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MUNICIPAL CORPORATION OF DELHI

v.

SURESH CHANDRA JAIPURIA & ANR.

November 3, 1976

B [A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

Civil Procedure Code Sec. 115—*Concurrent decisions on question of facts, interference by High Court, whether justified—Specific Relief Act,* 1963 *S.* 41(*h*) *application.*

The respondent purchased a house, and under the sale-deed became responsible for paying the house-tax subsequent to the purchase. On his failure to pay C the same, the appellant corporation started proceedings against him for the realisation of dues. In the course of a suit for permanent injunction, the respondent's application for an interim injunction was rejected by two courts. On further appeal, the High Court granted him interim injunction on the ground that there was a *prima facie* case even though agreeing with the appellate court that the balance of convenience was against such grant.

Allowing the appeal the Court,

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HELD : 1. Section 41(h) of the Specific Relief Act, 1963, lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceedings except in cases of breach of trust. [13E-F]

2. While exercising its jurisdiction under s. 115 the High Court is not competent to correct assumed erroneous findings of fact. The High Court had E itself erred plainly both in holding that the courts below had not taken a correct view of the *prima facie* case which existed here and that the question of balance of convenience was irrelevant. [12C-D, 13F-G]

3. High Court had overlooked legally possible grounds of interference under section 115 C.P.C. [14-A-B]

Baldevdas Shivlal & Anr. v. *Filmistan Distributors (India) P. Ltd. & Ors.* [1970] 1 SCR 435; *D.L.F. Housing and Construction Co. P. Ltd. New Delhi* v. F *Sarup Singh & Ors.*, [1970] 2 SCR 368; *The Managing Director (MIG) Hindustan Aeronotics Ltd. Balanagar, Hyderabad & Anr.* v. *Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronotics Ltd. Balanagar, Hyderabad,* A.I.R. 1973 S.C. 76; applied.

M/s Mechelec Engineers & Manufacturers v. *M/s Basic Equipment Corporation* [1977] 1 S.C.R. 1060 referred to.

G *Dewan Daulat Ram Kapur* v. *New Delhi Municipal Committee & Anr.* ILR 1973 (1) Delhi 363 distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1202 of 1976.

Appeal by Special Leave from the Judgment and Order dated the 21st Feb. 1975 of the Delhi High Court in Civil Revision No. 479 of 1974.

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F. S. Nariman, B. P. Maheshwari and *Suresh Sethi,* for the *Appellant.*

Mahendra Narain Advocate of Rajendra Narain & Co., for the Respondent.

The Judgment of the Court was delivered by

BEG. J. After issuing a notice to show cause why special leave should not be granted, this Court granted, on 13th October, 1976, the leave prayed for to appeal against the judgment and order of a learned Judge of the Delhi High Court. That Court had interfered under Section 115 Civil Procedure Code, with the concurrent findings of the Trail Court and the Appellate Court in this case that, as the plaintiff could not make out a prima facie case, no interim injunction could be granted to the respondent to restrain the appellant, the Municipal Corporation of Delhi, from realising a sum of Rs. 27,216/- on account of house tax from the plaintiffs pending the disposal of a suit for a permanent injunction. This Court directed a hearing of this appeal on 28th October, 1976. Accordingly, the appeal is now before us.

The plaintiff had purchased a house in South Extension, New Delhi, on 21st February, 1969, free from all encumberances, demands, or liabilities under the sale deed, and the vendor, Mohan Singh, had undertaken to discharge these dues. It was, therefore, decided in a previous suit that the defendant-appellant could not recover the whole amount sought to be recovered as house tax from him. The respondent was absolved from liability for the period before the sale. But, the plaintiff was liable to pay the tax for the period after the purchase. He had also paid Rs. 6,992/-. It appears that proceedings for realisation of dues subsequent to the purchase had then been taken by the appellant corporation. The plaintiff's suit for a permanent injunction was brought on the ground that this assessment of house tax had proceeded on an erroneous basis.

It is matter of admission between the parties that the house on which the house tax was levied had not been let to any tenant since its construction. The Trail Court had found that, from the plaintiff's statement of accounts of tax, it appeared that the demand which was being recovered from him was in respect of the period subsequent to 31st March, 1969 and was based on a rateable value of Rs. 37800/- per annum which had been provisionally adopted subject to results of proceedings in Courts of appropriate jurisdiction as to what the correct basis of assessment was. The Trial Judge had granted an interim injunction initially, but, after hearing parties, had vacated it on 18th October, 1973, as he had found that no prima facie case was made out to grant it.

On an appeal by the plaintiff, the Appellate Court, after considering all the questions raised before it, dismissed the appeal. It gave the following finding on the question of balance of convenience raised before it :

> "The balance of conveniences is also in favour of the defendant. The defendant renders services as a civic body most of the amount which it spends has to come from

A owners of property in the form of property taxes. If the plaintiffs do not pay the property tax then the defendant might not be able to carry out its duty. The plaintiffs have also been unable to show that they would suffer irreparable injury if an injunction is not granted to them. If they ultimately prove that they are not liable to pay full amount demanded by the defendant as property B tax then the plaintiffs could compel the defendant either to refund the amount realised in excess or to adjust the amount recovered in excess towards property tax for future years. The plaintiffs do not suffer irreparable injury if they are not granted the temporary injunction."

C The High Court, while agreeing with the view of the Appellate Court that the balance of convenience was in favour of discharging the interim injunction, held that, as there was a prima facie case that the assessment had been erroneously made, the principle of balance of convenience did not apply here. The learned Judge thought that the principles of assessment applicable to such cases had been already laid down by the Full Bench of the Delhi High Court in *Dewan Daulat Ram Kapur* v. *New Delhi Municipal Com-*D *mittee & Anr.*(1) He observed :

"One of the principles laid down by the Full Bench decision is that where premises were never let at any time, Annual value be fixed in accordance with section 6(1) (A) (2) (b) or S. 6(1) (B) (2) (b) by ascertaining market value of land and reasonable cost of construction. E The facts noticed above, but missed by the Courts below, prima facie establish that the property was never let out; the prima facie materials which are available, inclusive of what the D.M.C. itself had conceded, show the plaintiffs were occupying the property for their own use. The plaintiffs' case therefore, prima facie, falls within the above principle. Failure to perceive the above had resulted F in the Courts below declining to exercise jurisdiction vested in them in the manner it should have been exercised".

Hence, the learned Judge interfered and granted the interim injunction prayed for by the plaintiff.

Mr. F. S. Nariman, appearing for the appellant Corporation, points out that *Dewan Daulat Ram Kapur's* case (supra) was one G where premises had been let, but, in the case before us, it was a matter or admission by both sides that the premises had never been let out to a tenant. Section 6(1) (A) (2) (b) of the Delhi Rent Control Act relates to cases where standard rent has to be fixed of residential premises let out at any time on or after 2nd June, 1944. And, Section 6(1) (B) (2) (b) of the Delhi Rent Control Act relates to premises other than residential premises which had been let H out at any time after 2nd June, 1944. The Full Bench decision of the Delhi High Court in *Dewan Daulat Ram Kapur's* case (supra)

(1) I.L.R. 1973 (1) Delhi p. 363.

was that it was not incumbent on the Corporation to ascertain the hypothetical standard rent of premises in accordance with the provisions of the Rent Act in order to fix the annual value or rateable value where premises had been let but no standard rent had been fixed and assessment was sought to be made on the basis of agreed rent. It was also decided there that in cases before the High Court on that occasion, reasonable cost of construction as well as the market price of land to be taken into account in assessing the property tax.

It is difficult for us to see what bearing the provisions cited from the Delhi Rent Control Act or the Full Bench decision of the High Court could have on the case now before us. It seems to us that Mr. Nariman is correct in submitting that the learned Judge of the High Court had himself misapprehended the law in holding that the Courts below had failed to find a prima facie case because of a misconception of law. However, as no one has appeared on the date of the final hearing on behalf of the respondent, who had appeared through Counsel to answer the show cause notice issued by this Court before granting special leave, we refrain from deciding the question whether the provisions cited by the learned Judge of the Delhi High Court have any bearing on the case before us or not. This is a matter which will be decided in the suit itself. We, therefore, leave it expressly open for determination.

Mr. Nariman, learned Counsel for the Corporation, is, we think, on very firm ground in contending that balance of convenience could not be ignored in such cases and that the learned Judge of the High Court erred in holding that it could be.

It also seems that the attention of the learned Judge was not directed towards section 41(h) of the Specific Relief Act, 1963, which lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding except in cases of breach of trust. Learned Counsel for the appellant Corporation points out that there was the ordinary machinery of appeal, under section 169 of the Delhi Municipal Corporation Act, 1957, open to the assessee respondent. It had not even been found that the respondent was unable to deposit the necessary amount before filing the appeal. However, we abstain from deciding the question whether the suit is barred or not on this ground. All we need say is that this consideration also has a bearing upon the question whether a *prima facie* case exists for the grant of an interim injunction.

In *M/s. Mechelec Engineers & Manufacturers* v. *M/s. Basic Equipment Corporation*(1), also we found very recently that, as in the case before us now, a learned Judge of the Delhi High Court had overlooked the principles governing interference under Section 115 Civil Procedure Code laid down by this Court in *Baldevdas Shivlal & Anr.* v. *Filmistan Distributors (India) (P) Ltd. & Ors.*(2); *D. L. Housing &*

(1) [1977] 1 S.C.R. 1060. (2) [1970] 1 S. C. R. 435.

A *Construction Co. Pvt. Ltd. New Delhi* v. *Sarup Singh & Ors*(1).; *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad & Anr.* v. *Ajit Prasad Tarway, Manager (Purchase & Stores) Hindustan Aeronautics Ltd., Balanagar, Hyderabad.*(2). We direct the attention of the learned Judges concerned to the law declared by this Court.

B We allow this appeal and set aside the judgment and order of the Delhi High Court and restore that of the Appellate Court. The parties will bear their own costs in this Court.

M.R. *Appeal allowed.*

(1) [1970] 2 S.C.R. 368.
(2) A.I.R. 1973 S.C. 76.