
(1988) 01 MP CK 0004
In the Madhya Pradesh High Court
Case No : M. A. No. 50 of 1988

Preetpal Singh and others

APPELLANT

Vs

Sate of M. P. and others

RESPONDENT

Date of Decision : 22-01-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (1988) JLI 549

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

Bench : Single Bench

Advocate : P. P. Joshi, for the Appellant; S. S. Samvatsar, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—This is an appeal under Order 43, R. 1 (r) of the CPC Code, against the order dated 8-2-1988, passed in Civil Suit No. 26-A/87 by the Fourth Additional Judge to the Court of the District Judge, Indore, whereby the application under O.39, Rr. 1 and 2 of the C. P. C. for issuance of an interim mandtory injunction.

2. The facts leading to this appeal are that the truck no. M. B. E. 1581 of the appellant No. 2 was confiscated on 2-2-87 along with fire wood while unloading in the compound of M/s Bagga Timber Traders on the allegations that a forest offence has been committed u/s 52 of the Indian Forest Act, 1927 (for short "the Act"). Against this order of confiscation, an appeal was preferred before the Conservator of Forest under Sec. 52-A of the Act. The said appeal was also dismissed on 3 Ist August, 1987. Thereafter a revision was preferred u/s 52 (B) of the Act. This revision was also dismissed on 17-10-87. The plaintiffs felt helpless, filed a suit for declaration and injunction, whereby the authority and jurisdiction of the officer confiscating the truck was challenged. It was also challenged that the orders passed under the Act by the appellate authority as

well as by the revisional Court are non est, as the provisions of law, as contained in the Act were not followed. A declaration was sought and it was also prayed that the order of confiscation dated 4-4-87 be not enforced. An application under O.39, Rr. 1 and 2 of the C. P. C was also filed, wherein an ad interim mandatory injunction was prayed for delivery of the truck. The defendants opposed the application on their main contention that the jurisdiction of the Civil Court under the provision of Section 52-B and 52-C of the Act is barred and the Civil Court is not competent either to entertain the suit or to grant any relief of injunction.

The trial Court after hearing the parties, found that if the temporary injunction is not granted, the plaintiff will suffer an irreparable injury. The balance of convenience was also found in favour of the plaintiff no. 2 but on the basis that as the jurisdiction of the Civil Court is barred, hence it was considered that there is no prima facie case in favour of the appellants. The application, thus was dismissed, which has given rise to this appeal.

3. Shri P. P. Joshi, learned counsel for the appellants appeared and urged before me that the procedure adopted while granting or refusing injunction was unwarranted in law, under Sec. 94(c) of the C. P. C, which deals on supplemental proceedings, the Civil Court has got jurisdiction to grant temporary injunction. It was further contended by the learned counsel Shri Joshi that in fact this was not the stage for considering the issue of jurisdiction, the trial Court not only refused the injunction but virtually has decided the suit holding that the Court has no jurisdiction. That could only have done after the written statement is filed and the preliminary issue is raised then only the Court could have decided that the said Court has got jurisdiction to try the suit or not. He further challenged the validity of the proceedings being ultra vires and without jurisdiction. In such circumstances even assuming that Sec. 52-B and 52-C of the Act apply, the Civil Court has jurisdiction to try the suit. The exclusion of jurisdiction of the Civil Court cannot be readily inferred, even in an enactment, by considering the provisions of the Act and the Scheme, the bar of the jurisdiction of the Civil Court is inferred, where there is no specific bar of the jurisdiction. And where specific bar is there, in such cases the jurisdiction is not ousted if Tribunal has abused the power under the Act. In support of his contentions, Shri Joshi relied upon the decisions reported in *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, *The Provincial Government of Madras Vs. J.S. Basappa*, *Lala Ram Swarup and Others Vs. Shikar Chand and Another*, *The State of West Bengal Vs. The Indian Iron and Steel Co. Ltd.*, . For the purpose of considering the application u/O. 39, Rr. 1 and 2 C.P.C., the question of jurisdiction cannot be considered, it has to be considered only when the written statement is filed and the issue is framed and the matter is decided thereafter. A reliance was also placed on the decisions reported in *Naresh Sazena v. President Adarsh Nagrik Sahkari Bank* 1984 MPWN. 41 *Ram Nathi (Mst.) v. Mst. Nati Dhakad* 1986 MPWN (2) 167 and *Narandra Biswas v. Brijjiwahahalal* 1987 MPWN (2) 203. He contends that the Court below ought to have Considered the Prima facie case on merits whether the plaintiff

had made out a triable issue and fair question has to be tried or not. He placed reliance also on a decision in *Shankarlal Rathore v. State of M. P. & Ors.* 1978 J.L.J. 51.

4. Shri S. S. Samvatsar, learned Dy. Government Advocate appearing for the respondent, submitted that the scheme of the Act is such, which clearly bars the jurisdiction of the Civil Court. He read Sec. 52-B and 52-C of the Act and also placed reliance on a Bench decision of this Court reported in *Aemadji Ibrahimji v. State of M. P. & Ors.* 1985 J.L.J. 482

5. After hearing the counsel, I am satisfied that this appeal deserves to be allowed with a direction to the lower Court to reconsider the matter afresh on the question of prima facie case leaving aside the question of jurisdiction involved. My reasons for the same are as under:-

While hearing the matter pertaining to the grant of temporary injunction, the Court cannot be regarded to deal with the suit on merits. The proceedings pertaining to the grant of temporary injunction are supplemental proceedings, which do not press merits of the Case. This is clear from Sec. 94 C. P. C. which deals with supplemental proceedings and clause (c) thereof, deals with the power of the Court to grant temporary injunction. A Court, before which a question of jurisdiction has been raised, has power to issue an interim injunction without first finally deciding the question of jurisdiction, Since prima facie until such question is decided in the negative, a Court has jurisdiction to do all acts and take any action that may be sanctioned by law in connection with the Case. This is what has been held by Tapp, J. in AIR 1931 690 (Lahore) . Such a situation arose first before this Court in the case of *M, P. S. v. R. T, C, v. Amarsingh* (Civil Revision No. 879/81) decided on 27-4-82 by late Hon, Shri Justice H. G. Mishra, who held that when such a question is referred, the plaintiff has to satisfy the Court that he has fair question as to the existence of a legal right, claimed by him in the suit, is well recognised in India as well as in England. Again the Division Bench of this Court in the case of *Naresh Kumar* (Supra) held that when a question of jurisdiction of Civil Court is raised and the Court is considering the case of grant or refusal of temporary injunction, the Court has no jurisdiction to decide the suit on the basis of the reply filed under O. 39, Rr. 1 and 2 C.P.C., to say that the Court has no jurisdiction and suit is barred under the provisions of the M. P. Cooperative societies Act. The Division Bench further observed in that case that can only be done after the written statement is filed and a preliminary issue is raised and is decided. Thereafter again this matter came before this Court in *Laxminarayan v. State of M. P.* 1988 MPWN (1) 117 wherein this Court held that the question relating to the maintainability and jurisdiction of the Court can-not be decided after the written statement is filed and the issue is raised. This is not the stage, while considering an application under O. 39 Rr. 1 and 2 C. P. C. Even assuming that the Court has no jurisdiction, the Court has power to grant temporary injunction. Hence, this is well settled that while considering the application for grant of temporary

injunction, the Court has to apply its mind to see whether on the plaint allegations or on facts, a prima facie case has been made out or not. In my opinion, the trial Court committed an illegality while rejecting the application of the plaintiffs" on the ground that the Civil Court's jurisdiction was barred. Though the trial Court held that there is an irreparable injury and the balance of convenience is in favour of the plaintiff. But the trial Court, in my opinion, has not applied its mind to the facts whether the facts pleaded and the documents produced, a prima facie case, a fair question to be tried has been made out or not. In such circumstances, it is not possible for this Court in the appellate jurisdiction to grant temporary injunction at this stage and it is proper to direct the trial Court to pass a suitable order after considering whether the plaintiffs have made out a prima facie case or not.

6. As regards the contentions raised by Shri S. S. Samvatsar, learned Dy. G. A. for the respondent-State, it is suffice to say that the authority relied on by Shri Samvatsar, has no application in the facts and circumstances of the case, as it arose out of the criminal proceedings and there an appeal is provided but instead of filing appeal under the provisions of the Forest Act, the petitioner approached to the Court under Art. 226/227 of the Constitution of India with that reference those provisions were considered and not with respect to the jurisdiction of the Civil Court.

7. The result is this that this appeal is allowed and the trial Court is directed to dispose of the application after considering prima facie case and other ingredients, which are available or not to the plaintiffs for grant of temporary injunction, afresh in accordance with law, impugned the order of the trial Court is set aside, the trial Court is further directed to decide the application within ten days from the date of receipt of the record. The parties to appear before the trial Court on 27-7-88. It is further observed that in case, the respondents wish to raise the issue of jurisdiction, that may be decided after the written statement is filed, and issue is framed by the Court and not during the proceedings while considering the application under O. 39, Rr. 1 and 2 of the C. P. C. The record of the trial Court be sent immediately so as to reach there on or before 27-7-88. No order as to costs.