

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JAIPUR BENCH, JAIPUR**

**ORDER**

S.B. Civil Writ Petition No.12805/2012

M/s. Shah Associates

**Versus**

State of Rajasthan & Ors.

Date of Order :: 20<sup>th</sup> December, 2013

**HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA**

Mr. Bipin Gupta for the petitioner.

Mr. Nikhil Simlote for the respondents.

<><><>

**BY THE COURT:**

In the instant writ application, the petitioner/plaintiff (for short 'petitioner') has challenged the order dated 18<sup>th</sup> May, 2012 passed by the learned Trial Court on an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure (for short 'CPC'). The petitioner has also challenged the order dated 6<sup>th</sup> August, 2012 passed by the learned Appellate Court on an appeal against the order dated 18<sup>th</sup> May, 2012; upholding the order of the learned Trial Court.

2. Shorn of the unnecessary details, the essential material facts necessary for adjudication of the controversy raised in the writ application are that the petitioner firm instituted a suit for mandatory and permanent injunction pleading that the petitioner is involved in the business of sale and purchase of the plants, machinery and scrap of sick industries. An industrial concern in the name of 'Dalmiya Dairy Industries' was closed in the year 1999 on account of losses, and presently is known by the name of M/s. Bharatpur Nutritional Products Limited. The workmen of the industry instituted a suit before the learned Civil Judge (Jr. Div.), Bharatpur with a prayer that the plants

and machinery situated in the factory premises may not be misappropriated and transferred, and if at all, it was necessary to sell the plant and machinery of the industry, then the sale proceeds be first utilized for due payment of the salary, gratuity and bonus of the workers. An application under Order 39 Rule 1 and 2 read with Section 151 CPC was entertained and by an order dated 22<sup>nd</sup> September, 2007, it was ordered that the sale proceeds out of the plant and machinery, should be first utilized to make the due payment of the workers. It is pleaded case of the petitioner that the petitioner purchased the plant, machinery and other goods lying in the premises of the said industry on 1<sup>st</sup> May, 2008. Since the petitioner was not allowed to shift the goods and threats were held out on 13.7.2008, 20.4.2009 and 14.4.2010, to cause loss and was not permitted to remove the goods; an application was filed before the Sub Divisional Officer, who declined to extend any help. Therefore, the petitioner instituted a civil suit along with an application for temporary and mandatory injunction and an order dated 16<sup>th</sup> June, 2010 was passed by the learned Trial Court restraining the union of the workers from interfering in shifting of the goods purchased by the petitioner. The order dated 16<sup>th</sup> June, 2010 was subjected to an appeal unsuccessfully since the appeal was dismissed vide order dated 21<sup>st</sup> August, 2010. Since, the present respondents/defendants (for short 'respondents') interfered with the shifting of the goods, the petitioner was forced to institute the present suit along with an application for temporary and mandatory injunction on account of damage and loss caused on day-to-day basis. The learned Trial Court declined the application vide impugned order dated 18<sup>th</sup> May, 2012, which was subjected to appeal before the learned Appellate Court, which has also been dismissed vide

impugned order dated 6<sup>th</sup> August, 2012 upholding the order of the learned Trial Court.

3. The learned counsel for the petitioner reiterating the pleaded facts urged that the learned Courts below have committed a patent error and illegality in passing the impugned orders for the reason that the Appellate Court while reversing the finding of the learned Trial Court on the issue of *prima facie* case and balance of convenience; grossly failed to reverse the finding of irreparable loss for the reason that the respondents have no right to restrain the petitioner from shifting the goods and therefore, rejection of the prayer for mandatory injunction on the issue of irreparable loss, is absolutely illegal and an error apparent on the face of record. Further, the petitioner being a *bona fide* purchaser would suffer irreparable loss and injury on account of deterioration of the goods.

4. In response to the notice of the writ application, the respondent No.2 (Assistant Commissioner, Sales Tax Department) has filed counter-affidavit, raising preliminary objections as to the maintainability of the writ application, supporting the impugned orders dated 18<sup>th</sup> May, 2012 and 6<sup>th</sup> August, 2012. The learned counsel for the respondents emphatically stressed that the learned Courts below after a careful scrutiny of the entire facts, circumstances and material available on record, have passed the impugned orders, which are perfectly legal and valid. The petitioner failed to justify the plea of irreparable loss and injury, which cannot be compensated by way of monetary compensation. It has been further pointed out that there are huge outstanding dues of the Sales Tax Department and recovery of amount is underway by the Tehsildar on account of dues of UP Sales Tax Department as well. Since the Sales Tax Department has first lien

and charge over the property in question, the petitioner cannot remove the goods without clearing the dues. Therefore, the impugned orders call for no interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

5. I have heard the learned counsel for the parties and with their assistance perused the material available on record as well as the impugned orders.

6. It is not in dispute that there are outstanding dues on account of the sales tax. Section 47 and 48 of the Rajasthan Value Aided Tax Act, 2003 reads thus: -

“Section 47 – Liability under this act to be the first charge – Notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax and any other sum payable by a dealer or any other person under this act, shall be first charge on the property of such seller or person.

Section 48 – Certain transfers to be void – Where during the pendency of any proceeding for the determination of any liability to tax, interest, penalty or other sum under this act, if any dealer or a person against whom such proceedings is pending, creates a charge on, or parts with the possession by way of sale, mortgage, exchange, gift or any other mode of alienation whatsoever, of any of his assets in favour of any other person, such charge, transfer gift or alienation shall be void as against any claim in respect of any tax, interest, penalty or other sum payable by such dealer or person, which arises as a result of the self proceedings, except when -

- (a) such dealer or person has no notice of such proceedings pending against him and
- (b) such transfer is made for adequate valuable consideration.

7. The learned Courts below have considered the matter on merits



and have passed the orders in exercise of the jurisdiction vested. It needs no further reiteration that in order to obtain an order of injunction, a party has to prove to have made out a *prima facie* case, the balance of convenience in his favour and the element of irreparable loss and injury, else the injunction is declined. It is equally well settled that final relief cannot be granted at interim stage. Having considered the totality of the facts and circumstances as well as the material available on record, I do not find any material illegality or error apparent on the face of record, warranting an interference in exercise of supervisory jurisdiction.

8. The Hon'ble Supreme Court in case of *Abdul Razak (Dead) through LRs & Anr. Versus Mangesh Rajaram Wagle & Ors.* : (2010) 2 SCC 432, cautioned the High Courts to keep in view the limitations of certiorari/supervisory jurisdiction and refrain from deciding the writ petitions filed under Article 226 or petitions/applications filed under Article 227 of the Constitution. In case of *Abdul Razak* (supra), their Lordships held thus: -

"22. If respondent Nos. 1 and 2 had invoked the High Court's jurisdiction under Article 226, then the learned Single Judge ought to have considered whether the trial Court committed a jurisdictional error by refusing to strike off the additional written statement filed by the appellants or it was a case of failure on the part of the trial Court to exercise the power vested in it under Order VI Rule 16 CPC or the order under challenge was vitiated by an error of law apparent on the face of the record or there was violation of the rules of natural justice. In either case, the learned Single Judge was also required to consider whether there has been substantial failure of justice or manifest injustice has been caused to respondent Nos. 1 and 2 on account of the trial Court's refusal to strike off

the additional written statement. These are the parameters laid down by this Court in Syed Yakoob v. K.S. Radhakrishnan AIR 1964 SC 477.

23. If the petition filed by respondent Nos. 1 and 2 was under Article 227 of the Constitution of India, then the learned Single Judge should have taken note of the often quoted judgment in Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675, in which a two-Judge Bench, after threadbare analysis of Articles 226 or 227 of the Constitution and considering large number of judicial precedents on the subject, recorded the following conclusions:

"(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does

not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very

moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

9. Thus, applying the principles aforesaid, it is not at all justified to interfere with an order under the certiorari/supervisory jurisdiction, unless the Court below assumed jurisdiction, which it does not have or has failed to exercise the jurisdiction, which it does have or the jurisdiction though available is exercised in a manner not permitted by the law, resulting into failure of the justice or grave injustice. A patent error which can be perceived without any lengthy or complicated arguments or a long drawn process of reasoning, is another ground



where such jurisdiction could be invoked, as has been held by the Hon'ble Supreme Court.

10. The Hon'ble Apex Court of the land in a recent pronouncement in the case of *Shalini Shyam Shetty & Anr. Versus Rajendra Shankar Patil* : (2010) 8 SCC 329, examined the power of the High Court under Articles 226 and 227 of the Constitution. Their Lordships observed that the power to issue writs had undergone a sea change since the commencement of the Constitution from 26<sup>th</sup> January, 1950. Now, the writs can be issued by the High Courts under Article 226 of the Constitution and by the Hon'ble Supreme Court under Article 32 of the Constitution. According to their Lordships, neither writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. The Hon'ble Supreme Court after a survey of various judgments with reference to exercise of power under Articles 226 and 227 of the Constitution, concluded that the two Articles stand substantially on different footing. While the power conferred to issue writs under Article 226 of the Constitution has been treated to be one during the course of original proceedings whereas the exercise of jurisdiction under Article 227 of the Constitution is neither original nor appellate. Thus, the powers conferred under Article 226 and 227 have been held to be separate and distinct and operating in two different fields. The mode of exercise of power by the High Court under Articles 226 and 227 of the Constitution in the case of *Shalini Shyam Shetty* (supra) has been considered and explained thus: -

"48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as

a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex-debito justitia or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of

its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in **Waryam Singh** (supra) and the principles in **Waryam Singh** (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in **Waryam Singh** (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly

exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of **L. Chandra Kumar v. Union of India and Ors.** reported in MANU/SC/0261/1997 : (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of



public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

11. It hardly needs to be reiterated that writ petition is a remedy in a public law against either a State or an instrumentality of a 'State' within the meaning of Article 12 of the Constitution and therefore, private parties cannot be equated with the 'State' or the instrumentality of the 'State'. Their Lordships in the case of *Shalini Shyam Shetty (supra)* have sounded a note of caution while entertaining the petitions under Article 227 of the Constitution in view of law declared in case of *Surya Dev Rai Versus Ram Chander Rai & Ors.* : (2003) 6 SCC 675, holding that even the petition Article 227 of the Constitution cannot be called a writ application. Their Lordships further explaining the scope of exercise of power under Article 227 of the Constitution of India in view of amendment of Section 115 of the Civil Procedure Code, held thus:-

"66. We may also observe that in some High Courts there is tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in **Surya Dev** (supra) and in view of the recent amendment to Section 115 of the Civil Procedure Code by Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 of CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in

expanding High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest Courts of justice within their jurisdiction will adhere to them strictly."

In the result, writ application is devoid of merits and deserves to be dismissed. Ordered accordingly. In view of the final adjudication on the writ application, the stay application stands closed. However, in the facts and circumstances of the case, there shall be no order as to costs.

**(VEERENDR SINGH SIRADHANA), J.**

Sunil/P.A.

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

(Sunil Solanki)  
P.A.

सत्यमेव जयते