

(2002) 11 MAD CK 0076

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 1222 of 2002 and C.M.P. No. 10321 of 2002

Sam Jacob

APPELLANT

Vs

Pushparani, Secretary, Primary Agricultural Co-op. Bank, The Special Officer, Primary Agricultural Co-op. Bank, The Primary Agricultural Co-op. Bank and The Joint Registrar of Co-op Societies

RESPONDENT

Date of Decision : 19-11-2002

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 1 LW 224 : (2003) 1 MLJ 44

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : P. Selvaraj, for the Appellant; A. Selvaraj, for the Respondent

Final Decision : Allowed

Judgement

A. Kulasekaran, J.—The fourth defendant in the suit is the petitioner herein. The first respondent herein has filed the suit in O.S. No. 294 of 2001 before the Additional District Munsif's Court, Padmanabhapuram, seeking for a decree declaring that she is the duly appointed Secretary of the third respondent- Bank, and for injunction restraining the defendants therein from in any manner without due process of law reverting her from the Post of Secretary and other reliefs. Along with the suit, the first respondent herein filed I.A. No. 628 of 2001 seeking for injunction restraining the defendants from reverting her from the post of Secretary pending disposal of the suit. The trial court granted the order of interim injunction, which was later, after hearing both the sides made absolute by the impugned order dated 07-02-2002. Aggrieved by the said order, the present revision is filed.

2. The learned counsel appearing for the petitioner submitted that the suit filed by the first respondent herein is unsustainable in law and as such, the order of

injunction passed by the trial court is untenable. The learned counsel further submitted that consequent to the order dated 30-10-2001 passed by the 4th respondent in the appeal filed by the petitioner herein, holding that the punishment awarded is excessive, the third respondent-bank has taken necessary steps to restore the petitioner to the original post of Secretary, with the result, the first respondent has to be reverted to the lower post as she was appointed as Secretary in a stop gap arrangement, that too her appointment was made without following the provisions of law. Aggrieved by the said order passed by the fourth respondent, the first respondent has filed an appeal before the Registrar of Co-operative Societies, which is admittedly pending. The learned counsel appearing for the petitioner has further submitted that the first respondent has approached this Court under Article 226 of the Constitution of India in W.P. No. 2307 of 2002 praying for issue of a writ of mandamus forbearing the respondents therein from taking any action against the petitioner and reverting her from the post of the Secretary ship without any prior notice or enquiry; that the said writ petition was dismissed by this Court on 01-02-2002 holding that the petitioner has no right to file any writ petition on the basis of apprehension; and that suppressing the above facts the prayer of declaration as duly appointed Secretary and injunction has been sought for in the said suit in O.S. No. 294 of 2001. The learned counsel appearing for the first respondent vehemently opposed the revision and advanced arguments that the suit as well as injunction are sustainable in law and prayed for dismissal of the revision.

3. The facts culled out from the pleadings of the parties are as follows:

The petitioner was reverted from the post of Secretary for certain charges. Immediately, he has filed an appeal against the order of reversion before the 4th respondent. Pending appeal, the 1st respondent was appointed as Secretary on 12-04-2001 as stop gap arrangement in the temporary vacancy arose consequent to the reversion of the petitioner. It is alleged by the 1st respondent that on 29-08-2001, the bank has orally informed her that she was retired from the post of Secretary to the original post as her appointment itself was illegal. On 29-08-2001, the suit in O.S. No. 294 of 2001 was filed by the 1st respondent praying for a declaration to declare that she is duly appointed secretary and for mandatory injunction not to revert her from the post of Secretary. In the said suit, the 1st respondent has not whispered anything about the reversion of petitioner and her appointment was in the said vacancy. Later, on 30-10-2001, the appeal filed by the petitioner herein was allowed holding that the order of reversion is excessive punishment. In the meanwhile, the enhanced salary given to the 1st respondent was cancelled as early as on May 2001. I do not find any records that the said order was set aside or even challenged by the 1st respondent. Indeed, the first respondent has not made any claim in respect of the cancellation of higher salary eligible for the post of Secretary. The first respondent has suppressed the said facts in her plaint. The said facts were also brought to the notice of the trial court by the petitioner and respondents 2 to 4 herein. The trial court also failed to consider the events taken place prior to the

filing of the suit and also after the suit.

4. The prayer in application for injunction is to restrain the respondents from in any manner reverting the plaintiff from her post of Secretary in the 2nd defendant/bank without due process of law till the disposal of the suit. Grant or refusal of temporary injunction is covered by three well established principles namely (i) whether the plaintiff has made out a prima facie case (ii) whether the balance of convenience is in favour i.e., it would cause greater inconvenience to the plaintiff if the injunction is not granted, than the inconvenience which the defendant or persons claiming through him would be put to if the temporary injunction is granted and (iii) whether the plaintiff suffers irreparable injury.

5. The object of interim injunction is to protect the plaintiff against injury by violation of his rights for which he could not be adequately compensated and damages as recoverable in the action if the uncertainty were resolved in his favour at the trial.? The need for such protection has however to be weighed against the corresponding need of the defendant to be protected against the injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the balance of convenience lies.? These considerations will arise not only in respect of person who seeks an order of injunction, but also in respect of the party approaching the court for vacating the injunction.? In a suit for injunction, the court should enquire on affidavit, evidence and other materials placed before the court to find strong prima facie case and balance of convenience in favour of granting injunction otherwise irreparable damage or injury would ensue to the plaintiff. When court below did not render any valid finding in respect of prima facie case, balance of convenience or irreparable injury, this court should interfere and set aside the order of injunction.

6. The three established principles were not followed by the trial court. The reasoning given by the trial court that if injunction granted is vacated, it would cause irreparable loss to the 1st respondent herein is unsustainable. No materials were placed by the 1st respondent to deny the allegation that she was appointed by way of stop gap arrangement in the vacancy arose consequent to the punishment of reversion of the petitioner herein. Interim injunction should not be granted where the plaintiffs right to it is doubtful.

7. For the foregoing reasons, the impugned order of injunction granted by the court below is set aside. However, it is made clear that the findings, whatever made in this revision need not be taken into account by the trial court while disposing of the suit on merits. It is also open to the parties to approach the trial court for speedy disposal of the suit.

The revision is allowed. No costs. Consequently, connected CMP is closed.