
(2003) 11 AHC CK 0083
In the Allahabad High Court
Case No : C.M.W.P. No. 10526 of 1994

Krishi Utpadan Mandi Samiti

APPELLANT

Vs

IIIrd Additional Munsif and Another

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17

Citation : (2004) 1 AWC 509 : (2004) 1 UPLBEC 806

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; S.P. Gupta and Arun Kumar, S.C., for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—Heard learned counsel for the parties.

2. This writ petition is directed against an ex parte judgment and decree dated 13.5.1992 passed by the respondent No. 1 in Suit No. 77 of 1986.

3. Brief facts for the decision of this petition are that the contesting respondent No. 2 instituted an Injunction Suit No. 77 of 1986 restraining the petitioner from realising market-fee on kattha. The case set up in the plaint was that kattha and katechu are not agricultural products and since they were manufactured items, no market fee could be realised from it. It appears that an ex parte ad interim injunction was granted on the date of institution of the suit itself i.e., on 6.2.1986. After filing of the written statement issues were struck. The petitioner raised the question of jurisdiction alleging that the market fee payable by the plaintiff-respondent was for more than Rs. one crore in a year and the suit had been valued only at Rs. 10,000, therefore, the suit was not cognizable before the Court of Munsif. It was also stated that on the date of institution of the suit market fee to the tune of more than Rs. 7 lacs was due. It is alleged that 20.7.1987 was a date fixed when the plaintiff respondent remained absent and

the suit was dismissed for default. A restoration application was filed on behalf of the plaintiff respondent on 11.11.1987, when the Court issued notice on 10.2.1988. Again on 6.10.1988, it was directed that the notices be given to the counsel for the petitioner-defendant and 9.1.1989 was fixed but no notice were received by the petitioner defendant when the matter was directed to be fixed for 17.3.1989 and the plaintiff-respondent was directed to inform the petitioner defendant. However, again the matter was fixed for 12.2.1990 when the respondent-plaintiff was not present and again the application was dismissed for default. Again a restoration application was filed on 16.2.1990 which was numbered as Misc. Case No. 5 of 1990 and notices were issued fixing 2.3.1990. The restoration applications were allowed on 23.4.1990 and when the matter was taken up on 5.2.1992, then the petitioner defendant was absent and the suit was directed to proceed ex parte on 5.2.1992. On 16.3.1992 after recording the statement of Om Prakash the suit was decreed on 13.5.1992. It has also been alleged in this petition that a Writ Petition No. 8080 of 1987 was filed wherein the plaintiff-respondent was also a party and which was also based on the same ground that no mandi fee was leviable on kattha manufactured by the plaintiff respondent. From the writ petition, it appears that several writ petitions were filed on the said point. It is also alleged that one of the Writ Petition No. 3965 of 1989 was filed before the Lucknow Bench of this Court where the plaintiff-respondent was arrayed as petitioner No. 3 but even though the suit was instituted in 1986, there was no mention of the pendency of the suit. It has been alleged that the Secretary of the petitioner, Sri Gajraj Singh, who was doing the pairvi on behalf of petitioners in the suit did not take proper care resulting in the ex parte decree as such, departmental proceedings were initiated against him and he was dismissed.

4. Learned counsel for the plaintiff-respondent has urged that in fact no market fee was leviable as the item was manufactured by it and, therefore, in view of the decision of the Supreme Court in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, the plaintiff-respondent was within its right to approach the civil court. From a perusal of the aforesaid judgment it is evident that the Apex Court had directed the manufacturers to approach the Mandi Samiti in the first instance and only then the matter was to be decided by a court of law. It is alleged by the defendant-petitioner that no dispute was raised by the plaintiff-respondent before the mandi samiti. Counsel for the petitioner, however, has urged that the question whether the market fee was payable or not was no longer res integra as this Court in the case of U.P. Forest Corporation v. State of U.P. 1985 UPLBEC 1192, has held that kattha and katechu were agricultural products, therefore, the market fee was leviable.

5. Learned counsel for the appellant has raised a preliminary objection urging that in view of the alternative remedy available under the Code of Civil Procedure, this writ petition is not maintainable. In support of his contention, he has relied upon several decisions of this Court and so also of the Apex Court in the case of Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged

Committee of Management, Sri R.J.I. College, Agra and others, there was a dispute between the two rival committees with regard to management of the institution where one party had been able to obtain an interim injunction and also an impleadment application had been rejected. This matter was taken up directly before the High Court which entertained the writ petition. In these circumstances, the Apex Court held that when a suit is pending between the parties and interim and miscellaneous orders are passed, the High Court ought not to exercise its power under Article 226 of the Constitution of India, as the High Court cannot convert itself into a revisional or appellate court.

6. In *A. Venkatasubbiah Naidu Vs. S. Challappan and Others*, the Apex Court held that as two statutory alternative remedies were available, the High Court should have relegated the petitioner to the alternative remedy. Nevertheless, in paragraph 22, it went on to hold that no hurdle should be put against the exercise of the constitutional powers of the High Court. Thus, the Apex Court left it open to the High Court to exercise its power under Article 226 of the Constitution in a given set of fact and circumstances even though an alternative remedy was available.

7. In *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, the Apex Court had been approached challenging an order passed by the High Court in regard to an award rendered by the Motor Accident Claims Tribunal. Against award the Insurance Company had directly approached the writ court. The Apex Court held that the Insurance Company could have filed the appeal only on limited grounds and as such the High Court could not have enlarged those grounds by entertaining a petition under Article 226 of the Constitution.

8. However, learned counsel for the petitioner has urged that the writ petition was entertained, heard on merits and has been pending before this Court for the last about 8 years where pleadings have been exchanged between the parties, therefore, it is submitted, that at this belated stage the writ petition may not be thrown out on the ground of alternative remedy. In support of his contention, the learned counsel for the petitioner, has relied upon the decisions of the Apex Court rendered in *Dr. Balkrishna Agarwal v. State of U.P. and Ors.* 1996 (2) UPLBEC 1055 and also on the decision rendered in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*,

9. In the case of *Dr. Balkrishna Agarwal (supra)*, though an efficacious statutory alternative remedy of approaching the Vice-Chancellor u/s 68 of U.P. State Universities Act was available, it held that as the writ petition was pending for about five years before the High Court, therefore, it was not prudent to relegate the petitioner to the alternative forum at such a belated stage.

10. In *L. Hirday Narayan's case (supra)* again the Supreme Court came to hold that even though a statutory alternative remedy was available, but since the writ petition had been heard on merits and had remained pending, before the High Court for a sufficiently long period where pleadings have been exchanged, it

would be unjust to relegate the petitioner to the alternative forum.

11. Normally, the High Court under Article 226 of the Constitution does not exercise its discretion where a statutory alternative remedy is available. But there is no absolute bar to the exercise of powers under Article 226 of the Constitution where the facts and circumstances exist for its exercise. The rule of refusing to exercise the discretion under Article 226 where an alternative remedy exists is a self-imposed rule, but it does not preclude the Court from exercising its power where circumstances exist for the interest of justice. In the present case, a statutory body is said to lose huge sum of money on the basis of an ex parte decree. The question which is involved in the suit is of considerable importance. This petition has been pending in this Court for the last about eight years where pleadings have been exchanged between the parties. It is on record that the person responsible for letting the ex parte decree to be passed had to be dismissed from service for his casual approach resulting into the ex parte decree. Considering all these facts, relegating the petitioners to the alternative remedy at this belated stage would be against all canons of justice and fair play. Therefore, in my view, this writ petition cannot be thrown out only on the grounds of availability of alternative remedy. Thus, the preliminary objection has to be rejected.

12. This Court has heard the arguments of both the parties on merits of the case. From the record, it is evident that without investigation on facts, a decision cannot be rendered by this Court. It is well settled that High Court under Article 226 should not enter into disputed questions of fact. It is also well-settled that normally a view should be taken against an ex parte decree. From the record, it is evident that no more than one occasion, the suit was dismissed for default and even the restoration application was dismissed for default. It should be kept in mind that the petitioner against whom an ex parte decree has been passed in a Corporation fully controlled by the State Government. The Corporation operates through individuals and judicial notice can be taken of the fact that more often than seldom such persons act without any real sense of duty or belonging. The judgment of the trial court will have a very far reaching consequence as it would apply to large number of cases. Therefore, instead of deciding the matter on merits, it would be just and proper to remand the matter to the trial court after setting aside the ex parte decree.

13. In view of the discussions hereinabove, the writ petition succeeds and is allowed and the impugned ex parte judgment and decree dated 13.5.1992 is hereby set aside. The case is remanded to the trial court which shall dispose of the suit within a period of 12 months from the date of submission of the certified copy of this order. Both the parties are permitted to raise all relevant issues, including the issue with regard to pecuniary jurisdiction of the trial court. However, the plaintiff respondent should be compensated as he has been made to run to this Court due to the fault of the employees of the petitioner and as such he would be entitled to costs of Rs. 1,000.

14. With the aforesaid observations, the writ petition succeeds and is allowed.