

(6) After giving the matter our most earnest consideration, we, with respect, prefer the view of the High Court of Kerala in *P. S. N. Motors (P) Ltd.'s case* (supra) as being more in accord with the context of the provisions and the scheme of the Income Tax Act, 1961 and the judgment of the Supreme Court in *B. C. Srinivasa Setty's case* (supra). We consequently hold that the route permit acquired for the first time must be treated as a self-generated asset, the consideration for the sale of which, is not amenable to Capital Gains Tax. We accordingly answer all the questions referred in the affirmative in favour of the assessee and against revenue. This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before V. K. Jhanji, J.

PREM SINGH,—Petitioner.

versus

RUPINDER SINGH AND ANOTHER,—Respondents.

Civil Revision No. 1478 of 1991.

3rd June, 1991.

Punjab Co-operative Societies Act, 1961—S. 82, rl, 12(2) of Appendix 'C'—Election of Member challenged in Civil Court—Jurisdiction of Civil Court barred—Grant of interim injunction—Principles stated—Suit dismissed as withdrawn—Appeal entertained by the Appellate Court for grant of interim injunction—Such proceedings—Illegal and without jurisdiction.

Held, that the election of petitioner could be challenged only by way of election petition as provided under rule 12(2) of the Rules and not by way of filing civil suit as Section 82 of the Punjab Co-operative Societies Act, 1961 bars the jurisdiction of the Civil Court.

(Para 5)

Held, that *ad-interim* injunction though essentially is equitable relief but the grant or refusal of an injunction must rest in the sound judicial discretion of the Court to be exercised in the light of facts and circumstances of each case.

(Para 7)

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Held, further, that the appeal filed by the respondent was also not maintainable because the plaintiff himself withdrew the suit and the suit was not pending on the day when he obtained *ex parte* order from the first appellate Court. (Para 10)

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri V. B. Handa, Additional District Judge, Ludhiana, dated 9th April, 1991, reversing that of Court of Shri S. B. Sharma, Sub Judge, 1st Class, Samrala, dated 10th April, 1991 admitting the appeal and staying the operation and execution of this order in appeal and issuing the notice to the respondent for 7th May, 1991 on filing of process fee.

Claim: Suit for permanent injunction restraining the defendant No. 1 Prem Singh from participating and voting in the election of office bearer's and co-option of members/directors in the meeting of Board of Directors of the defendant No. 2 to be held on 25th March, 1991 and restraining the defendant No. 1 to take part in the proceedings of the meeting.

G. S. Doad, Advocate, for the Petitioners.

M. L. Sarin, Sr. Advocate with Miss Alka Sarin, Advocate, for Respondent No. 1.

I. S. Sidhu, Advocate, for Respondent No. 2.

JUDGMENT

V. K. Jhanji, J.—

(1) The election for the Committee Members (Directors) of the Primary Cooperative Agricultural Development Bank Ltd. Sarmala took place on 5th March, 1991. In all six Directors were to be elected. The petitioner was elected after he defeated respondent Rupinder Singh, defendant No. 1. It is not in dispute that election of the petitioner could be challenged under rule 12(2) of Appendix 'C' of the rules framed under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act). After the election of the Directors, election of the office bearers including nomination of two more Directors was fixed for 25th March, 1991. Respondent No. 1, instead of filing election petition as provided under rule 12(2) of the Rules challenging the election of the petitioner, filed suit for permanent injunction restraining defendant No. 1 (petitioner) from participating and voting in the election of the office bearers and co-option of members-Directors in the meeting of the Board of

Directors to be held on 25th March, 1991. In the plaint, it was alleged that the election of the petitioner is illegal as he was wrongly declared elected in the election. It was also alleged in the suit that the petitioner connived with the counting staff and the Presiding Officer concerned. The plaintiff further alleged that the plaintiff is going to file election petition before the competent authority. Along with suit, an application under Order 39 Rule 1 and 2, Civil Procedure Code was filed seeking *ad-interim* injunction in the terms prayed in the suit. The learned trial Court,—*vide* order dated 22nd March, 1991 passed the following order:—

“Office report perused. Suit be registered. The plaintiff has filed an application u/o 39, R. 1 & 2 read with Section 151 C.P.C. for restraining defendant No. 1, Prem Singh, from participating and voting in the election of office bearers and co-option of members/directors in the meeting of the Board of Directors of defendant No. 2. The application is supported by a duly sworn affidavit. Notice of the suit and the application be issued to the defendants on P.F. for 26th March, 1991 and in the meantime respondent No. 1 is restrained from taking part in the voting in the election of the office bearers and co-option of members in the meeting of the Board of Directors of defendant No. 2 to be held on 25th March, 1991 subject to making compliance of the provision of Order XXXIX R. 3, C.P.C. today.”

(2) As the petitioner was restrained from participating in the election of the office bearers, other two Directors who were in the group of the petitioner also did not participate in the meeting of the Board of Directors and the meeting was attended only by three members. Because of non-participation by three members, respondent No. 1 was co-opted as a Director. The petitioner came to know about the order only on 25th March, 1991, when the election of the office bearers and co-option of other two Directors was to be held. On coming to know of the order dated 22nd March, 1991, the petitioner filed an application on 26th March, 1991 under Order XXXIX Rule 4 read with Section 151 of Civil Procedure Code for vacation of *ex parte* order dated 22nd March, 1991. Notice of this application was given to respondent No. 1 for 2nd April, 1991 and on that day counsel for respondent No. 1 (plaintiff in the suit) made a statement that he does not want to proceed with the case and the same may be dismissed as withdrawn. This statement was made as the

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purpose which the respondent No. 1 wanted to achieve, had already been achieved. However, petitioner pressed before the trial Court that his application under Order XXXIX Rule 4, Civil Procedure Code read with section 151 of the said Code be decided on merits despite the statement given by counsel for the plaintiff for the dismissal of the suit. The trial Court in order to undo the mischief decided the application on 2nd April, 1991 and the material portion of the order reads as under:—

“In view of the statement made by the counsel for the plaintiff, the suit is dismissed as withdrawn.”

“On the application filed by Prem Singh respondent for modification of the injunction order, it is held that the proceedings of the meeting dated 25th March, 1991 shall not be binding on the rights of the Prem Singh respondent and the proceedings held in that meeting stand set aside because the suit in which the injunction order was passed has been got dismissed by the plaintiff himself by making a statement. File be consigned to the record room.”

(3) The order of the trial Court dated 2nd April, 1991 is in two parts. Suit of the plaintiff was dismissed as withdrawn and in the second part, the proceedings of the meeting dated 25th March, 1991 in which respondent No. 1 was co-opted as a Director, were found to be not binding on the rights of the petitioner. Proceedings held in the meeting were set aside. After the order dated 2nd April, 1991, meeting for the election of office bearers as well as for co-option of two other Members (Directors) was fixed for 11th April, 1991. Since the trial Court,—*vide* order dated 2nd April, 1991 had undone what the respondent No. 1 wanted to achieve, respondent No. 1 filed an appeal against the order dated 2nd April, 1991 before the Additional District Judge, Ludhiana, who,—*vide* order dated 9th April, 1991, stayed the operation and execution of the order dated 2nd April, 1991. As the operation of the order dated 2nd April, 1991 was stayed,—*vide* order dated 9th April, 1991 passed by the Additional District Judge, Ludhiana, in the meeting dated 11th April, 1991 the petitioner was not allowed to participate and two other Directors belonging to his group also did not participate in the meeting in protest and thus in their absence, Chairman, Vice-Chairman were elected. One person was also nominated to represent the Co-operative Bank in the apex body. The petitioner has challenged the order dated 22nd March, 1991 as well as order dated 9th April, 1991 by way of present civil revision.

(4) The civil revision has been contested by respondent No. 1.

(5) After hearing learned counsel for the parties at length, I find that this petition has to succeed. Learned counsel for respondent No. 1 could not dispute that the election of petitioner could be challenged only by way of election petition as provided under rule 12(2) of the Rules and not by way of filing civil suit as Section 82 of the Act bars the jurisdiction of the Civil Court. Section 82 of the Act provides as under:—

“82. *Bar of jurisdiction of courts.*—(a) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of:—

- (a) the registration of a co-operative society or its bye-laws or of an amendment of a bye-law ;
- (b) the removal of a Committee;
- (c) any dispute required under Section 55 to be referred to the Registrar.

(6) The order of the learned trial Court, dated 22nd March, 1991 clearly shows that while granting *ex parte ad-interim* injunction in favour of respondent No. 1 and against the petitioner. The learned trial Court did not take into consideration three pre-requisite conditions which are necessary for grant of *ad-interim* injunction i.e. (i) *prima facie* case; (ii) irreparable loss/injury which normally cannot be compensated in terms of money; and (iii) the balance of convenience in favour of the one seeking such a relief.

(7) It has repeatedly been held by this Court as well as by other Courts “that *ad-interim* injunction though essentially is equitable relief but the grant or refusal of an injunction must rest in the sound judicial discretion of the Court to be exercised in the light of facts and circumstances of each case”. In the present case, respondent No. 1, though had stated in his plaint that he shall be filing an election petition challenging the election of the petitioner but still the trial Court granted *ex-parte* injunction. In case the trial Court had perused the plaint, minutely and carefully, it certainly would have rejected the plaint as the election could not be challenged by way of filing a suit as the jurisdiction of the Civil Court is barred under Section 82 of the Act. The order of the trial Court dated 22nd March, 1991 also does not show that the trial Court while granting *ad-interim* injunction kept into consideration the three pre-requisite conditions for the grant or refusal of *ad-interim* injunction.

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(8) The order dated 9th April, 1991 of the first appellate Court is also without jurisdiction. As noticed above, on coming to know about the *ex parte* order dated 22nd March, 1991, the petitioner filed an application under Order XXXIX Rule 4 of the Civil Procedure Code for vacation of the *ex parte ad-interim* order and apprehending that the *ex parte* order is likely to be vacated because of the bar of the Civil court jurisdiction, the respondent No. 1 withdrew the suit. When the suit had already been withdrawn, I cannot understand as to how the appeal was maintainable before the first appellate Court. No such suit was pending on the day when the first appellate Court entertained the appeal and granted *ex parte* order staying operation of the order dated 2nd April, 1991. The appellate Court also committed the same error which was committed by the trial Court while granting *ad-interim* injunction. The appellate Court had the order dated 2nd April, 1991 before him as the same was impugned by respondent No. 1 in appeal but instead of calling upon respondent No. 1 to show as to how the appeal was maintainable when the suit had already dismissed as withdrawn on the statement made by counsel for respondent No. 1, the appellate Court granted *ex parte* order staying operation of the order dated 2nd April, 1991. Respondent No. 1 in view of orders dated 22nd March, 1991 and order dated 9th April, 1991 was not only able to prevent the petitioner but also his other two group Members from attending the meeting dated 11th April, 1991, where the election of the office bearers was held and respondent No. 1 was co-opted as a Member. A resume' of the facts of this case clearly shows that the proceedings initiated by respondent No. 1 firstly by filing a suit and obtaining *ex parte* injunction order and then when the same was vacated, filed an appeal before the first appellate Court and again obtaining *ex parte* injunction order, is clearly an abuse of the process of Court.

(a) The argument of learned counsel for respondent No. 1 that there is no error of jurisdiction and this Court should not interfere in revisional jurisdiction is also without any substance. To exercise the powers under Section 115, Civil Procedure Code, this Court has to satisfy the three matters:—

- (a) that the order of subordinate Court is within its jurisdiction;
- (b) that the case is one in which Court ought to exercise jurisdiction; and

(c) that in exercising jurisdiction the Court has not acted illegally i.e., in breach of some provision of law or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

(10) The facts and circumstances of this case clearly show that while passing order dated 22nd March, 1991 the trial Court, and appellate Court while passing order on 9th April, 1991, acted illegally and also with material irregularity in exercise of their jurisdiction. As observed by me, the suit itself was not maintainable because of the bar contained in Section 82 of the Act. The appeal filed by respondent No. 1 was also not maintainable because the plaintiff himself withdrew the suit and the suit was not pending on the day when he obtained *ex parte* order from the first appellate Court.

(11) Consequently, the civil revision is allowed with costs. Order dated 9th April, 1991 is set aside. Since order dated 22nd March, 1991 was modified by order dated 2nd April, 1991, no direction is necessary on this score. As I am setting aside the order dated 9th April, 1991, proceedings of the meeting held on 11th April, 1991, in which election of Chairman, Vice-Chairman and co-optation of two Members as also nomination of one Member to the apex body, was held is also set aside. Registrar, Co-operative Societies, Ludhiana, shall fix a date for holding a meeting and the meeting shall be attended only by six Members (Directors) who were elected on 5th March, 1991. Respondent No. 1 shall pay costs of Rs. 5,000 to the petitioner.

S.C.K.

Before S. S. Sodhi & N. K. Kapoor, JJ.

VIJAY KUMAR.—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 4563-M of 1989.

9th July, 1991.

Punjab Co-operative Societies Act, 1961—S. 55—Matter referred to Arbitrator under section 55—Initiation of criminal proceedings on the same cause of action is not barred.