



GAHC010194562023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/138/2023

EK SARAN BHAGAWATI SAMAJ AND ANR
REPRESENTED HEREIN BY ITS PRINCIPAL SECRETARY, SRI JYOTI
PRASAD DAS, AGED ABOUT 53 YEARS, ADD- OFFICE OF THE EK SARAN
BHAGAWATI SAMAJ, ASSAM, ASTRAPAHAR PALNAM THAN, P.O.-
MIKIRBHETA, PIN-782104, P.S.-JALUGUTI, DIST-MORIGAON, ASSAM

2: CENTRAL EXECUTIVE COMMITTEE OF EK SARAN BHAGAWATI SAMAJ
ASSAM

REPRESENTED HEREIN BY ITS UPACHARJYA SRI DHARMESWAR DAS
ADD- OFFICE OF THE EK SARAN BHAGAWATI SAMAJ
ASSAM
ASTRAPAHAR PALNAM THAN
P.O.-JALUGUTI
P.S.-MIKIRBHETA
DIST-MORIGAON
ASSAM
PIN-78102

VERSUS

PRATAP CHANDRA MEDHI AND 3 ORS
CHAIRMAN, (EK SARAN BHAGAWATI SAMAJ, ASSAM), CENTRAL OFFICE
CUM CENTRAL PALNAM THAN, ADD- NIZ SILA BONDHA, KOLIABOR,
DIST- NAGAON, PIN-782137, ASSAM

2:DEHESWAR BORA (ACHARJYA)
MAHAPURIYA PALNAM THAN
RONGBONG PHATA
NANADPUR GAON
P.O.-KANAIGHAT
DIST-GOLAGHAT
ASSAM
PIN-785699



3: BALIRAM DAS (UPACHARJYA)
BEBEJIYA PALNAM THAN
BEBJIYA
DIST-NAGAON
PIN-782142
ASSAM

4: KESHAB NATH
AUTHORIZED REPRESENTATIVE EK SARAN BHAGAWATI SAMAJ
ADD- KRISHNA NAGAR NAMGAHR (EK SARAN BHAGAWATI SAMAJ
KAHILIPARA
KRISHNA NAGAR ROAD
GUWAHATI
DIST-KAMRUP (M)
ASSAM
PIN-78101

Advocate for the Petitioner : MR. S CHAMARIA

Advocate for the Respondent : J SHARMA (FOR CAVEATOR)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 14-03-2024

JUDGMENT & ORDER

This is an appeal under Section 115 of the Code of Civil Procedure, 1908 (for short, the Code) challenging the legality and validity of the order dated 25.08.2023 passed by the learned Additional District and Sessions Judge No.1 Kamrup(M) Guwahati in Misc. Appeal No.04/2023. By the said order dated 25.08.2023 (hereinafter referred to as the impugned order), the temporary injunction which was granted by the learned trial court dated 21.02.2023 in Misc.(J) Case No.1179/2022 arising out of Title Suit No.765/2022 was set aside. At the foremost, this Court finds it relevant to take note of that the instant

proceeding under Section 115 of the Code is not maintainable taking into account that the instant proceedings arises out of an order passed by the 1st Appellate Court in exercise of the power under Order XLIII, Rule 1(r) of the Code. Be that as it may, taking into account the interest of justice, this Court converts the instant proceeding from a proceeding under Section 115 of the Code to a proceeding under Article 227 of the Constitution.

2. This Court also takes note of the submission of Mr. J Sarma, the learned counsel appearing on behalf of the respondents, who submitted that the objection to the maintainability of the proceedings was taken on the date on which the instant application was moved. In spite of that, the petitioners have not done the needful. Taking into account the above, this aspect of the matter would be dealt with at the conclusion of the instant order.

3. From the materials on record, it reveals that the petitioners herein as plaintiffs had instituted a suit being Title Suit No.765/2022 seeking declaration that the defendants have no right or authority to use the name of the plaintiff No.1 and also seeking permanent injunction and mandatory injunction. Along with the suit, an injunction application was filed which was registered and numbered as Misc.(J) Case No.1179/2022. In the said injunction application, the reliefs sought for was for directing the opposite parties, who were defendants in the suit their man, representatives, agents etc., not to carry any further activity jointly or severally in the name of the plaintiff No.1 during the pendency of the litigation and further directing the opposite parties their man, representatives, agents etc., not to celebrate jointly or severally any golden jubilee of *Ek Saran*



Bhagawati Samaj, Assam at the Meleng Meteli Palnam Than, Ladoigarh, Jorhat, Assam from 27th January to 30th January, 2023 by using the name of the plaintiff No.1. The second prayer had already been infructuous. Be that as it may, to the said application seeking injunction, the defendants/respondents herein filed their written objection as well as in the said suit, the written statement and additional written statement was filed by the defendants.

4. The learned trial court vide an order dated 21.02.2023, after considering the three elements for grant of an injunction disposed of the said injunction application thereby restraining the opposite parties their men, representatives, agents etc., from using the name of *Ek Saran Bhagawati Samaj* till disposal of the dispute between the parties in Title Suit No.765/2022. Being aggrieved, the defendants have filed an appeal before the Court of the learned District Judge, Kamrup(M) at Guwahati and the said appeal upon being registered and numbered as Misc.Appeal No.4/2023 was endorsed to the Court of the learned Additional District Judge No.1 Kamrup(M) at Guwahati (hereinafter referred as the '1st Appellate Court'). The learned 1st Appellate Court vide its order dated 25.08.2023 had set aside the injunction order passed by the learned trial court, thereby allowing the Appeal. It is under such circumstances, that the instant proceedings have been initiated.

5. This Court has duly taken note of the order passed by the learned trial court dated 21.02.2023 whereby the learned trial court in exercise of its equitable and discretionary jurisdiction had granted temporary injunction in favour of the petitioners.

6. This Court finds it relevant at this stage to take note of the judgment of the Supreme Court in the case of *Wander Ltd. v. Antox India (P) Ltd.*, reported in (1990) Supp SCC 727, wherein the Supreme Court at paragraph 14 had observed that the Appellate Court could not interfere with the exercise of the discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court have ignored the settled principles of law regulating grant or refusal of the interlocutory injunction. It was further observed in the said judgment that an appeal against the exercise of discretion is said to be an appeal on principle. Under such circumstances, the Appellate Court is not required to re-assess the materials and seek to reach a conclusion different from the one reached by the court below if the one reached by the learned trial court was reasonably possible on the basis of the materials. It was also observed that the Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to contrary conclusion. Paragraph 14 of the said judgment being relevant is reproduced hereunder:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The Appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been

exercised by the trial court reasonably and in a judicial manner the fact that the Appellate Court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.’”

The appellate judgment does not seem to defer to this principle.”

7. In the instant case, a perusal of the judgment of the 1st Appellate Court would show that the 1st Appellate Court merely on the question of maintainability of the suit had set aside the order passed by the learned trial court. No doubt, the question of maintainability can very well be taken into account in deciding as to whether the plaintiff has a *prima facie* case (see Shiv Kumar Chaddha Vs. Municipal Corporation of Delhi, reported in (1993) 3 SCC 161, Paragraph 30).

8. This Court is also well aware of the fact that for the purpose of grant of an injunction, the three golden principles need to be satisfied. The first would be the plaintiff has a *prima facie* case to go for trial. Secondly, the balance of convenience is in favour of granting the injunction to the plaintiff. Thirdly, if the injunction is not granted an irreparable injury would be caused which cannot afterwards be compensated by any decree which a Court can pass as a result of the cause. Therefore, in the opinion of this Court, the learned 1st Appellate Court was justified on taking into account the question of maintainability to decide as to whether there arose a *prima facie* case for going for trial.

9. Under such circumstances, the question, therefore, arises as to whether, the learned 1st Appellate Court was justified in holding that the plaintiff did not have a *prima facie* case on the maintainability of the suit. A perusal of the impugned order reveals that the plaintiff No.1 is a Society registered under the Societies Registration Act, 1860 (for short, the Act of 1860). The said society has a Constitution. As per the latest amended constitution dated 17.10.2012, it was stipulated that all litigations for and against the Samaj would be instituted in the name of the Core committee or the Principal Secretary.

10. The learned 1st Appellate Court, while deciding the maintainability of the suit on the question as to whether the suit would be maintainable in its present form, *inasmuch as*, the Society was shown to have been represented by the Principal Secretary and the Plaintiff No.2 was a central core committee, the learned 1st Appellate Court decided at paragraph 26 that the same was not in accordance with Section 6 of the Act of 1860 as well as was contrary to the provisions of the constitution of the Samaj, in force. It is pertinent herein to take note of that the learned 1st Appellate Court came to a finding that the suit was not maintainable by taking into consideration certain materials which could at the best could have been taken for consideration at the trial of the suit, *inasmuch as*, the learned 1st Appellate Court had taken into consideration certain resolutions which as per the learned 1st Appellate Court were passed without inviting the defendants in such meetings. This Court finds it very relevant to observe that the defendants had not filed a suit challenging those resolutions. Under such circumstances, what the learned 1st Appellate Court had

taken into consideration while deciding the issue of maintainability on the basis of Section 6 of the Act of 1860 and/or the Constitution of the plaintiff No.1 was completely out of context, having no relevance to the issues involved in the suit, which, therefore, renders such findings perverse.

11. The next aspect on which the learned 1st Appellate Court decided that the suit was not maintainable was on the issue of territorial jurisdiction. This Court finds it very pertinent to mention that from a perusal of paragraph No.1 of the plaint, it has been categorically mentioned that the plaintiff No.1 is a society having various branches throughout Assam, including some of the branches situated within the district of Kamrup(M). From a perusal of the plaint, it reveals that various allegations have been made that the defendant Nos.1 to 4 are representing, the plaintiff No.1 society. Under such circumstances, the effect of such representatives so made by of the defendant Nos.1 to 4 would also be felt within the ambit of the branches which fell within the jurisdiction of the learned trial court. The learned 1st Appellate Court completely failed to take note of the provisions of Section 20(c) of the Code which stipulates, amongst others, that the suit can be filed where cause of action wholly or in part arises. Under such circumstances, the findings which was arrived at by the 1st Appellate Court in so far as the maintainability of the suit on territorial jurisdiction is also erroneous on the fact of it.

12. This Court in view of the above analysis and discussion is of the opinion that this is a fit case where interference is required under Article 227 of the Constitution. Accordingly, the impugned order dated 25.08.2023 passed by the



Court of the learned Additional District Judge No.1 Kamrup(M) at Guwahati in Misc.Appeal No.04/2023 is set aside and quashed.

13. This Court also finds it very pertinent to take note of that the learned 1st Appellate Court in the impugned order did not decide anything else beyond the question of maintainability of the suit. The learned 1st Appellate Court did not decide the legality and validity of the learned Trial Court's order of injunction on the other two principles necessary for grant of an injunction. Under such circumstances, this Court is of the opinion that this is a fit case therefore to remand the said proceedings back to the learned 1st Appellate Court to decide afresh the legality and validity of the injunction order. However, the points which have already been decided herein cannot be again agitated and decided by the learned 1st Appellate Court.

14. Accordingly, taking into account that the parties herein are duly represented, this Court therefore directs the parties to appear before the learned 1st Appellate Court on 08.04.2024 and the learned 1st Appellate Court shall fix a date for hearing of the said Appeal as per the business of the said Court and dispose of the said Appeal in accordance with law.

15. The learned Trial Court's injunction order dated 21.02.2023 passed by the learned Trial Court stands restored, but shall be subject to such further order(s) to be passed by the learned 1st Appellate Court.



16. Now coming back to the first aspect as regards the conversion of the proceedings under Section 115 of the Code to a proceeding under Article 227 of the Constitution, this Court is of the opinion that a cost of Rs.10,000/- be imposed upon the petitioners. Accordingly the petitioners are directed to deposit the cost before the learned 1st Appellate Court on the next date fixed by this Court and the respondents herein who are the defendants would be at liberty to file an application seeking for withdrawal of the said amount. The learned 1st Appellate Court upon such application being filed shall permit the withdrawal.

17. With the above observations and directions, the instant proceeding stands disposed of.

JUDGE

Comparing Assistant