

Swetambar Sthanakwasi Jain Samiti and another

Vs

The Alleged

Civil Appeal No. 3368 of 1996

(Kuldip Singh, S. Saghir Ahmad JJ)

14.02.1996

JUDGEMENT

KULDIP SINGH J.

1. Special leave granted.

2. Swetambar Sthanakwasi Jain Samiti (the society), Petitioner No. 1 in the appeal herein, is a society registered under the Societies Registration Act. The society claims that it has established and is administering various educational institutions including Sri Ratnamuni Jain Inter College (The college) Agra. This appeal is sequel to the litigation between two rival management committees, both claiming right to manage the college.

3. It is not necessary for us to go into the details of the litigation going on between the parties for the last more than ten years. Suffice it to say that respondents 1 and 2, in the appeal herein, got a rival society, namely, RMJ Educational Society (the RMJ Society) registered under the Societies Registration Act on September 10, 1991. The society and the RMJ Society have submitted their separate schemes for the administration of the college to the Deputy Director of Education and the District Inspector of Schools, Agra. The appellants elected their managing committee on July 1, 1991 whereas respondents 1 and 2 elected a separate management committee on June 21, 1991. Both the committees have been approaching the Deputy Director of Education and District Inspector of Schools for recognition and different orders at different times have been passed by these authorities.

4. The Deputy Registrar Societies, respondent 6 in the appeal herein, by the order dated March 19, 1994 cancelled the registration of RMJ Society. As a consequence the Deputy Director of Education by the order dated March 23, 1994 directed the District Inspector of Schools to take immediate action in the matter and grant recognition to the scheme of administration submitted by the appellants. This was done and appellant No. 2, Kamal Kumar Jain was recognised as manager of the college and was permitted to manage and operate the bank accounts. The success of the appellants was, however, shortlived. The Deputy Director of education and the District Inspector of Schools withdraw their orders and stopped the appellants from managing the college and operating the bank accounts. The appellants challenged the orders of the Deputy Director of Education and District Inspector of Schools by way of a civil suit No. 230/94 in the Court of Civil Judge Agra. The suit was transferred to the IIIrd Additional Civil Judge, Agra who by the order dated April 4, 1994 granted interim injunction as prayed for by the appellants. Moti Lal Jain, respondent 2 in the appeal herein, filed an application on April 5, 1994 before the Additional Civil Judge for being impleaded as a party in the suit. The application was dismissed by the learned Judge.

5. Respondents 1 & 2 challenged, the order of the learned Additional Civil Judge by which he granted interim relief to the appellants, the order rejecting the application for impleadment and also for quashing of the plaint, before the High Court by way of a writ petition under Article 226 of the Constitution of India. The High Court allowed the writ petition in the following terms :

"Thus, the petition deserved to be allowed partly. The prayer for quashing the plaint and proceedings in original suit No. 230 of 94 supra is rejected mainly on the ground that the petitioners have an alternative remedy under Order 7, Rules 10 and 11, C. P. C.

The prayer for quashing the order dated 4-4-94 (Annexure 20 to the petition) is allowed and so is the case with the order dated 5-4-94 (Annexure 23 to the petition) rejecting the application for impleadment. Both these orders are quashed totally. The application for impleadment as defendant by Sri Moti Lal Jain is allowed. The proceedings before the learned IIIrd Addl. Civil Judge, Agra in Original Suit No. 230 of 94, Shri Swetambar Sthanakwasi Jain Samiti v. Regional Dy. Director of Education stands transferred with immediate effect to the Court of the District Judge, Agra who shall transfer it to any other Court of competent jurisdiction, other than Sri Chandra Bhan, IIIrd Addl. Civil Judge, Agra.

It is made clear that after Sri Moti Lal Jain's impleadment as defendant, he shall be given an opportunity to file objections against the interim injunctions applications and also the written statement against the plaint. The application for interim injunction would be considered afresh again after hearing the parties by the learned Civil Judge, to whom the case is transferred.

Till the final disposal of the injunction application, Sri Moti Lal Jain shall continue to function as the Manager of the Committee of Management of Sri Ratan Muni Jain Inter College, Loha Mandi, Agra and nobody shall be allowed to disturb his functioning as such. After any order passed under Order 39, Rules 1 and 2, C. P. C. affected party will have statutory remedy to file appeal/revision as provided under the Code of Civil Procedure."

This appeal by the society and Kamal Kumar Jain, Manager of the College, is against the above quoted judgment of the High Court.

6. The High Court in the impugned judgment noticed the prayers of the writ petitioners before the said Court as under :

"In this writ petition a prayer has been made for an order or direction in the nature of certiorari quashing the plaint and all proceedings in original suit No. 230 of 94. Sri Swetambar Sthanakwasi Jain Samiti v. Regional Dy. Director of Education Agra Region, Agra. Further a writ, order or direction has been prayed for quashing the orders dated 4-4-94 and 5-4-94 passed by the IIIrd Addl. Civil Judge, Agra respondent No. 1 (Annexures 20 and 23 to the writ petition). There is an additional prayer to restrain respondent No. 1, i. e. Addl. Civil Judge, Agra from taking any further proceedings in original suit No. 230 of 94 aforesaid."

7. It is not disputed that the remedy of appeal before the District Judge was available to the

respondents against the order of the Additional Civil Judge by which the learned Judge granted interim injunction against the respondents. The order dated April 5, 1994 rejecting the applications of respondent No. 2 for impleadment could not also be challenged by way revision. The High Court also noticed this aspect in the following words :

"Of course, he could have availed the jurisdiction of the District Judge, who has an authority to hear appeal as well as revision. But somehow or the order he has been advised to approach this Court."

8. We are of the view that the High Court not only fell into patent error but also exceeded its jurisdiction under Article 226 of the Constitution of India. Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a civil Court under the ordinary law. When a suit is pending between the two parties the interim and miscellaneous orders passed by the trial Court - against which the remedy of appeal or revision is available - cannot be challenged by way of a writ petition under Article 226 of the Constitution of India. Where the civil Court has the jurisdiction to try a suit, the High Court cannot convert itself into an appellate or revisional Court and interfere with the interim/miscellaneous orders of the Civil Court. The writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.

9. We, therefore, allow the appeal with costs and set aside impugned judgment of the High Court. The writ petition filed by respondents 1 and 2 before the High Court shall stand dismissed. We quantify the costs as Rs. 20,000/- to be paid by respondent No. 2. Appeal allowed.