(1992) 3 ALT 577 : (1992) 2 APLJ 358

Andhra Pradesh High Court

Case No: W.A. No. 1080 of 1990

D. Ramana Raju		APPELLANT
	Vs	
Yendapalli Gowramma and Others		RESPONDENT

Date of Decision: Aug. 11, 1992

Acts Referred:
Andhra Pradesh (Andhra Area) Tenancy Act, 1956 â€" Section 16(1), 16(2)#Constitution of India, 1950 â€" Article 226

Citation: (1992) 3 ALT 577 : (1992) 2 APLJ 358

Hon'ble Judges: Sivaraman Nair, J; A. Gopala Rao, J

Bench: Division Bench

Advocate: C.V.N. Sastry and E.S. Sreeramachandra Murthy, for the Appellant; Government Pleader for Revenue for Respondents 5 and 6 and T. Veerabhadrayya, for Respondents 1 to 4, for the Respondent

Final Decision: Allowed

Judgement

Sivaraman Nair, J.
The 1st respondent in Writ Petition No. 10037/87 appeals the Judgment of our learned brother Radhakrishna Rao, J.

2. Petitioners in the above Writ Petition sought the issue of a writ of certiorari to quash the order of the District Judge, West Godavari in ATA No.

58/85, reversing the order of the Special Officer-cum-District Munsif, Chintalapudi of the same District in ATC No. 1/83. The facts which led to

the writ petition are the following:

3. We will refer to the parties as they were arrayed before the learned single Judge.

4. The 1st respondent filed an application u/s 16(1) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Act") before the 3rd

respondent Special Officer District Musnif to declare him as a cultivating tenant in respect of the petition schedule land measuring Ac. 1.25 cents of

wet land in R.S. No. 49/23 of Tedlam village in Chintalapudi taluk. He sought the consequential injunction restraining the landlady or her agents

and the transferees from interfering with the possession during the subsistence of his tenancy. He had also sought other consequential reliefs.

5. The 1st respondent examined 9 witnesses and marked Exs.A-1 to A-11 in support of his case. The landlady examined herself and 5 others and

produced Exs.B-1 and B-2. The Special Officer District Munsif on a consideration of the evidence on record found that the relationship of tenant

and landlord between the petitioner and the 1st respondent was not made out. He also entered a finding that the tenant usurped possession under

the guise of ex parte temporary injunction which was obtained by him. The Special Officer therefore directed the 1st respondent to restore

possession of the petition schedule land to the petitioner. The tenant then filed an appeal before the Dist. Judge as provided u/s 16(2) of the Act.

The appellate authority considered the matter at length, differred from the conclusions and findings of the Special Officer and set aside the order

under appeal before him. He observed mat the Special Officer had failed to appreciate the evidence on record in proper perspective and that the

voluminous oral evidence of all the neighbouring ryots clearly established that the tenant had been cultivating the petitioner schedule land since six

years from the date of filing of the petition. He consequently declared that the 1st respondent was the cultivating tenant. The petitioner landlady and

transferees, assailed the appellate order passed by the District Judge in W.P. No. 10037/87. The learned single Judge allowed the Writ Petition on

a reapprecaition of the evidence mainly because, according to him the appellate court should not have rejected the findings of the Original court

where oral evidence was crucial since the original court had the opportunity to observe the demeanor of the witnesses. Reliance was placed on the

decisions of the Supreme Court in Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, and Rajbir Kaur and Another Vs. S.

Chokesiri and Co.,

6. The learned single judge did not accept the submissions made on behalf of the 1st respondent tenant based on Hari Vishnu Kamath Vs. Syed

Ahmad Ishaque and Others, and Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, to the effect that the legislature having conferred finality on

the decision of the appellate authority it was not proper for the High Court in exercise of its jurisdiction under Article 226 of the Constitution of

India to interfere with the findings of fact recorded within jurisdiction unless such findings were perverse or based on no evidence to justify them or

had resulted in manifest injustice. It is the correctness of that judgment of the learned single Judge that is canvassed before us in this Appeal.

7. It is necessary for us to refer to the relevant portions of Section 16 of the Act;

16. Adjudication of disputes and appeal:

(1) Any dispute arising under this Act between a landlord and cultivating tenant in relation to a matter not otherwise decided by the special officer

under the provisions of this Act shall on application by the landlord or the cultivating tenant as the case may be, be decided by the Special Officer

after making an enquiry in the manner prescribed:

Provided that nothing in this sub-section shall apply with respect to any matter pertaining to the fixation of reasonable rent or the determination of

other terms and conditions of the lease relating to the said reasonable rent under clause (e) of Sub-section (1) of Section 74 of the Andhra Pradesh

Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 17 of 1966).

(2) Against any order passed by the Special Officer under this Act an appeal shall lie to the District Judge having jurisdiction within thirty- days of

the passing of the order and the decision of the District Judge on such appeal shall be final.

8. It is clear from the above provision that the original and appellate authorities have got unlimited jurisdiction to decide the dispute between a

landlord and the cultivating tenant. Sub-section (2) of Section 16 constitutes the appellate decision on such matters as final. This finality is a quality

of the appellate judgment. Apparently that finality was deliberately conferred by the legislature. Ordinarily that finality shall not be impaired. But this

restraint does not apply to certiorari proceedings. In other words the final order of the appellate authority is amenable to the supervisory

jurisdiction of this court under Article 226 or 227 of the Constitution of India. That shall however be only on well known grounds which justify

interference with a final order passed by a Tribunal within jurisdiction. One such ground is ''error of law apparent on the face of the record''. That

may comprehend within its scope findings which are unsupported by any evidence or finding reached by a perverse appreciation of the evidence

resulting in manifest injustice to one of the parties. It is well to remember that ''error of law apparent on the face of the record'' is a ground which is

hedged in by restraining rules evolved by courts over the years. Statutory finality which attaches to an order passed within jurisdiction cannot be

trifled or tampered with for the only reason that the Writ Court is persuaded to a different view on the effect of the evidence or on the ground of

insufficiency or inadequacy of evidence or for the reason that other alternative findings on the same evidence is possible. Garner in his

''Administrative Law'' (4th Edition, page 145) dealing with error of law posed and answered the question as follows;

There is the further question what is an error of law as distinct from an error of fact? This second question seems to amount to asking whether the

tribunal could, on a correct statement of law have reasonably come to the decision it did. If the answer is in the affirmative there can be no review

on this ground. Review will hot be granted simply because it can be shown that the inferior tribunal came to the wrong decision; it must have come

to that decision for wrong reasons.

9. It is necessary to reiterate that error of law which justifies invocation of the jurisdiction of a writ court must be apparent on the face of the record

in the sense of being quite easily ascertainable by the supervising court without much effort. It shall not be one that can be ascertained only by a

detailed appreciation and evaluation of all evidence that was before the deciding authority once again. It is all well remember that the order of

Certiorari is a process of review and not of appeal. Only in the latter case can the court reappreciate the evidence to discover mistakes in the

appreciation of evidence find fault with the findings and upset the decision of the statutory Tribunal. HWR Wade on "Administrative Law" (5th

edition page 285) deals with the scope of interference in certiorari with decisions of statutory tribunals in the following terms;

The courts should interfere only when the decision of the tribunal is unreasonable in the sense that no tribunal acquainted with the ordinary use of

language could reasonably reach that decision. The court should be ready to lay down broad guidelines to promote uniformity of decision but

should refuse to be used as a court of appeal.

10. On a reading of the judgment under appeal we find that what is cautioned against in the above statements of law is that which has transpired in

this case. The learned single judge reviewed and reassessed the evidence and found fault with inferences drawn from proved facts for the only

reason that such inferences as the appellate judge drew were different from those which the original authority (Special Officer) had drawn from the

same set of facts. The learned single judge assumed that the above inferences were drawn only from conflicting oral evidence. He therefore found

that the findings of the appellate authority which differed from the special officer were perverse. That was done on a reappreciation of the

evidence.

11. Sri T. Veerabhadrayya, counsel for the petitioners submitted that there is no occasion for interference with the judgment under appeal in view

of the fact that the learned single judge has borne in mind the correct principle of law enunciated by the Supreme Court in the decision in

Madhusudan Das (1 supra) and Smt. Rajbir Kaur (2 supra). He asserted that in a case of conflicting oral testimony the appellate court shall not

lightly interfere with the findings entered by the original authority or court which had the opportunity of observing witnesses and watching their

demeanor. He submitted further that the appellate court should have assumed mat the original authority rested its findings on the credibility of

witnesses whom he had occasion to observe when they gave evidence. He submitted that these wholesome principles having been accepted by the

Supreme Court and the learned single Judge having acted on them there is no justification for us to interfere in appeal.

12. The scope of the powers of the first appellate authority in reviewing evidence which is mostly oral are too well known to require any decision

to elucidate it further.

13. In Veeraswami v. Talluri Narayana, 1949 P.C. 32 the scope of interference by an appellate court with the findings of the trial court based on

conflicting oral testimony was considered. The Judicial Committee observed:

But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at, at the trial and especially if that conclusion has

been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not

enjoyed this opportunity and that the view of the trial judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of

first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may

go wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance when estimating the value of verbal testimony, has the

advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given.

14. In Prem Singh Hyanki v. Deb Singh Bisht 1948 PC 20 the following observations of Lord Thankerton in 1947 (1) A11E.R. 582 were

extracted:

The appellate court either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the

evidence may, be satisfied that he has not taken proper advantage of his having seen and heard the witnesses and the matter will then become at

large for the appellate court.

15. Dealing with similar question the Supreme Court in Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, laid down the law in

the following terms;

The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced

in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial judge had in having the witnesses

before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts the

appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is - and it is nothing more than a rule of practice -

that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then

unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge''s notice or there is a sufficient

balance of improbability to displace his option as to where the credibility lies, the appellate court should not interfere with the finding of the trial

Judge on a question of fact.

16. In Bhagwan Singh v. Ujagir Singh, AIR 1940 Patna 33 Rowland, J. observed:

The Legislature has thought fit to entrust to the first Appellate Court the final decision of all matters of fact on which the disposal of the suit turns.

Every officer in this position should realise that the confidence thus reposed, in him implies a corresponding duty and trust, that he will to the best of

his power weigh and balance the evidence,facts and considerations appearing on both sides. He should endeavour so to decide his cases that his

judgment may carry a conviction if not of its correctness atleast of a fair endeavour to place a correct valuation on the merits of the case of both

sides. He should never let it appear, either to the public or to a superior court that he has chosen to accept the evidence of one side or the other

without due consideration of the salient facts established and contrary to the conclusion to which the outstanding facts point, arbitrarily or on

patently inadequate grounds. In short, the judgment ought to show that the Judge has been led to a particular conclusion by the force of the facts

and not that he has had a fancy to adopt a particular conclusion and then made a one sided presentation of the facts to support that conclusion.

17. The scope of interference with the findings of facts based on oral evidence had been considered by the Privy Council in Govind Prasad v.

Balakunwar 1934 PC 12. The same question was considered by a Division Bench of the Madhya Pradesh High Court in Chakrapani Jagannath

Prasad v. Chandoo Sahadeo and Anr. AIR 1959 M.P. 84 Chief Justice Hidayatullah made the following observations:

The law with regard to the powers of an appellate court to review the evidence and to reach a conclusion of fact is well settled. It has been laid

down by their Lordships of the Privy Council in very clear terms that an appellate Court should be slow to disbelieve evidence accepted by the

Original Court which had the chance of recording the evidence and watching the demeanor of witnesses in the box.

All the same their Lordships have stated that where the inferior Court rejects or accepts the testimony of witnesses, not because it considers the

witnesses untrustworthy or untruthful but on an examination of the probabilities involved in the case the appellate court is in as good a position as

the original court in. assessing the value of the evidence.

18. Considering the question a Division Bench of the Kerala High Court in S. Kunjan Pillai v. Peirce Leslie & Co. AIR 1957 KLT 521 observed:

The duty of the appellate Court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial

court arrived at or whether there is an element of improbability arising from proved circumstances which in the opinion of the court outweigh such

finding.

19. Acomprehensive review,reassessment and reappreciation of the evidence on record is a part of the duty of the appellate court. If on such

appreciation the appellate court comes to its own findings the writ court can interfere only if it finds an error of law apparent on the face of the

record and not by a detailed examination of the entire evidence afresh, nor for the reason that the appellate court could as well have agreed with

the inferences drawn by the original authority from proved facts. A different opinion by this court of the credibility of the witnesses on a

consideration of the entire matter is not a justification for interference with the finding entered by the appellate court whose decision is final

according to Section 16(2) of the Act.

20. On a consideration of the record we are satisfied that what the District Judge in the present case did was to review the evidence in discharge of

his wholesome duty to find out whether the order of the special officer was correct or not. We are also satisfied that he had borne the correct

cautions in mind in appreciating the oral evidence of witnesses whom he had no opportunity to observe. He did not rest his findings on the

credibility of witnesses. Assessing the balance of improbability due to preponderance of oral evidence of almost all ryots around the disputed land

who were expected to know who was cultivating the land the appellate judge entered his findings differing from those of the Special Officer. He

also drew support from whatever documentary evidence that was available. We are of the opinion that the appellate judge would have failed in his

duty if he did not review the evidence threadbare and examine the findings of the special officer with reference to the balance of probabilities. The

only fact that he could not agree with the findings of the Special Officer shall not be good enough reason to interfere with his order in exercise of

jurisdiction under Article 226 of the Constitution of India. Neither Madhusudan Das (1 supra) nor Smt Rajbir Kaur (2 supra) lends any support to

the proposition that an appellate authority shall abdicate its duty to review evidence when oral evidence is crucial. Those cases were decided in the

context of appellate courts acting improperly in entering findings on the credibility of witnesses whom the original court had opportunity to observe

and the appellate court did not. The appellate court shall be slow to interfere in such cases is a rule of practice and prudence, but does not compel

abdication of appellate review of evidence altogether.

21. The scope of jurisdiction of this court to interfere with orders of Subordinate Tribunals was considered in a number of decisions of the

Supreme Court. The earliest among them may perhaps be Hari Vishnu Kamath v. Ahmad Ishaque (3 supra). In Syed Yakoob Vs. K.S.

Radhakrishnan and Others, a Constitution Bench of the Supreme Court considered the same question. The court held:

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an

appellate court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of

evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a

writ, but not an error of fact however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be

issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had

erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on no evidence that

would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot however be challenged in proceedings for a Writ of certiorari on the ground that the relevant and

material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of

evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points

cannot be agitated before a writ Court.

The court also held:

an error of law which can be corrected by a writ of certiorari must be one which is apparent on the face of the record."" and

If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or Tribunal its

conclusion may not necessarily or always be open to correction by a writ of certiorari.

22. In T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others, the Supreme Court upheld the refusal by the Madras High

Court to interfere with an order of the Labour Commissioner in which he enumerated proper tests applied them and after considering the entire

material on record came to the conclusion about the status of the appellant and that there was no error apparent on the face of the record. The

court also held that

It would be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in

matters which have been left by the legislature to the decisions of specially constituted Tribunals.

23. In Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, the Supreme Court considering the question of "error

of law apparent on the face of the record", after referring to Hari Vishnu Kamath (3 supra) held:

An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be

said to be an error apparent on the face of the record. Where an alleged error is far from self evident and if it can be established it has to be

established by lengthy and complicated arguments such an error cannot be cured by a writ of certiorari according to the rule governing the powers

of the superior court to issue such a writ.

24. In State of Andhra Pradesh and Others Vs. Chitra Venkata Rao, the Supreme Court held:

The High Court is not a court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public

servant. The court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure

prescribed in that behalf and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with

the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the

charge it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which

is apparent on the face of the record can be corrected by a writ but not an error of fact however grave it may appear to be. A finding of fact

recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or

inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding

are without the exclusive jurisdiction of the Tribunal.

25. In Sawarn Singh and Another Vs. State of Punjab and Others, the Supreme Court reiterated that the court exercising special jurisdiction under

Article 226 is not entitled to act as an appellate court. It held further:

This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be

reopened or questioned in Writ Proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an

error of fact, however grave it may appear to be.

26. In Chandavarkar Sita Ratna Rao (4 supra) the Supreme Court held that-

It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate Court if there was no evidence to justify such a

conclusion and if no reasonable person could possibly have come to the conclusion which the Courts below have come or in other words a finding

which was perverse in law. This principle is well settled. In D.N. Banerji Vs. P.R. Mukherjee and Others, it was laid down by this Court that

unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226

and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected

itself either on law or on fact then in exercise of the power under Article 226 or Article 227 of the Constitution the High Court should refrain from

interfering with such findings made by the appropriate authorities"" and

Yet all these are for the Courts finding facts and if such fact finding bodies have acted properly in law and if the findings could not be described as

perverse in law in the sense mat no reasonable person properly instructed in law could have come to such a finding such findings should not be

interfered with within the exercise of the jurisdiction by the High Court under Articles 226 and 227 of the Constitution.

The court also observed with reference to the facts of mat case:

It is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned

trial Judge came to one conclusion and the appellate bench came to another conclusion is indication of the position that two views were possible in

this case. In preferring one view to another of factual appreciation of evidence the High Court transgressed its limits of jurisdiction under Article

227 of the Constitution. On the first point therefore the High Court was in error.

27. We do not propose to multiply authorities on this self-evident proposition. We are of the opinion that what the learned single judge has done is

to reappreciate the evidence for the purpose of faulting the findings of fact recorded by the appellate Judge. The mere fact that after a detailed

enquiry he differed from the findings recorded by appellate Judge for the reason that the findings entered by the appellate Judge were perverse is

no reason to justify the order of the learned single Judge. We are satisfied that the findings entered by the appellate judge were not such as no

reasonable person would have come to. The learned single judge has not stated how was the finding of the appellate judge in favour of the tenant

perverse. Nor do we accept the observation of the learned single judge that-

If on the facts of the case the High Court comes to the conclusion that the findings that have been arrived at by the appellate authority are perverse

or bad in law. Basing on the appreciation of the evidence this court is competent to interfere with such a finding lest it should result in manifest

injustice.

That is to over simplify the scope and extent of jurisdiction and invite or justify interference in all cases where this court may differ from findings of

facts entered by competent tribunals within jurisdiction. That is the power of appellate review not supervisory oversight. The latter alone is the

function of this court, and definitely not the former.

28. An enquiry into an error of fact however grave not being permissible it was not open for this court exercising extraordinary jurisdiction under

Article 226 of the Constitution of India except in very exceptional cases to reappreciate the evidence and come to its own conclusions differing

from those of the appellate Judge whose decision u/s 16(2) of the Act on all points of fact and law has been given finality by the legislature. The

only fact that the inferences which the original authority had drawn from the same set of proved facts were also reasonable inferences was hardly

good enough reason for this court to interfere under Article 226 of the Constitution of India. We should also state that the appellate Judge had in

reappreciating the evidence in the discharge of his appellate functions set before him the correct tests and applied the same to the evidence on

record. He had stated more than once that-

We have to appreciate the oral evidence on broad probabilities. We should not give undue importance to minor contradictions of this type.

He also adverted to the facts mat R.W.I and P.W. 7 had abandoned their husbands and were living with their second husbands. The appellate

judge considered their evidence with full awareness of this infirmity in their marital lives. It is on a consideration of the entire evidence that the

appellate judge came to the conclusion that ""the special officer has failed to appreciate the evidence available on record in a proper perspective

and that appellant was the cultivating tenant of the petition schedule land since six years prior to the date of the filing of the petition in court. Apart

from stating that the evidence adduced by the neighbouring ryots was reliable the appellate Judge found that the witnesses examined by the land

lady were hardly worthy of any credence by reason of the inherent contradictions in their evidence. The appellate Judge seems to us to have

considered the entire evidence oral and documentary as he was charged by Section 16(2) to do as an appellate judge assessed the preponderance

of probabilities and the balance of improbabilities so as to arrive at the correct decision on the points of law and fact which arose for consideration.

That was undovibtedly what he was expected to do. Such findings as he entered were not liable to be upset in exercise of the jurisdiction of this

court under Article 226 of the Constitution of India for the only reason that there was conflict of oral evidence and the trial court had entered

different findings on the same evidence. What this court shall see is whether there was an error of law apparent on the face of the record. Primarily

mat look must be at the order under challenge. Ordinarily mat order cannot be faulted by an appellate review.

29. On a consideration of the entire matter in the light of the relevant precedents we are constrained to hold that the learned single Judge exceeded

his jurisdiction in interfering with the order of the appellate Judge by reappreciating the evidence, apparently for the only reason that the proved

facts could support an inference different from that which the appellate Judge drew.

30. In this view we allow the Writ Appeal and set aside the judgment of the learned single Judge and restore the order of the appellate Judge in

ATA No. 58/85. However respondents 1 to 4 are permitted to cut and take away the crop, which they are said to have raised in the land in

question after harvesting the crop or till the end of November, 1992 whichever is earlier. Till such time the appellant should not interfere with their

possession. Parties will suffer their respective costs.