The decision reported in *Gregory v. Camden London Borough Council* (1966) 1 WLR 899, according to me, cannot advance the case of the defendants that the plaintiff has no right to maintain the present suit.

10. On a reading of the plaint in the present case I find that the plaintiff is complaining of an infringement of its legal right to function exclusively as a Stock Exchange in Ernakulam District and is also complaining that the defendants are violating the provisions of the Securities Contracts (Regulation) Act. In my view

there is no impediment to the plaintiff maintaining such a suit in the civil court for the redressal of its grievances. I therefore overrule the contention raised on behalf of the appellants regarding the maintainability of the suit and hold that the suit as formed by the plaintiff is prima facie maintainable. I have dealt with this aspect somewhat elaborately in view of the fact that the major argument raised on behalf of the appellants was on the aspect of the maintainability of the suit.

11. The next contention seriously urged is that the plaint and the affidavit in support of the application for injunction do not make out a cause of action to enable the plaintiff to get the remedy sought for by it. It is pointed out that in the affidavit in support of the application for injunction, there were no allegations which would show that any legal right of the plaintiff has been invaded and that the plaintiff has suffered any legal injury. It is also pointed out that there are no allegations to establish a prima facie case or to make out that the balance of convenience is in favour of the grant of an interim injunction in favour of the plaintiff. In answer it is submitted by the learned counsel for the plaintiff that a reading of the plaint would clearly show that the plaintiff has put forward its case that it is the only recognised Stock Exchange and that the defendants are carrying on a business which can be carried on only by a Stock Exchange and that the defendants are precluded by Sections 13 and 19 of the Securities Contracts (Regulation) Act from carrying on the activities they intend to carry on. A reading of the plaint shows that the plaintiff has pleaded that the plaintiff is the recognised Stock Exchange and that Sections 13 and 19 of the Securities Contracts (Regulation) Act have been brought into force in Ernakulam District and that they prohibit dealings in securities by any person other than between the members of the recognised Stock Exchange. It is also pleaded that in the light of this position nobody other than the plaintiff Stock Exchange could do business in Ernakulam District. It is averred in paragraph 7 of the plaint that the first defendant company has given membership to a large number of persons to function as stock brokers and they are permitting dealing with in securities in their business places. It is also averred that the first defendant company is maintaining a trading floor in its place of business. It is also averred that the members of the first defendant company are carrying on dealings in securities as if the first defendant company is a Stock Exchange. In paragraph 3 it is again averred that the first defendant company is functioning as if it is a Stock Exchange and is permitting dealings in securities. It is also averred that the company is illegally maintaining trading floors and enable its members to trade on the illegal floors established by the company. In the light of these averments it cannot be said that the plaint does not disclose a cause of action against the defendants. A reading of the plaint as a whole would clearly indicate that the plaintiff is claiming a right to function as the sole Stock Exchange within the Ernakulam District and that it is complaining that the first defendant company is trying to function as a parallel Stock Exchange in violation of the rules of the plaintiff Stock Exchange and also in violation of the relevant provisions of the

Securities Contracts (Regulation) Act. It is not therefore possible to agree with the submission made on behalf of the defendants that the plaint does not disclose a cause of action. I am therefore not able to accept the submission made on behalf of the appellants that the plaint ought to be thrown out on the ground that it does not disclose a cause of action.

12. The next question for consideration is as to whether the plaintiff has made out prima facie case of violation of any statutory provision by the defendants or an infringement of its claimed right to function as the sole Stock Exchange in the District Ernakulam. It can be seen from Ext. A1 dated 8-5-1989 that the Central Government had granted recognition to the plaintiff as an Exchange u/s 4 of the Securities Contracts (Regulation) Act. Ext. A4 shows that in exercise of the powers conferred u/s 13 of the Securities Contracts (Regulation) Act the Central Government had declared that Section 13 shall apply to the Ernakulam District of Kerala State and also that Section 19 of the said Act had been made applicable with effect from 10-5-1979 in the area covered by the Ernakulam District of Kerala State. Ext. A1 coupled with Ext. A4 would prima facie support the case of the plaintiff that the plaintiff is a recognized Stock Exchange and that Sections 13 and 19 have been extended to Ernakulam District thereby prohibiting any other person from carrying on business as a Stock Exchange. It is therefore prima facie clear that the first defendant could not function as a parallel Stock Exchange within Ernakulam District. This position is sought to be met on behalf of the defendants by contending that the first defendant is only doing "spot delivery contract" and that by virtue of Section 18 of the Securities Contracts (Regulation) Act Section 13 of the Act has been made inapplicable to "spot delivery contracts". In further support of this submission the circular Ext. B3 issued by the Securities Exchange Board of India saying that the business of "spot delivery contract" in securities is not hit by the prohibition is also relied on. It is also contended that what is prevented by Section 19 is only what is prescribed by Section 13 of that Act and since a "spot delivery contract" would not come within Section 13 of the Act, the same also could not be said to be prevented by Section 19 of the Act. The Court below has taken the view that even though "spot delivery contract" is not hit by the prohibition contained in Section 13 of the Act the same is also hit by the prohibition contained in Section 19 of that Act. This finding by the trial court is seriously challenged by counsel for the appellants.

13. It may be necessary at this stage to notice the three relevant sections of the Securities Contracts (Regulation) Act. The said sections are extracted below.

"13. Contracts in notified areas illegal in certain circumstances. -- If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or area, that it is necessary so to do, it may, by notification in the official Gazette, declare this section to apply to such State or area, and thereupon every contract in such State or area which is entered into after the date of the notification otherwise than between members

of a recognized stock exchange in such State or area or through or with such member shall be illegal."

"18. Exclusion of spot delivery contracts from Sections 13, 14, 15 and 17. -- (1) Nothing contained in Sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in Sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether Section 13 has been declared to apply to that State or area or not), it may, by notification in the official Gazette, declare that the provisions of Section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply",

"19. Stock exchanges other than recognized stock exchanges prohibited. -- (1) No person shall, except with the permission of the Central Government, organize or assist in organizing or be a member of any stock exchange (other than a recognized stock exchange) for the purpose of assisting in, entering into or performing any contracts in Securities.

(2) This section shall come into force in any State or area on such date as the Central Government may, by notification in the official Gazette, appoint".

14. "Spot delivery contract" is defined by Section 2(i) of the Securities Contracts (Regulation) Act thus :

"spot delivery contract" means a contract which provides for the actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore though the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality :"

In *Madhubhai Amathalal Gandhi Vs. The Union of India (UOI)*, the Supreme Court observed thus (at pp. 23 and 24 of AIR) :--

"The Act mainly provides for the recognition of stock exchanges and for controlling the rule-making of the said exchanges. Section 4 of the Act empowers the Central Government to recognise stock exchanges subject to two conditions. Section 13 enables it to issue a notification that in a particular State or area every contract which is entered into after the date of the notification otherwise than between members of a recognised stock exchange in such State or area or through or with such member shall be illegal. Without resorting to such drastic procedure the Government is also given power to prohibit contracts in certain securities in certain areas from doing business without obtaining a licence. Spot

delivery contracts are excluded from the operation of Sections 13, 14 15 and 17 of the Act, unless the Central Government by notification thinks fit to extend the operation of Section 17 of the Act to such contracts Section 19 prohibits formation of stock exchanges other than recognised ones except with the permission of the Central Government. It declares all auctions in securities entered into after the commencement of the Act illegal. It also provides penalties for the infringements of the provisions of the Act. In short, the Act confers an effective controlling power on the Central Government over the stock exchanges."

It was further observed in paragraph 12 of the said judgment :

"The petitioner has the right to do business in shares : in spite of the notification she can still do business in spot delivery contracts. He can apply to become a member of the Stock Exchange subject to the conditions laid down by the Rules."

In the earlier part of the judgment their Lordships have referred to the three modes of dealing in shares and stocks. It has been observed thus (at pp. 22 and 23 of AIR) :

"There are three modes of dealing in shares and stocks, namely, (1) spot delivery contract, i.e., a contract which provides for the actual delivery of securities on the payment of a price thereof either on the day of the contract or the next day, excluding perhaps the period taken for the despatch of the securities or the remittance of money from one place to another; (2) ready delivery contract, which means a contract for the purchase or sale of securities for the performance of which no time is specified and which is to be performed immediately or within a reasonable time; (3) forward contracts, i.e., contracts whereunder the parties agree for their performance at a future date. If the stock exchange is in the hands of unscrupulous members, the second and third categories of contracts to buy or sell shares may degenerate into highly speculative transactions, or what is worse, purely gambling ones".

In the said decision though the question as to whether a spot delivery contract which is exempted by Section 18 of the Act also comes within the prohibition of Section 19 of the Act was not discussed as such, it has to be noted that their Lordships have referred to Section 19 of the Act in the course of the judgment and have thereafter observed at the end of the said decision that in the absence of a Notification u/s 18(2) of the Act, there is no prohibition in carrying on the business of spot delivery contract even in an area wherein there is a recognised Stock Exchange. In the light of this position it is not possible to agree prima facie with the trial court that even the carrying on the business of spot delivery contracts would be hit by Section 19 of the Securities Contracts (Regulation) Act.

15. The learned counsel for the appellants relied on Section 12 of the Securities and Exchange Board of India Act, 1992 to contend that the first defendant has applied u/s 12 of that Act for registration and is hence entitled to carry on its business until the registration is refused by virtue of the proviso to that Section. Section 12 of the Securities and Exchange Board of India Act, 1992 relates only

to registration of stock brokers, sub-brokers, share transfer agents and others who are in the position of intermediaries associated with securities markets. It appears to me prima facie that Section 12 of the Securities and Exchange Board of India Act cannot enable the defendants either to run a parallel stock Exchange or have members affiliated to the first defendant and also have trading floors to permit such members to carry on business in shares and securities. Moreover Section 32 of the Securities and Exchange Board of India Act provides that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. It therefore appears to me that the fact that the first defendant has applied u/s 12 of the Securities and Exchange Board of India Act would not enable it to contend that it is not affected by the prohibition contained in Sections 13 and 19 of the Securities Contracts (Regulation) Act.

16. Exts. A6 to A8 are advertisements issued by the first defendant regarding the activities it proposes to carry on and inviting applications for employment under it. These advertisements coupled with the plaint Ext. A9 filed by the fifth defendant would indicate that the business that the first defendant proposes to carry on would be a business that comes within the prohibition enacted by Section 19 of the Securities Contracts (Regulation) Act, 1956. The Objects and Reasons of the first defendant Company as quoted in the counter affidavit of the fifth defendant also justifies the apprehension of the plaintiff. The Objects are :

"1. To carry on the business of Buying, Selling Dealing, investing, subscribing, Jobbing, Financing, Underwriting, brokeraging, Market Making of Securities and Managing the Funds of any persons or Company in various avenues like Growth Fund Venture Capital Fund and to pass benefits of such portfolio investments to its participants and to act as a clearing house for settlement of transactions and to hold the securities in its custody deposited by the participants and to render financial services to the public.

2. To apply for and obtain the membership in the Stock Exchange and generally deal in securities as the member of the Stock Exchange or to enter into any arrangements with members of the Stock Exchanges".

The argument that spot delivery contracts are not prohibited but are really licenced and permitted as can be seen from Ext. B2 does not enable the defendants to run a Stock Exchange as defined in Section 2(j) of the Securities Contracts (Regulation) Act. It appears to me that the attempt of the defendants is really to organise a Stock Exchange for the purpose of associating in, entering into or performing contracts in securities. In any view even if Exts. A6 to A9 do not make out that the attempt of the defendants is to create a parallel Stock Exchange, even then it is clear in the light of the provisions of the Securities Contracts (Regulation) Act that the defendants are not entitled to carry on an activity that would be hit by Section 19 of that Act. I am therefore in agreement with the trial court that the business attempted by the defendants is hit by Section 19 of the Securities Contracts (Regulation) Act except in cases where the

first defendant itself is entering into spot delivery contracts. I am therefore of the view that the plaintiff has made out a prima facie case for an injunction restraining the defendants from carrying on the business akin that of a Stock Exchange within the District of Ernakulam. Since I have found that the plaintiff has made out a prima facie case for injunction, it is not necessary to consider the question as to whether a prima facie case has in fact to be fully made but before an order of injunction could be granted or whether it is not sufficient to show that the balance of convenience is in favour of the grant of injunction and that a triable issue arises in the light of *American Cyanamid Co. v. Ethicon Ltd.* (1975) All ER 504 (HL) and *Joshua v. His Grace Geevarghese Mr. Discorus* ILR (1985) 1 Ker 1.

17. The next aspect that has to be considered is the question of balance of convenience. It is contended on behalf of the appellants that the defendants have invested considerable amounts for the purpose of carrying on their business in the premises referred to in the plaint and that the grant of an injunction restraining them from carrying on their business would result in considerable financial loss to them and that the refusal of an injunction in favour of the plaintiff would not seriously affect the plaintiff since the injury on the plaintiff's business if at all would be only marginal. May be that the defendants have invested substantial amounts for acquiring a premises and equiting it for the purpose of running their business. But once it is found that the activity sought to be carried on by the defendants is one that is prohibited by Section 19 of the Securities Contracts (Regulation) Act, it appears to me that the balance of convenience would be in favour of preventing the defendants from by-passing the statutory prohibition and not in enabling them to get over the bar created by the statute. Moreover I have found that the first defendant itself could do the business of spot delivery contract and is not entitled to conduct a trading floor or permit its members to do business among themselves in such trading floors. It is not therefore a case where the entire business activities of the first defendant are prevented by the issue of an injunction. Moreover if the policy of the law is to permit only one recognised Stock Exchange in a given area to function as Stock Exchange for the purpose of the Securities Contracts (Regulation) Act, it appears to me that the balance of convenience in law would always be in favour of the grant of injunction to enforce that statutory scheme rather than refusing an injunction so as to enable a person to by-pass that scheme. Running of a parallel Stock Exchange would also certainly affect the functioning of the recognised Stock Exchange, which is the plaintiff in this case. I am therefore of the view that the balance of convenience in this case is in favour of the "grant of the injunction claimed by the plaintiff subject to the modification I have noted above.

18. Mr. Krishnamoorthy, advocate appearing on behalf two persons who sought to get themselves impleaded in C.M.A. No. 87 of 1993 was also heard though the application for impleading itself was not formally allowed. He pointed out that there was a clear averment in the plaint that Section 19 of the Securities Contracts (Regulation) Act was violated by the defendants but that the

defendants have not chosen to plead the facts explaining the nature and extent of the proposed business so as to enable this court to come to a conclusion as to whether Section 19 of the Securities Contracts (Regulation) Act is really violated in this case. He pointed out that the defendants have not disclosed the nature of the business they propose to carry on nor have they disclosed their object in making such elaborate arrangements for the carrying on of their business. He also points out that Ext. A6 advertisement would itself show that their intention is not merely to do business in spot delivery contracts. I find some justification in the submission made on behalf of the intervener that the defendants have not disclosed the nature of the business they propose to carry on in their premises. The objects of the first defendant company as can be seen from the counter affidavit filed by the fifth defendant also supports the apprehension expressed by counsel for the plaintiff that what the first defendant proposes to do is to have a parallel Stock Exchange. Having found therefore that Section 19 of the Securities Contracts (Regulation) Act would be attracted, in the light of the averments in the plaint which had not been specifically controverted, I am satisfied that the plaintiff is entitled to an injunction as granted by the trial court with a clarification. The clarification is to the effect that the first defendant is entitled to enter into spot delivery contracts.

19. In modification of the order of the trial court I order that there will be an injunction restraining defendants 1 to 5 from starting, functioning or organising dealings or business in securities including the establishing or conducting of any trading floor in the buildings Nos. 36/1602 to 36/1605 in Elamkulam Village, Kanayannur Taluk, Ernakulam District until the disposal of the suit. It is clarified that the first defendant would be entitled to carry on the spot delivery contract business but would not be entitled to permit its members or others to do trading among themselves in the premises of the first defendant. Subject to the above clarification the order of injunction granted by the trial court is confirmed, Bearing in mind that these are interlocutory appeals, I have refrained from elaborately considering the various aspects. But out of deference to the long arguments addressed before me I have dealt with the questions in some detail.

In the result the appeals are substantially dismissed except as regards the modification regarding the entitlement of the first defendant to carry on spot delivery contract business as permitted above. I make no order as to costs.