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(1978) 08 MP CK 0001

Madhya Pradesh High Court

Case No: Miscellaneous A. No. 7 of 1972

Gopalnarain		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: Aug. 28, 1978

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 80
- Madhya Pradesh Excise Act, 1915 - Section 4

Citation: (1979) JLJ 662

Hon'ble Judges: H.G. Mishra, J

Bench: Single Bench

Advocate: A.K. Shrivastava and Balwantsingh, for the Appellant; M.N. Pendharkar, panel lawyer, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

H.G. Mishra, J.
This is an appeal by the plaintiff against an order dated 15-11-71. rejecting the application for grant of temporary injunction against recovery of sales-tax officer, Gwalior Circle No. 1.

2. Facts essential for purposes of this appeal are as under:

(i) The appellant (Plaintiff) has instituted a suit for declaration simpliciter to the effect that the best judgment assessment made by the Sales-tax officer is ultra vires on facts and cause of action laid in the plaint. The defendant has denied the contentions on the plaintiff and has contended that the plaintiff himself has created the situation to compel the Sales-tax Officer to take resort to best judgment assessment. The assessment in question is validly made. The provisions of section 4 of the M.P. Excise Act, are not ultra vires.

(ii) The plaintiff submitted an application u/s 151 CPC dated 21-3-1971 for grant of ad-interim relief of temporary injunction restraining the non-applicant from recovering the amount of sales-tax till disposal of the suit: This application was filed because notice period had not expired by that time.

(iii) Thereafter by order dated 4-11-1971, the suit was registered as regular civil suit. On behalf of the plaintiff, an application for issuance of ad-interim injunction was submitted on 21-3-1971 u/s 151 CPC. This application was opposed by the State Government and has been rejected by the impugned order. Hence this appeal.

3. Shri A.K. Shrivastava and Shri Balwantsingh appeared on behalf of the plaintiff-appellant and contended that the impugned order is illegal on facts as well so on law. Shri M.N. Pendharkar, panel lawyer for the State argued in support of the impugned order and further contended that after registration of the suit, plaintiff submitted another application under order 39. rule 1 and 2 read with section 151 CPC on 3-1-1972, for restraining the defendant from recovery dues in question. This application was opposed by the State Government and was dismissed by order dated 17-1-1972. No appeal has been filed against this order. Therefore, the present appeal deserves to be dismissed.

4. After having heard the learned counsel for the parties, I am of the opinion that the appeal deserves to be dismissed.

5. An application for issuance of interim injunction, in proceedings started prior to expiry of notice period prescribed by section 80 CPC is made and entertained only by way of stop-gap arrangement. This is what has been held by a Division Bench of this Court in case reported in Ram Krishana Parashar v. Chironjilal Vaishya and others 1977 JLJ 184 SN 1 wherein law has been laid down that:

(1) Where the period of notice u/s 80 of the CPC has not expired an intending plaintiff can file a substantive application praying for grant of a temporary injunction such an application is not one u/s 151 CPC but it is necessarily one under the CPC wherein inherent powers of the Court are invoked for grant of temporary injunction. Such an order will only be operative till the party concerned is able to file a suit and is able to obtain a temporary injunction from the Court in the suit itself.

(2) The Court acting such an application can grant a temporary injunction having resort to the inherent powers saved section 151 CPC.

6. This apart, after courting dismissal of the aforesaid injunction application, the plaintiff again moved the trial Court under Order 39 rule 1 and 2 read with section 151 CPC for issuance of interim injunction. This application was opposed and dismissed by order dated 17-1-1972 The appellant is not able to show that he has preferred appeal against the order dated 17-1-1972 The present appeal, though against an earlier order deserves to be dismissed as barred by the doctrine of res-judicata.

7. Even on merits, there is no prima facie case in favour of the plaintiff appellant Mere institution of a suit challenging vires of provisions of law and an assessment order passed by a competent authority cannot entitle a plaintiff to claim as of rights issuance of interim injunction to restrain recovery of tax imposed and assessed on him. These factors have to be shown to co exist by a plaintiff to claim and/or sustain to grant of interim injunction viz, (a) prima facie case, (b) balance of convenience and (c) irreparable injury. If any of the aforesaid factor is not shown to exist then interim injunction cannot be issued.

8. In this case the learned A.D.J. has proceeded on the presumption that prima facie case may be assumed to be in favour of the plaintiff and then has proceeded to examine the remaining two factors viz., those of balance of convenience and irreparable loss. The learned A.D.J. has thus conducted himself illegally in omitting to decide the question of prima facie case The plaintiff did not submit any accounts before the Sales-tax Officer and suffered a best judgment assessment to be made against him. He did not take resort to any appeals which are open under the M.P. General Sales-tax Act, 1958 It is true that the question of vires of a provision of law is not within the jurisdiction of the appellate authorities pre cribed under the said Act, yet as observed by me earlier act of throwing mere challenge in the plaint cannot be assumed that the Challenge to the vires of the provision of law is ex-facie valid. On the contrary. Courts of law have to presume that the particular of law is intravires and not ultra vires.

9. As to whether the best judgment assessment on the basis of which recovery of Sales-tax in question is being made was beyond the competence of the sales-tax officer on the facts and grounds stated in the plaint. The plaintiff has also to satisfy the Court that there is prima facie case in regard to the illegality of the assessment order under fire. No material has been produced by the plaintiff to even show ex-facie that best judgment assessment was illegal. Thus, there is no prima facie case in favour of the plaintiff-appellant.

10. Since all the three factors mentioned above have to be shown to co-exist by the plaintiff and because there is no prima facie case in his favour, there is no necessity to consider the existence or otherwise of the remaining two factors viz., balance of convenience and irreparable injury.

Yet so far as concept of irreparable injury is concerned, that point stands concluded by a Division Bench of this Court reported in State v. Md. Unis 1965 JLJ SN 96, where almost in similar situation it has been held that in such a case the plaintiff is not likely to suffer any irreparable loss or injury. The ratio of the case of State v. Md. Unis runs as under :

The non-applicant filed a suit for declaration that he is not liable to pay the sales-tax assessed and the penalty imposed on a shop as he was neither the proprietor nor co-owner of the shop. The trial Court granted a temporary injunction restraining the

State from recovering the amount This order was confirmed in appeal.

Held: It was manifest that the plaintiff was not likely to suffer any irreparable loss or injury if the amount of sales-tax and penalty was recovered from him. When one spoke of irreparable injury what was meant was an injury which could not be adequately remedied by damages or compensated by in his as sales-tax and penalty could always be refunded by the State to him. Temporary-injunction vacated.

11. On behalf of the plaintiff-appellant Shri A.K. Shrivastava, has cited before me case reported in The State of Tripura Vs. The Province of East Bengal, . It has not been laid down in that case that merely throwing of a challenge to the vires of a provision of statute entitles the plaintiff to grant of interim injunction. The ratio of the case reported in Ramkant Gupta and another v. Union of India and others 1972 JLJ 818, cannot apply to the fact and circumstances of the present case On facts that case is distinguishable. It was a case where remand was ordered. The case reported in Nathulal v. State of M.P. 1972 MPWN 60, etc. was a case where plaintiff filed a suit on the ground that he was a liquor contractor but during the major portion of the lease period, liquor was not provided to him by the Government according to the demand as there was shortage in production for which he was entitled to compensation. The plaintiff claimed an injunction against the State Government not to realise half of the contract amount. The trial Court in that case came to the conclusion that plaintiff has a good prima facie case. On these facts it was held in that case that balance of convenience requires that the defendant should not be permitted to utilise co-ercive process for realising an amount. It was further found that the most reasonable way of settling the matter was to settle the compensation and deduct it form the amount realisable. In these circumstances, it was held that the order refusing injunction was not justified. There is no question of any entitlement of compensation in the present case.

12. The other case relied on by the appellant is State v. Laxminarain 1961 JLJ 905. Relincne is placed on para 30th thereof. In para 30 of the case State v. Laxminarain (supra) it has been stated that "In the instant case, neither assessment made nor order passed under the Act or the rules made thereunder is being challenged. In fact no such order is on record as neither the plaintiff nor the defendant has filed it. This distinguishes that case form the present case. Moreover, it was net a case where principles governing issuance of interim injunction have been laid down. It was second appeal on merits.

13. The ratio of the case reported in Borough Municipality, Chalisgaon Vs. Chalisgaon Shree Laxminarayan Mills Co. Ltd. and Another, is not application to the situation because before the Bombay High Court there was a case of recurring liability. Here there is no question of liability being recurring in character. The liability is determined by the assessment order. Therefore, the case of Borough Municipality. Chalisgaon (supra) is tangentially off the point.

14. lastly, reliance was placed on the ratio of Lokmanya Mills Barsi Ltd. v. Barsi Borough Municipality, Barsi AIR 1961 SC 1868 wherein it has been held that:

Rule 2-C framed by the Barsi Municipality u/s 58(J) of the Act for assessing house tax and water tax in respect of factory buildings and building relating thereto on a rental value computed on the capital value of the stiluses and not the capital value or on the annual rent for which the building may reasonably be expected to let is illegal and ultra vires.

By section 78. Sub-section (1) Cl. (d) and Explanstion to section 75 the rate to be levied on lands and buildings may be assessed on the valuation of the lands and buildings based on capital or the annual letting value. If the rate is to be levied on the basis of the capital value, the building to be taxed must be valued according to some recognised method of valueation if the rate is to be levied on the basis of the annual letting value, the building must be valued at the annual rental which a hypothetical tenant may pay in respect of the building. By prescribing valuation computed on the area of the factory building the Municipality not only fixed arbitrarily the rental which a tenant may reasonably pay, but rendered the statutory right of the tax payer to challenge the valuation illusory An assessment list prepared u/s 78, before it is authenticated and finalised, must be published and the tax payers must be given an opportunity to object to the valuation is not based upon the capital value of the building or the rental which the building may fetch, payers may raise is in substance restricted to the area and not to the valuation ILR (1952) Bom. 918. AIR 401. over-ruled: AIR 1944 71 (Privy Council) Distinguished, Motiram Keshavdas Vs. Ahmedabad Municipal Borough, . Referred to.
The scheme of the Bombay Municipal Borugh''s Act (No. 18 of 1925 (in section 78 (1) (d), section 75 Explanation and section 58(j) is entirely different. Therefore, the ratio of this case cannot be extended and supplied to the present situation.

15. As to value of precedents their Lordships of the Supreme Court in the case reported in The State of Orissa Vs. Sudhansu Sekhar Misra and Others, have held that:

A decision is only an authority for what it actually decides, what is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task of extract a sentence here and there from a judgment and to build upon it.

16. Accordingly the attempt of the learned counsel for the appellant to extract a sentence here and there from the judgments relied by him and to build upon it cannot be regarded as a profitable task. The authority of the decision relied on has to be regarded only for what they actually decide. None of them lays down a principle of universal application.

17. According to the aforesaid discussion, the appeal deserves to he dismissed and is hereby dismissed with costs.