

no.1. Accordingly the appellant handed a part of the sale proceeds to the respondent no. 1. The appellant was, about to hand over the remaining money. Meanwhile the respondent no. 3 filed a suit before the Court of Board of Nominees against the respondent no. 2, and the appellant claiming Rs. 77,786/- being the sale proceeds of the goods sold. In the said suit, Respondent No. 3 obtained an order of injunction against the appellant thus preventing the appellant from handing over the said amount to Respondent No. 1. Similarly another suit was filed by the respondent No. 1, against the appellant and the respondent No.3 before the Court of Board of Nominees. Both the suits were tried together.

By common order, the Court of Board of nominees ordered that the amount of Rs.77, 786/- lying with the appellant be paid to the respondent no.3 with interest at the rate of 18% per annum. The appellant was thus saddled with large amount of interest though it was holding money as per court's direction only and for no reason of its own or for any dispute with any of the Respondents.

Respondent no.1 and Respondent no.2 filed Writ Petitions before the High Court. In the said Writ Petition, even though the appellant was impleaded as a party respondent, it was not served with notice and therefore the appellant did not remain present at the time of hearing of the Writ Petitions. Both the Writ Petitions were heard and dismissed.

Appellant filed review application which was dismissed on the ground that no 'adverse order' was passed against the appellant. Hence the present appeal.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: Pursuant to the order of restraint passed by

A the Board of Nominees, the appellant was restrained from giving or making payment to respondent No.1. Though appellant was a party in the Special Civil Application, the matter was disposed of without hearing the appellant. In the Review Application the High Court proceeded on entirely erroneous premises. The ultimate result is that the appellant, without getting an opportunity of being heard and/or presenting its case has been saddled with the liability. [Para 9] [765-F, G, H; 766-A]

C **CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 1892 of 2008

From the final Judgment and Order dated 13.05.2005 of the High Court of Gujarat at Ahmedabad in Misc. Civil Application (Stamp Number) No. 231 of 2005

D Mahendra Anand, Rajan Narain, for the Appellant.
Sarla Chandra for the Respondents.

The Judgment of the Court was delivered by

E **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by learned Single Judge of the Gujarat High Court in Special Civil Application No. 5660 of 1998 and Misc. Civil Application No. 231 of 2005.

F 3. Background facts as projected by appellant in a nutshell are as follows:

G Certain bales of cotton belonging to Respondent No. 3 were pledged with the respondent no. 1. However, the respondent no. 3 had handed over the said goods to the respondent no. 2 for ginning. The respondent no. 2 had ginned the cotton but they were not having any facility of pressing. Therefore, the said goods were given to Ashoknagar Cooperative Society. Asnoknagar Cooperative Society had pressed and made bales and the same were supplied to the

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present appellant to be sold in the market. The said goods were accordingly sold by the appellant after approval was granted by the respondent no. 1 on the condition that the sale proceeds of the goods would be paid to the respondent no. 1. Accordingly the appellant handed a part of the sale proceeds to the respondent no. 1. For the remaining amount, the appellant was, about to hand over the said money.

In the meantime, Civil Suit No. 1808/1990 was filed by the respondent no. 3, before the Court of Board of Nominees at Mehsana against the respondent no. 2, and the present appellant claiming a sum of Rs. 77,786/- being the sale proceeds of the goods sold. In the said suit, Respondent No. 3 obtained an order of injunction against the appellant thus preventing the appellant from handing over the said amount to Respondent No. 1. Similarly, Civil Suit No. 1809 of 1990 was filed by the respondent No. 1, against the appellant and the respondent No.3 herein before the Court of Board of Nominees at Mehsana. Both the suits were tried together.

Thus the appellant though having money and prepared to pay the said money to respondent no.1 was prevented from paying the same by the injunction order obtained by respondent no.3 against the present appellant. According to appellant it has no privity of contract with the respondent no.3. The goods were handed over by Ashok Nagar Cooperative Society to the appellant. Therefore, the appellant has nothing to do with either the respondent no.3 or with the respondent no.2. Therefore, in both the suits, the appellant did not remain present.

The said suits were decreed by common order dated 18.7.1994 and it was ordered that the amount of Rs.77, 786/- lying with the appellant be paid to the respondent no.3 with interest at the rate of 18% per annum. The appellant was thus saddled with large amount of interest though it was holding money as per court's direction only and for no reason of its own or for any dispute with any of the Respondents.

The aforesaid order of the Court of Board of Nominees

A was challenged before the Cooperative Tribunal by way of Appeal Nos. 243/94 and 216/94. The said appeals were dismissed by the Cooperative Tribunal by its order dated 31.5.1998 and order of the Court of Board of Nominees was confirmed. Against the said order of the Cooperative Tribunal, B Respondent no.1 and Respondent no.2 moved Writ Petitions before the High Court of Gujarat. In the said Writ Petition, even though the appellant was impleaded as a party respondent, it was not served with notice and therefore the appellant could not remain present at the time of hearing of the C Writ Petitions. Both the Writ Petitions were heard and dismissed by a Single Judge of the High Court of Gujarat by order dated 2.12.2004.

Thereafter the appellant filed a review application in the High Court of Gujrat bearing No. Misc. Civil Application (Stamp D No. 231/2005) interalia on the ground that no notice was served and hence no opportunity of hearing was given to it. The said review application was dismissed by the present impugned order dated 13.5.2005 on the ground that no 'adverse order' was passed against the appellant.

E After the review petition was dismissed Respondent No. 3 filed execution proceedings in the Small Causes Court, Ahmedabad, being Darkhast No. 378 of 2005 and obtained ex parte garnishee orders against the appellant. The appellant's account in Respondent No. 1 Bank was seized.

F 4. Learned counsel for the appellant submitted that the High Court proceeded on erroneous premises. In the special Civil application appellant was impleaded as respondent No. 2, but no notice was issued to it.

G 5. In para 4 of the Order it was observed as follows:

H "I have heard learned counsel for the parties and perused the relevant documents on record. The Board of Nominees Court, after hearing the advocates for the parties, passed a decree by which an amount of Rs.77,786/- was ordered

to be recovered from defendant No. 2 and the order below A
Exh. 6 was confirmed. The Tribunal has rightly upheld the
order passed by the Board of Nominees Court. Mehsana,
as is clear from the reasonings given by it in para 12 of its
order, I find no infirmity in the orders passed by the Board B
of Nominees Court and the Tribunal, since the same are
just and proper and do not require any interference from
this Court in this petition. Hence, the petitions are required
to be dismissed.”

6. The Board of Nominees of Cooperative Societies at C
Ahmedabad, in Case No. LVD/2629/82.93292 dated
15.10.1982, directed as follows:

“From Amongst that amount the defendant No. 1 is hereby
restrained from recovering any amount from the balance
amount of Rs.77,786.82 which remains after deducting D
the amount of Rs.60,604.76 from the total price which is
to be recovered by the defendant No. 1 from the plaintiff
and the defendant No. 2 is also restrained from giving or
making give the said amount to the defendant No. 1 and
such order of interim injunction is being passed against
the defendant Nos. 1 and 2.” E

7. In the Revision Petition the High Court noted as if the
appellant was to receive some money from Respondent No. 1.
The case of the respondents was to the contrary.

8. There is no appearance on behalf of the respondents F
Nos. 1 and 2 in spite of notice.

9. It needs to be noted that pursuant to the order of restraint
passed by the Board of Nominees, Ahmedabad Division as
quoted above, the defendant No. 2 i.e. present appellant was
restrained from giving or making payment to defendant No.1. G
Though appellant was a party i.e. respondent No. 2 in the Special
Civil Application, the matter was disposed of without hearing
the appellant. In the Review Application the learned Single Judge
of the High Court proceeded on entirely erroneous premises. H

A The ultimate result is that the appellant, without getting an opportunity of being heard and/or presenting its case has been saddled with the liability.

B 10. We, therefore, set aside the impugned order and remit the matter to the High Court for fresh disposal in accordance with law.

11. The appeal is allowed with no order as to costs.

D.G.

Appeal allowed.