
(2005) 10 BOM CK 0107

In the Bombay High Court

Case No : Notice of Motion No. 1525 of 2002 in Suit No. 1715 of 2002

Prof H.C. Patel and Others

APPELLANT

Vs

Kaushik Desai and Another

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(13), 22, 50, 50(1), 50(2)
Bombay Revenue Tribunal Act, 1957 — Section 71
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2), 9, 92, 9A
Constitution of India, 1950 — Article 226
Maharashtra Co-operative Societies Act, 1960 — Section 77A

Citation : (2006) 1 BomCR 162 : (2005) 107 BOMLR 752

Hon'ble Judges : S.U. Kamdar, J

Bench : Single Bench

Advocate : S.H. Doctor, instructed by Dhru. Liladhar and Co, for the Appellant;
R.V. Govilkar, for the Respondent

Final Decision : Dismissed

Judgement

S.U. Kamdar, J.—The present notice of motion has been taken out to determine the issue of jurisdiction as preliminary issue u/s 9A of the CPC.

2. Prayer (b) of the motion is to declare that in view of the provisions contained in the Society Registration Act and the Bombay Public Trust Act, 1950 particularly in view of Sections 50, 51 and 81 thereof this Court has no jurisdiction to try the present suit and consequently the present suit is liable to be dismissed.

3. Before I deal with the rival submissions of the parties it is necessary to set out the true facts of the present case in so far as they are relevant for determination of jurisdictional issue.

4. The defendant No. 2 is an institution known as institution of mechanical engineers. The said institution is a society registered under the provisions of the Society Registration Act, 1860 and thus a public trust u/s 2(13) of the Bombay Public Trust Act, 1950. By virtue of aforesaid deeming fiction all the provisions of

Bombay Public Trust Act, 1950 are applicable to it. The defendant No. 2 society is for engineers and is inter-alia constituted to safeguard the interest of engineers in general. The plaintiff No. 1 claims to be a council and corporate member of the 2nd defendant institution and he is claiming to be a qualified engineer. The plaintiff No. 2 is similarly also claiming to be a qualified engineer and claims to be a professor and attached in the institute known as Sardar Vallabhai Patel Polytechnic-Borivali. The plaintiff No. 3 is also claiming to be a member of the 2nd defendant society and is also an engineer by qualification and is claiming to be an associate member of the 2nd defendant institution since 1978. According to the plaintiff No. 1 defendant No. 1 is an Indian national but is residing in U.K. and holds U.K. passport. The defendant No. 1 is claiming to be a secretary of the 2nd defendant institution. It is the case of the plaintiff that on 30.8.99 a meeting was convened pursuant to the orders passed by this Court and in the said meeting the defendant No. 1 is claiming to have been elected as secretary of the 2nd defendant institution. However according to the plaintiff in fact in the said meeting an ad-hoc committee was elected of the said institution. In so far as the present motion is concerned I am not concerned with the aforesaid facts save and except that the defendant No. 2 is a public charitable trust by virtue of the provisions of Section 2(13) of the BPT Act, 1950.

5. In the present case the plaintiffs have filed the suit in this Court inter-alia claiming reliefs that the defendant No. 1 who is claiming to be the secretary and trustee of the 2nd defendant should be removed from the post of the office bearer of the 2nd defendant. It is further contended that a primary membership of the defendant from the 2nd defendant institution itself be cancelled or quashed and set aside. It has been further claimed that in any event the defendant No. 1 is not entitled and cannot claim to continue to be the member of the Managing Committee and or trustees of the 2nd defendant with effect from 30.8.2000. In prayer (d) and (e) it has been prayed that the defendant No. 1 should be permanently restrained from acting as an examiner for the examinations conducted by the 2nd defendant and in prayer (e) a decree is sought for Rs. 79,502/- on the purported ground that the defendant No. 1 has misappropriated the funds of the trust by filing frivolous case and/or defending the case in his personal capacity but making payment of advocates fees from the account of the trust.

6. In the present suit the averments are made in the plaint particularly para-8 of the suit inter-alia admits that the defendant No. 2 institution is governed by the provisions of the BPT Act 1950 and that there are certain other proceedings pending under the provisions of the said act before the Charity Commissioner. Even in respect of the proceedings arising out of the so called election of the first defendant as secretary, the first defendant has filed a change report u/s 22 of the BPT act before the Charity Commissioner and the said change report is pending.

7. The defendant No. 1 in support of the aforesaid motion has thus contended

that the present suit is hit by Section 50 and 51 of the BPT Act and therefore the present suit should be dismissed as not maintainable and that this Court has no jurisdiction to entertain and try the same. It has been contended that the for the purpose of filing of the suit of the nature as in the present case a prior permission of the charity commissioner is required u/s 50 of the BPT Act. It has been contended that the suit which has been filed by the plaintiff in the present case is the suit which is prescribed under the provisions of Section 50 of the BPT Act and for the purpose of filing of such a suit a prior permission of the charity commissioner is necessary. It has been thus contended that the present suit should be dismissed as not maintainable and/or in any event this Court has no jurisdiction to entertain and try the present suit in absence of the prior permission of the charity commissioner.

8. In the present suit a notice of motion for interim reliefs was also taken out being Notice of Motion No. 1479 of 2002. The said notice of motion and the present motion both were heard by me on 19.8.2005. In the present notice of motion I had directed that the issue as to the maintainability of the suit which is raised as preliminary issue and therefore the matter was fixed for hearing on such preliminary issue on 1.9.2005 at 2.45 p.m. However Notice of Motion for interim relief being 1475 of 2002 was disposed off in view of the agreement between the parties that the order dated 11.6.2002 should continue till the disposal of the suit. Pursuant to the aforesaid directions given by me on 19.8.2005 I heard the matter on preliminary issue on 1.9.2005. Both the parties before me have made their submissions at length. However before dealing with the same it is necessary that the provisions of the BPT act which are relied upon in the present case should be reproduced.

50. Suit by or against or relating to public trusts or trustees or others :

In any case,-

- (i) where it is alleged that there is a breach of a public trust, negligence, misapplication or misconduct on the part of a trustee or trustees,
- (ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an amount of such property or proceeds from a trustee, ex-trustee, licensee, trespasser or any other person including a person holding adversely to the public trust but not a tenant or licensee,
- (iii) where the direction of the court is deemed necessary for the administration of any public trust, or
- (iv) for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, the Charity Commissioner after making such enquiry as he thinks necessary, or two or more persons having an interest in case the suit is under Sub-clauses (i) to (iii), or none or more such persons in case the suit is under Sub-clause (iv) having obtained the consent in writing of

the Charity Commissioner as provided in Section 51 may institute a suit whether contentious or not in the court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs :

(a) an order for the recovery of the possession of such property or proceeds thereof;

(b) the removal of any trustee or manager;

(c) the appointment of new trustee

or manager;

(d) vesting any property in a trustee;

(e) a direction for taking accounts and making certain enquiries;

(f) an order directing the trustee or others to pay to the trust the loss caused to the same by their breach of trust, negligence, misapplication, misconduct or wilful default;

(g) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(h) a declaration to apply the trust property or its income cypruss on the lines of Section 56 if this relief is claimed along with any other relief mentioned in the section;

(i) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged or in any manner alienated on such terms and conditions as the court may deem fit necessary.

(j) the settlement of a scheme, or variations or alterations in a scheme already settled;

(k) an order for amalgamation of two or more trusts by framing a common scheme for the same.

(l) an order for winding up of any trust and applying the funds for other charitable purposes;

(m) an order for handing over of

one trust to the trustees for some other trust and deregistered such trust;

(n) an order exonerating the trustees from technical breaches, etc;

(o) an order varying, altering, amending or superseding any instrument of trust;

(p) declaration or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases,-

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust :

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust, except in conformity with the provisions thereof :

Provided further that, the Charity Commissioner may instead of instituting a suit make an application to the Court for a variation or alteration in a scheme already settled :

Provided also that, the provisions of this section and other consequential provisions shall apply to all public trusts, whether registered or not or exempted from the provisions of this Act under Sub-section (4) of section.].

51. Consent of Charity Commissioner for institution of suit

(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in Section 50, they shall apply to the Charity Commissioner in writing for his consent. [If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is satisfied that there is a prima facie case, he] may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reason for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under Sub-section (1) the persons applying for such consent may file an appeal to the [Maharashtra Revenue Tribunal constituted under the Bombay Revenue Tribunal Act, 1957] in the manner provided by this Act.

(3) In every suit filed by persons having interest in any trust u/s 50, the Charity Commissioner shall be a necessary party.

(4) Subject to the decision of the [Maharashtra Revenue Tribunal] in appeal u/s 71, the decision of the Charity Commissioner under Sub-section (1) shall be final and conclusive."

9. Learned counsel Mr. Doctor on behalf of the defendant has submitted that the present suit is hit by the provisions of Section 50. He has contended that the dispute as to the valid election of the defendant No. 1 as a secretary of the 2nd defendant institution is a subject matter of a change report which has been pending before the Charity Commissioner u/s 22 of the BPT Act. It has been further contended that the averments in the present suit indicates that in effect the plaintiffs are seeking that the defendant No. 1 should be removed as trustee of the said trust and according to the learned Counsel for the defendant such relief is hit by the provisions of Section 50. It has been further contended that the prayer (a) and (b) of the suit seeks reliefs that defendant No. 1 membership

should be cancelled and/or he should expelled from the said membership. The said relief in effect tantamounts to removing the defendant No. 1 as a trustee and/or secretary of the 2nd defendant institution and thus the said reliefs are also hit by the provisions of Section 50 and 51. He has further contended that even the relief pertaining to the money decree for the recovery of sum of Rs. 79,502/- also tantamounts to recovery of the property of the public charitable trust being the 2nd defendant herein and that the said recovery is based on allegation that the defendant No. 1 has in his capacity as trustee misappropriated and misapplied the funds of the trust which is also equally hit by the provisions of Section 50 of the BPT Act. In that view of the matter, it has been submitted by the learned Counsel for the defendant No. 1 that the present suit cannot be tried by this Court unless a condition precedent to obtain the permission of the Charity Commissioner as contemplated u/s 51 is fulfilled and/or complied with.

10. Learned Counsel for the plaintiff has resisted the present notice of motions on diverse grounds. The first contention raised by the learned Counsel for the defendant is that this Court has no jurisdiction to hear the application u/s 9A of the CPC. It has been contended that once the application for interim relief is disposed of being Notice of Motion No. 1479 of 2000 by an order dated 19.8.2005 this Court ceases to have jurisdiction to entertain and hear the matter u/s 9A of the CPC. It has been contended that it is a condition precedent for hearing the application u/s 9(A) that the motion for interim relief should be pending and then only the issue of jurisdiction can be heard. He has contended that in view of the fact that the application for interim relief itself being disposed off by an order dated 19.8.2005 it is not open for this Court to determine the issue of jurisdiction. In support of the aforesaid contention the learned Counsel has relied upon the judgment of single judge of this Court in the case of Shri Arjun Dada Gadage Vs. Mallappa Gurappa Chougule and Subhashchandra Bhau Shahpure, Secretary, Shedshal Shikshan Prasarak Mandal, . He has further relied upon the judgment of the division bench of this Court in the case of Meher Singh v. Deepak Sawhny and Anr. reported in 1998 (4) All M.R. 536 and also the judgment of division bench in the case of I.C.I.C.I. Limited Vs. Sri Durga Bansal Fertilizers Ltd. and others, He has also relied upon the judgment of another single judge in the case of BSI v. M.V. Cristian-C and Ors. reported in 1994 (4) Bom.C.R 302. By replying upon the aforesaid judgment it has been contended that interim application having been disposed of this Court has no jurisdiction to hear the present application u/s 9A. In so far as the aforesaid contention is concerned I am not inclined to accept the said contention for more than one reason. Firstly the application u/s 9A as well as interim reliefs was heard together. Both were heard on 19.8.2005 by me. In view of no contest on the main application for interim relief the same was disposed off. However due to want of time this motion could not be heard on the very same day i.e. 19.8.2005 a preliminary issue was therefore framed by me and I had ordered that the same should be heard and accordingly the present motion on issue of jurisdiction was fixed for hearing on 1/9/2005. Thus it is not the case where the application u/s

9A is heard dehors the application for interim reliefs and in that view of the matter the contention of the learned Counsel for the plaintiff is totally erroneous and is required to be rejected.

11. Secondly, also I do not find that the contention of the learned Counsel on the point of law also is absolute accurate. It is no doubt true that u/s 9A of the CPC it is the mandate of legislature that in cases where interim applications are made and if the issue of jurisdiction is also raised u/s 9A of the Act then the court should before determining and/or granting the interim relief should determine the issue of jurisdiction. In the present case the interim reliefs have been granted by consent of the parties by keeping the rights of the defendants reserved on the issue of jurisdiction. However I do not see any prohibition either in Section 9A or any other provisions of the CPC that the court is precluded from determining the issue of jurisdiction at any stage of the proceedings. Infact under the provisions of Order 14 Rule 2 Sub-rule 2 the court has been empowered to dispose off the suit on a preliminary issue at any stage of the proceedings. Thus there is a positive mandate on the court to determine the issue of jurisdiction on an issue of law or on facts even after the interim proceedings are concluded. The judgments which have been relied upon by the learned Counsel arise in the case where the court has granted interim reliefs finally without determining the issue of jurisdiction and this Court has consistently held in each of the aforesaid judgments that final interim relief cannot be granted unless the issue of jurisdiction if raised u/s 9A is determined. The intention of the legislature to provide u/s 9A that jurisdiction issue to be heard before interim reliefs are granted is to see that court of no jurisdiction cannot grant interim relief which will be in operation for long period of time till suit is finally decided. In my opinion the converse thereof is neither true nor the same is laid down by the courts in the aforesaid judgment. It is not held by the courts that the issue of jurisdiction can never be decided once the interim relief in motion is heard and disposed off. It is upto the court to determine the issue of jurisdiction at any stage of the proceedings if the court finds that issue of jurisdiction or maintainability is a mixed question of law and fact then the court may adjourn the hearing of such a issue at the trial of the suit but if on the other hand the court is of the opinion that the issue can be determined and disposed off merely on pleadings and arguments between the parties then in that event it is open to the court to determine such issue of jurisdiction at any stage of the proceedings without waiting for a final trial of the suit. In my opinion it is not appropriate to interpret Section 9A in such a manner that it debars the court from hearing the issue of jurisdiction subsequently to disposal of the motion for interim reliefs and the court must necessarily wait till the trial of the suit. It would only amount to perpetuating the proceedings for a long period of time even though on ex-facie the court has no jurisdiction to try the suit. It will also further perpetuate gross delay in litigation which would result in injustice rather than justice in accordance with law.

12. In the present case neither the parties have made the application that the

present issue of jurisdiction and or maintainability is required to be tried after the evidence in the matter. The only objection of the plaintiff is that merely because the motion is already disposed off the court is precluded from hearing the issue of jurisdiction u/s 9A. In my opinion it is merely a matter of discretion of the court whether to hear the issue of jurisdiction and maintainability at the trial of the suit or frame such an issue at the earliest possible stage and dispose off the said proceedings in accordance with law. In my opinion the aforesaid contention has no merits and therefore I reject the same.

13. This leads me to the next contention advanced by the learned Counsel for the defendant. It has been contended that the present suit is maintainable u/s 50 and 51 of the Act. It has been contended that prayer (a) and (b) of the plaint do not fall under the provisions of Section 50 of the BPT Act. He has contended that under the constitution of the trust the office bearer is entitled to hold the office only for a period of one year. It has been contended that even if it is accepted that the defendant No. 1 is rightly elected as a trustee of the 2nd defendant trust on 30.8.1999 then also when his period expired, he ceases to remain as a office bearer of the trust of the 2nd defendant trust. Thus the prayer (a) and (b) is not to remove him as a trustee or officer bearer of the said trust but the same is to remove him from the primary membership of the 2nd defendant trust. In support of the aforesaid contention the learned Counsel for the defendant has relied upon Clause 6 of the constitution.

14. On the other hand the learned Counsel for the plaintiff has contented that the election of the defendant No. 1 as secretary and consequently as trustee of the 2nd defendant is a subject matter of change report before the charity commissioner u/s 22 of the BPT Act. He has further contended that till and until the new secretary is elected, a person holding the office obviously continues in office and thus it cannot be treated that the defendant No. 1 has ceased to be a trustee and/or a secretary of the 2nd defendant. It is further contended that till the next incumbent is elected and takes charge of the office the person in charge continues to remain in charge and therefore it has been contended that the prayer (a) and (b) infact is not to remove the defendant No. 1 as a temporary member of the said trust but by the said prayer is to remove the defendant No. 1 from the secretary and trustee of the said 2nd defendant trust also. It has been contended that the plaintiff seeks to achieve indirectly what they cannot achieve directly. It has been contended that if the Act bars the relief of removal of the defendant No. 2 as a trustee then by removing him as a member of the 1st defendant trust one cannot be permitted to achieve the very same object which is otherwise prohibited in law. The learned Counsel for the plaintiff has however placed reliance upon Section 77A of the Maharashtra Co-operative Society Act, 1960 and has contended that the mandate of law is that the person on completion of his terms of office if does not call for another election then he ceases to be a member and registrar can take over the said society by getting himself appointed under the said provisions. In my opinion the contention based on provisions of Section 77A of the Maharashtra Co-operative Societies Act is

totally baseless. It is because the provisions of Section 77A are only a discretionary power of the Co-operative Registry either on suo-moto or on application of any officer of the society to appoint any member or members of the society as a member/s of the committee to fill vacancies and/or to appoint a committee constituted of three members till the new committee is elected. I do not see firstly that any such provisions of the Maharashtra Co-operative Society Act are at all applicable to the 2nd defendant institution. In my opinion even if the term is expired of an office bearer then also till the next person is elected and/or assumes office there cannot be any vacuum in the management of the affairs of any trust or society or till the Co-operative Registrar exercises power as conferred under the provisions of the act, the outgoing office bearer obviously continues because unless it is so the management of the said society or any trust would be grossly affected. If any person does not conduct the election though his term has expired then the persons aggrieved by such an Act has various remedies available in law but to hold that the office falls vacant on an expiry of the terms of an office bearer would result in total anarchy in the management and affairs of any society. I am not inclined to accept such a course and interpret the provisions of law as suggested by the plaintiff herein. In my opinion Clause 6 of the trust does not by any means suggest that on an expiry of a term of an office bearer the office will automatically be vacant and a person ceases to hold the office of an office bearer. In the aforesaid circumstances I am of the opinion that prayer (a) and (b) are couch in such a manner that the plaintiffs are seeking to remove the defendant No. 1 from the membership of the 2nd defendant but in effect he is seeking to remove the defendant No. 1 as trustee or manger of the said public charitable trust. I am therefore of the opinion that the suit as framed falls u/s 50 (b) of the BPT Act. The other prayers namely that the prayer sought for a decree for a sum of Rs. 79,502/-also falls u/s 50(1) and (2) of the said act and therefore the said prayer is also within the purview of the said Section 50 and 51 of the said Act. The nature of the suit is such that it falls u/s 50 of the act and thus u/s 51 the permission of the charity commissioner is mandatory and necessary.

15. However the learned Counsel for the defendant has relied upon the following judgments and contended that the provisions of Section 50 and 51 of the Bombay Public Trust Act are not applicable to the present case.

(i) Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others, and placed reliance on the following para :

"They also held that in the circumstances of the case the idol had the tight to file the suit represented by Yasodanandan who was a worshipper of the deity and was helping the second defendant in the management of the temple. In the result the trial court gave a decree for possession and for recovery of Rs. 1400 as past mesne profits against the 1st defendant on condition that the plaintiff returned a sum of Rs. 10,000 to the 1st defendant within two months from the date of the decree and also that the plaintiff would be entitled to future mesne

profits at Rs. 45 per month till the date of delivery of possession of the property. The High Court confirmed the same. Hence the present appeal."

(ii) The judgment of the Madras High Court in the case of Sundaralingam Chettiar and Ors. v. S. Nagalingam Chettiar and Ors. reported in AIR 1958 Mad 307 and particularly the following para:

A suit for declaration that the person in office was not entitled to be a trustee and that the assumption of office itself was invalid does not fall within the scope of Section 92. The removal for which Section 92 provides cannot be construed to include within its scope cases where the right to hold the office itself is challenged. To put it, in other words, a trustees de jure can be removed. A trustee de son tort is without any legal right to hold the office. In such a case there can be no need to ask for his removal from office."

(iii) 1992 Mah.L.J. in the case of Amirchand Tulsiram Gupta and Ors. v. Vasant Dhanji Patil and Ors. and particularly the following para.

The trustee is the legal owner of the property and enjoys all rights inherent in a natural owner of property and can sue to recover trust property. Section 50 cannot apply as a bar to the substantive right of the trustee to institute suit. No permission u/s 51 is necessary in such a case. The amendment effected by Act No. 20 of 1971 as to include "trustee" while defining in Section 2(10) the expression "person having interest" has no effect on the position of law as above."

(iv) 1966 (69) BLR 472 Rajgopal Raghunath Das Somani v. Ramchandra Hajarimal Jhavar.

16. In my opinion none of the aforesaid judgments has any relevance to the facts of the present case, the judgment of the apex court in the case of Bishwanath (supra) only holds that under the provisions of Section 9 of the CPC, a suit would lie for declaration of title and possession of the property from a person in illegal possession without a permission being obtained even by worshipper because that is enforcement of right by a worshipper in his personal capacity. Similar is the judgment of the Madras High Court, which also arises u/s 92 of the CPC and it has been held that if the suit is for a declaration that a person is not entitled to be a trustee and secondly that the assumption of office by him is invalid then such a suit does not amount to removal of trustees though I do not concur with the legal reasoning of the learned single judge of the madras High Court but in my opinion the present suit is not for a such a declaration. Once a person is holding an office of a trustee then any method by which you are seeking his removal would in my opinion be hit by Section 50 of the BPT Act. The judgment of the division bench of this Court which has been relied in the case of Amirchand (supra) is totally irrelevant to the facts of the present case. It is because the suit was by the trustees for recovery of the trust property. Similar is the view in the judgment of the division bench in the case of Raghunath Das Somani (supra). Thus in my opinion the judgments relied upon by the learned Counsel for the

plaintiffs in support of his contention that the present suit would lie in this Court because it is not in the nature of reliefs sought as contemplated u/s 50 of the B.P.T has no relevance. These judgments do not arise u/s 50 of the BPT Act except the judgment of the division bench in the case of Amirchand (supra). The learned Counsel however has contended that the provisions of Section 92 of the CPC and Section 50 of the BPT Act being paramateria similar the said judgments should be taken into consideration. Even after considering the aforesaid view I am of the opinion that the present suit is hit by virtue of the provisions Section 50 and 51 and thus the same is not maintainable and is also without jurisdiction in absence of permission obtained by the plaintiff from the charity commissioner as contemplated u/s 51 of the BPT Act. Lastly the learned Counsel has relied upon an order of the apex court dated 20.1.2005 it has been contended that in the aforesaid order the apex court has confirmed that in the meeting of August, 1999, the ad-hoc committee has been appointed and not the defendant No. 1 herein. I have perused the said order dated 20.1.2005. From the perusal of the said order it is clear that the apex court was not considering any such issue. The only issue before the court was whether the High Court of Allahabad was justified in entertaining the writ petition under Article 226 of the constitution of India against the notice issued in an application of injunction by the Trial Court at Lucknow. In my opinion the only issue was whether the writ jurisdiction can be exercised merely against issuance of notice by a trial court in an injunction suit. Furthermore the apex court in the aforesaid judgment has taken note of the fact that the various proceedings are pending including the present proceedings in this Court and the court has held that each of the proceedings must be determined independently in accordance with law and further held that they do not express any opinion on the matter. In that view of the matter the reliance placed by the learned Counsel for the plaintiff on said order dated 20.1.2005 is also without merits and I reject the same.

17. In the aforesaid circumstances I hold that the present suit is not maintainable in absence of permission u/s 50 and this Court has no jurisdiction to entertain and try the suit. Accordingly I dismiss the suit in the light of the embargo contained under the provisions of Section 51 of the BPT Act. Suit is accordingly dismissed. No order as to costs.

18. Learned counsel for the defendant states that interim order passed in Notice of Motion No. 1479 of 2002 be continued. At his request the said order is continued for a period of four weeks from today.