

Birbal Singh vs Kedar Nath Sharma on 2 November, 1976

Equivalent citations: 1977 AIR, 1 1977 SCR (2) 1, AIR 1977 SUPREME COURT 1, 1976 4 SCC 691, 1977 2 SCR 1, 1976 KER LT 608, 1976 U J (SC) 960

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, A.C. Gupta

PETITIONER:
BIRBAL SINGH

Vs.

RESPONDENT:
KEDAR NATH SHARMA

DATE OF JUDGMENT 02/11/1976

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
GUPTA, A.C.

CITATION:
1977 AIR 1 1977 SCR (2) 1
1976 SCC (4) 691
CITATOR INFO :
R 1992 SC 891 (32)

ACT:
Representation of the People Act, 1951 Sec.
--(a) corrupt practice-Publishing false and defamatory
Pamphlets & editorial approach in appreciating oral evidence
about commission of corrupt practice in election petition.
Evidence Act, 1872--Testimony of interested witnesses
whether can be rejected out right.

HEADNOTE:
In the Rajasthan Legislative Assembly elections held in March, 1972, the respondent defeated the appellant by a margin of over 22000 votes. The appellant filed an election petition in the Rajasthan High Court challenging the election of the respondent alleging that the respondent and his election agent committed the following corrupt practices.

(1) A pamphlet containing defamatory and false statements touching the personal character of the appellant was distributed by the respondent and his election agent in a meeting on 23-2-72 at Nehru Park.

(2) Several copies of a Weekly newspaper called Patal Shakti dated 27-2-1972 containing a scurrilous editorial were distributed by the respondent and his election agent at a meeting of the Socialist Party held at Public Park on 27-2-1972.

The High Court dismissed the election petition filed by the appellant. The High Court discarded the evidence of the appellant's witnesses on the ground that they were interested witnesses.

This Court by consent of parties remitted the following two additional issues to the High Court with liberty to the parties to lead evidence on those issues.

(1) Whether the pamphlet was printed at the instance and with the consent of the respondent and whether the payment for that pamphlet was made by his election agent ?

(3) Whether the editorial in Patal Shakti was read over in the meeting of 27-2-1972 by Vijay Kumar Talwar in the presence of the respondent.

The High Court after remand held in favour of the respondent on both the issues.

Dismissing the appeal under section 116A of the Representation of the People Act, 1951,

HELD: 1. It is matter of common occurrence in election petitions that parties manage to collect a large volume of oral evidence in support of allegations of corrupt practice. Very often, the allegations are connected and are attempted to be established with the evidence of partisan witnesses, On rare occasions when the allegations are true, untrue evidence is led to strengthen the charges.

[4D-E]

2. The High Court should not have brushed aside the evidence of the appellant's witnesses merely on the ground that they belong to the, same party as the appellant or that they were otherwise interested in his success in the

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election. Interested witnesses are not necessarily false witnesses though the fact that the witness has a personal interest or stake in the matter must put the court on its guard. The evidence of such witnesses must be subjected to a closer scrutiny and the Court may in a given case be justified in rejecting that evidence unless it is corroborated from an independent source. The reasons for corroboration must arise out of the context and the texture of evidence. Even interested witnesses may be interested in

telling the truth to the Court and, therefore, the Court must assess the testimony of each important witness and indicate its reasons for accepting or rejecting it. A broad and general comment that a particular witness is an election agent of a candidate cannot therefore be relied on is not a judicial assessment of evidence. Evidence can be assessed only after a careful analysis. [4F-H]

3. Since the High Court rejected the evidence of the appellant on the omnibus ground that the witnesses were interested, this Court went through the relevant evidence and on a consideration of that evidence came to conclusion that it is impossible to accept the allegations of corrupt practice made against the respondent. [5A-B]

4. The allegations that the respondent and his agent distributed the pamphlet in the meeting held at the Nehru Park was disbelieved by this Court on the following grounds:

(a) The meeting was addressed by the Prime Minister and over a lakh of people were present. It is fantastic to think that in a meeting called by the rival party which was so largely attended the respondent and his election agent would be so foolish as to distribute a scandalous pamphlet.

(b) None of the recipients of the highly defamatory document took any action after receiving it.

(c) It is impossible to accept the allegation of the appellant that the pamphlets were distributed to the Additional District Magistrate and the Circle Officers who were present at that meeting in their official capacity.

(d) Neither the Additional District Magistrate nor the Circle Officer produced a copy of the pamphlet nor did they take any action on the pamphlet.

(e) The election agent of the respondent is an advocate and the respondent had won 3 consecutive assembly elections by a good margin. It is impossible that these two old hands would so openly and incontrovertibly lend an easy ground for the success of a possible election petition.

(f) Although the matter was remanded no proper evidence was led by the appellant. The appellant tried to lead evidence on facts which even if proved would not decide the issue in his favour.

[5B-H,

6A-C]

5. The Court negatived the appellant's contention that the editorial was published with the consent of the respondent or his agent for the following reasons:

(a) Gyan Devi Talwar the mother of Vijay Kumar Talwar is styled as the Director of Patal Shakti. Raj Kumar Sethi is said to be the Chief Editor of the weekly while Vijay Kumar Talwar is an Assistant Editor. The proceedings of the meetings of the Congress workers of 18-2-1972 show that the said meeting which was called by the party to which the appellant belonged was attended amongst others by Gyan Devi Talwar, Rat Kumar Sethi, Madan Lal Kanda, Chandram Sheralpal one of the Assistant Editors of Patal Shakti. The said meeting resolved unanimously to support the candidature of the appellant.

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(b) Gyan Devi Talwar had called a meeting of the Trade Union workers to support the appellant's candidature.

(c) Seeing that persons closely connected with the Journal had taken a prominent part in the appellant's election campaign, it is absurd to think that these very persons would be parties to the publication of the editorial.

(d) The receipt of Rs. 2000/- alleged to have been paid by the respondent for publication of the editorial is uninspiring.

(e) Raj Kumar Sethi has perjured himself on several important points.

(f) The letter of the appellant alleged to have been addressed to the editor and the reply of the editor are got up documents prepared for supporting the appellant's case that the editorial was published at the instance of the respondent.

(g) Raj Kumar Sethi was pliable and could for consideration be made to say different things at different times.

(h) The evidence of the appellant suffers from serious infirmities.

(i) The evidence of the other witnesses only shows that several witnesses conspired to create false evidence. [6E-H, 7A-H, 8A-H, 9A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1118 of 1973. (From the Judgment and Order dated 30-3-1973 of the Rajasthan 'High Court in Election Petition No. 5/72). B.L. Bhargava, S.N. Bhargava, S.K. Jain, I. Makwana and S.M. Jain, for the Appellant.

G.N. Lodha, J.S. Rustogi and S.S. Khanduja for the Respond- ent.

The Judgment of the Court was delivered by CHANDRACHUD, J.--In the general elections to the Rajasthan 'Legislative Assembly held in March 1972 from the Ganganagar constituency, the respondent who was sponsored by the Samyukt Socialist Party defeated the appellant, a Congress (R) candidate, by over 22000 votes. The appellant filed Election petition No. 5 of 1972 in the Rajasthan High Court challenging the election of the respondent on the ground of corrupt practices committed by him and his election agent Bhagirath Singh. The petition having been dismissed the election petitioner has filed this appeal under section 116A of the Representation of the People Act, 1951.

We are concerned in this appeal with two corrupt practices said to have been committed by the respondent. It is alleged, firstly, that a pamphlet (Ex. 1) was distributed by the respondent and his election agent in a meeting held on February 23, 1972 at Nehru Park, Ganganagar. The second corrupt practice alleged against the respondent is that several copies of a weekly newspaper called "Patal Shakti"

dated February 27, 1972 containing a scurrilous editorial were distributed by the respondent and his election agent at a meeting of the Socialist 'Party held at, Public Park, Ganganagar on the 27th.

The editorial is also said to have been read out in the meeting by one Vijay Kumar Talwar. The allegations contained in the editorial and in the pamphlet (Ex. 1) to which the editorial refers are indisputably defamatory of the appellant. The editorial (Ex. 2) contained in the Patal Shakti is alleged to have been written at the instance of the respondent and in a manner, paid for by him. This appeal had come up for hearing on August 6, 1975 when by consent of parties two additional issues were remitted by this Court to the High Court, with liberty to the parties to lead evidence on those issues. The first issue was whether the pamphlet (Ex. 1) was printed at the instance and with the consent of respondent and whether the payment for that pamphlet was made by his election agent Bhagirath Singh. The second issue remitted to the High Court was whether the editorial (Ex. 2) in Patal Shakti was read over in the meeting of February 27, 1972, by Vijay Kumar Talwar in the presence of the respondent. By its judgment dated April 8, 1976, the High Court after considering the fresh evidence led by the parties held in favour of the respondent on both the issue. Those findings are challenged by the appellant in this appeal.

The appeal is devoid of substance and this we feel constrained to say in spite of a careful argument advanced on behalf of the appellant by Shri M.B.L. Bhargava. In view of some of the fundamental circumstances to which we will presently refer, it is unnecessary to discuss fully the evidence of each one of the witnesses examined by the parties on the two corrupt practices attributed to the respondent. It is a matter of common occurrence in election petitions that parties manage to collect a large volume of oral evidence in support of the allegations of corrupt practice. Very often, the allegations are concocted and are attempted to be established with the evidence of partisan witnesses. On rare occasions when the allegations are true untrue

evidence is led to strengthen the charges.

Several witnesses were examined by the appellant for proving that in a meeting held on February 23, 1972 the pamphlet (Ex. 1) was distributed by the respondent and his election agent. We agree with the learned counsel for the appellant that the High Court should not have brushed aside the evidence of those witnesses on the mere ground that they belonged to the same party as the appellant or were otherwise interested in his success in the election. Interested witnesses are not necessarily false witnesses though the fact that the witness has a personal interest or stake in the matter must put the court on its guard. The evidence of such witnesses must be subjected to a closer scrutiny and indeed the court may in a given case be justified in rejecting that evidence unless it is corroborated from an independent source. But the reasons for corroboration must arise out of the context and texture of evidence. Even interested witnesses may be interested in telling the truth to the court and therefore the court must assess the testimony of each important witness and indicate its reasons for accepting or rejecting it. A broad and general comment that a particular witness is an election agent of a candidate and cannot therefore be relied upon is not a judicial assessment of evidence.

Evidence can be assessed only after a careful analysis. Since the High Court has, by and large, rejected the evidence led by the appellant on the omnibus ground that the witnesses are interested, we have gone through the relevant evidence with the help of the respective counsel. It is on a careful consideration of that evidence that we reached the conclusion that it is impossible to accept the allegation of corrupt practice made against the respondent.

The first allegation against the respondent is that he and his election agent Bhagirath Singh distributed the pamphlet (Ex. 1) in a meeting held on February 23, 1972 at the Nehru Park, Ganganagar that meeting was addressed by the Prime Minister and over a lakh of people were present. It is fantastic to think that on the heels of such a largely attended meeting convened under the auspices of the rival party, the respondent and his election agent would be so foolish as to distribute a scandalous pamphlet of the type in issue. It is also difficult to believe that none of the recipients of this highly defamatory document took any action after receiving it. In a town seized by election fever, the poll being just a few days ahead, it is impossible that even rival partymen looked at the incident with such cool unconcern. Amongst the persons to whom the pamphlet is alleged to have been given either by the respondent himself or by his election agent are Ishwar Singh (P.W. 7) and Arjun Singh (P.W. 20). Ishwar Singh was an Additional District Magistrate whereas Arjun Singh was the Circle Officer. Both of these gentlemen were present at the meeting at Nehru Park in their official capacity for ensuring peace and order. It strains one's credulity to believe that the respondent and his election agent would take the imprudent risk of distributing the pamphlet to these high Government officers. Neither Ishwar Singh nor Arjun Singh was able to produce a copy of the pamphlet nor indeed did either of them take any

steps whatsoever after the alleged receipt of the Pamphlet. Bhagirath Singh, the election agent of the respondent, is an advocate by profession while the respondent had won three consecutive Assembly elections in 1962, 1967 and 1972. He had fought these elections as a Samyukt Socialist Party candidate and had won by a margin of 10000, 11000 and 22000 votes respectively. It is impossible in the very nature of things that these two old hands would, so openly and incontrovertibly, lend an easy ground for the success of a possible election-petition.

The additional issue on which a finding was called for by this Court is whether the payment for the pamphlet was made by Bhagirath Singh. It is amusing that in spite of a fresh opportunity accorded by this Court to the appellant to prove his case, what he did was to lead evidence to make nonsense of the additional issue. Instead of showing that the charges of printing the pamphlet were paid by the respondent's election agent, the appellant led evidence to show that one Kuldeep Bedi paid those charges to Tarsaim Chandra (P.W. 24) who is alleged to have printed the pamphlet. Tarsaim Chandra did not produce any receipt for the payment and offered the flimsy explanation that he had given his printing press for running to a person called Mehar Singh who had not returned to him the records of the press. The appellant had cited Kuldeep Bedi as a witness but did not examine him and the appellant's counsel conceded fairly that there is no evidence on the record to show that Kuldeep Bedi bears any connection with the respondent. In these circumstances the finding on the additional issue relating to the pamphlet had to be that the appellant had failed to prove that the printing charges of the pamphlet were paid by the respondent's election agent, Bhagirath Singh.

Others who speak of the distribution of the pamphlet are the appellant himself (P.W. 1), Khetpal (P.W.

10), Gulab Rai (P.W. 11), Devi Datt (P.W. 12), Nathuram (P.W. 13) and Madan Lal Kanda (P.W. 16) besides of course Ishwar Singh, the Additional District Magistrate (P.W. 7) and Arjun Singh the Circle Officer (P.W. 20). The evidence of these witnesses has been rejected by the High Court and for reasons which we have mentioned above we feel that the High Court was perfectly justified in refusing to place reliance on the evidence of these interested witnesses who told an utterly incredible story to the court. Accordingly, the charge that the respondent and his election agent dis-

tributed the pamphlet (Ex. 1) must fail.

Coming to the second charge of corrupt practice, the case of the appellant is that the editorial which appeared in the "Patal Shakti" of February 27 was written at the instance of the respondent and that the issue of the newspaper was read and distributed at a meeting of the Socialist Party which was held at Public Park, Ganganagar, on the 27th itself. The matter contained in the editorial is highly defamatory and we entertain but little doubt that anyone who reads the editorial would carry an ugly

impression of the appellant's political image. But the question for decision is whether the respondent is responsible for the publication and whether as stated in additional issue No, 2 which was remanded to the High Court, the editorial was read over by Vijay Kumar Talwar in the meeting of the 27th in the presence of the respondent.

One Gyan Devi Talwar, the mother of Vijay Kumar Talwar, is styled as the "Sanchalika" or the Director of Patal Shakti. Raj Kumar Sethi is said to be the Chief Editor of the weekly, while Vijay Kumar Talwar is an Assistant Editor. Learned Counsel for the appellant has naturally placed great reliance on the evidence of Raj Kumar Sethi (P.W. 5) who, being the Chief Editor of the newspaper, should be in the best position to know whether the defamatory matter which appeared in the issue of February 27 was inserted at the instance of the respondent. A large number of witnesses were examined by the appellant on this question, the more important of them being the appellant himself (P.W. 1), Raj Kumar Sethi (P.W. 5), Madan Lal Kanda (P.W. 10), Radhey Shyam (P.W. 17), Om Prakash (P.W. 18), Harbeant Singh (P.W.

21), Banwari Lal (P.W. 22) and Avinash (P.W. 23). These witnesses, we feel no doubt, have concocted an utterly false story as will be transparent from the following circumstances.

On February 18, 1972 a meeting of about 300 Congress workers was held in the Block Congress Committee, Gangana-gar. The proceedings of that meeting are recorded in the minutes, Ex. A/24, which were produced by Kesho Ram Garg (P.W. 12), who has been the Secretary of the Congress Committee since 1975. The appellant's counsel objected to the admissibility of the document but no such objection having been taken in the trial court, we are unable to entertain it here. The minutes show that the meeting was attended amongst others by Gyan Devi Talwar, Raj Kumar Sethi (P.W. 5), Madan Lal Kanda (P.W. 16), Om Prakash (P.W. 18), Harbeant Singh (P.W.

21), Banwari Lal (P.W. 22), Chand Ram Sherwal, one of the Assistant Editors of Patal Shakti and by Manphool Singh an ex-Deputy Minister in Rajasthan who is the brother of the appellant. The meeting resolved unanimously to support the candidature of the appellant. In this context it is difficult to believe that the newspaper of which Gyan Devi Talwar was the Director and Raj Kumar Sethi is its Chief Editor could possibly be persuaded to print and publish an editorial so highly defamatory of a candidate in whose success they were so keenly interested. The second circumstance which has an important bearing on this question is that on February 20, 1972 Gyan Devi Talwar had called a meeting of Trade Union Workers for supporting the appellant's candidature. That meeting was attended, amongst others, by Raj Kumar Sethi and Vijay Kumar Talwar, the main speaker being Gyan Devi herself. The weekly, 'Patal Shakti' was started on the eve of the elections on January 26, 1972 the object of starting the journal being obviously to undertake an election campaign on behalf of the Congress (R) candidates. Seeing that persons closely connected with the journal had taken a prominent part in the appellant's election-campaign, it is absurd to think that 'these very persons would be parties to the printing and publication of the editorial. Raj Kumar Sethi says in his evidence that the respondent paid him 200 rupees as the price of the publication and this is attempted to be corroborated by the production of the counterfoil of a receipt showing that the newspaper had received 200 rupees from the respondent on the 27th. The receipt, however, apart from being otherwise uninspiring says that the amount was paid for charges of an advertisement.

The argument of the appellant's counsel that the editorial was in the nature of an advertisement in favour of the respondent is too naive for our acceptance. Besides, it is not likely that the respondent would pay Rs. 200 under a receipt and create evidence against himself to show that he was a party to the defamatory publication. Raj Kumar Sethi has perjured himself on several important points. In his enthusiasm to support the cause of the appellant, he said his evidence 'that copies of the newspaper were distributed in a meeting held at Nehru Park. The election petition speaks of a meeting in Public Park and it is common ground that the two places are distinct and separate. Raj Kumar Sethi's sense of honour can be assessed in reference to the fact that a creditor had to file a suit for a paltry sum of Rs. 450 against him and after a decree was passed in that, suit execution proceedings had to be commenced to recover the amount.

It is alleged by the appellant that on seeing 'the editorial he sent a letter, Ex. 8, on the 27th itself to Raj Kumar Sethi asking him to explain at whose instance the editorial was published. Raj Kumar wrote a reply (Ex. 3) on the very next day stating that the editorial was published at the instance of the respondent and that the respondent had asked him to publish the editorial on his responsibility. Both Ex. 3 and Ex. 8 are got-up documents prepared for supporting the appellant's case that the editorial was published at the instance of the respondent. We have already indicated that in the very nature of things it is impossible that Raj Kumar Sethi, Gyan Devi Talwar and Vijay Kumar Talwar who were interested in the success of the appellant would permit a publication, so highly defamatory of the appellant.

There is an extremely interesting aspect of this matter to which we must refer. During the pendency of the election petition on October 23, 1972 Raj Kumar Sethi made an affidavit stating that he was an active member of the Congress, that he had supported the appellant in the elections held in 1972, that the letter (Ex. 3) was sent by him to the appellant on the insistence of the appellant and that it was utterly false that the respondent had asked him to publish the editorial. Confronted by this affidavit, to which his attention was pointedly drawn in cross-examination, he trotted out the story that his lawyer, Kesho Ram Garg, had taken the affidavit from him by making a misrepresentation that the document was a deed of compromise. Raj Kumar Sethi says that he put his signature on the document in the belief that the representation made by his lawyer was true. In one part of his evidence he said that he had put his signature on the document voluntarily, believing in the representation made by his lawyer. Quite a different version was given by him later that he was forced to subscribe to the document. How false the story is can be judged from the fact that Kesho Ram Garg, who is alleged to have deceived him, was still representing him in the execution petition filed against him. The witness had the temerity to write a letter, Ex. A/3, to the Chief Justice of Rajasthan complaining that an affidavit was obtained from him by fraud and misrepresentation. It is obvious that the witness was pliable and could for consideration be made to say different things at different times.

The evidence of the appellant Birbal Singh suffers from equally serious infirmities. He speaks of the distribution of the newspaper in a public meeting held on the 22nd at Public Park but in the election petition, as originally filed, his case was that the newspaper was distributed throughout Ganganagar. The election petition also mentioned that the editorial was read at the meeting but the allegation that it was distributed to several hundred persons is a later improvement. The meeting at which the

newspaper was distributed was held under the auspices of the Socialist Party which renders it unlikely that the appellant had attended the meeting. And if the appellant was present at the meeting, it seems to us strange that even after noticing that the defamatory matter which had appeared in the morning's editorial was being freely distributed, he left the meeting without a protest. It is interesting that the appellant did not say in his examination-in-chief that he attended the particular meeting in which the newspaper was distributed. It occurred to him for the first time in his cross-examination to say that he was present at the meeting and was an eye-witness to the distribution of the newspaper.

Ex. 5, which is a draft of the editorial, is said to be in the hand of Chand Ram Sherwal, an Assistant Editor of Patal Shakti. Chand Ram was not examined in the case. Chand Ram was present in the meeting of the 18th February which unanimously supported the candidature of the appellant. This makes it difficult to believe that he would write out the draft so highly defamatory of the appellant. Why Vijay Kumar Talwar who was also interested in the appellant's election and who is the son of the Director of the newspaper should sign the draft is more than we can understand.

The evidence of the other witnesses like Madan Lal Kanda, Radhey Shyam, Om Prakash, Harbeant Singh, Banwari Lal and Avinash can carry the matter no further except perhaps to show that not one or two but several witnesses conspired to create false evidence to show that the editorial which appeared in the Patal Shakti of February 27, 1972 was written at the instance of the respondent and that Vijay Kumar Talwar read it out in a public meeting. Accordingly, we are in entire agreement with the High Court that no reliance can be placed on the testimony of the witnesses examined by the appellant to prove the charges of corrupt practice against the respondent. Not only are the charges not proved beyond a reasonable doubt, but we are of the opinion that there is no substance whatsoever in the charges.

Consequently, we confirm the judgment of the High Court and dismiss the appeal with costs.

P.H.P.
dismissed.

Appeal

MUNICIPAL CORPORATION OF DELHI
V.
SURESH CHANDRA JAIPURIA & ANR.
November 3, 1976

[A. N. RAY, C.J., M.H. BEG AND JASWANT SINGH, JJ.] Civil Procedure Code Sec. 115--Concurrent decisions on question of interference by High Court, whether justified Specific Relief Act, 1963 S. 41 (h) application. The respondent purchased a house, and under the sale deed became responsible for paying the house-tax subsequent to the purchase. On his failure to pay the same, the appellant corporation started proceedings against him for the realisation of dues. In the course of a suit for permanent injunction, the respondent's application for an interim injunction was rejected by two courts. On further appeal, the High Court granted him interim injunction on the ground that there was a prima facie case even though agreeing with the appellate court that the balance of convenience was against such grant.

Allowing the appeal the Court HELD: 1. Section 41 (h) of the Specific Relief Act, 1963, lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceedings except in cases of breach of trust. [13E-F]

2. While exercising its jurisdiction under s. 115 the High Court is not competent to correct assumed erroneous findings of fact. The High Court had itself erred plainly both in holding that the courts below had not taken a correct view of the prima facie case which existed here and that the question of balance of convenience was irrelevant. [12C-D, 13F-G]

3. High Court had overlooked legally possible grounds of interference under section 115 C.P.C. [14-A-B] Baldevdas Shivalal & Anr. v. Filmistan Distributors (India) P. Ltd. & Ors. [1970] 1 SCR 435; D.L.F. Housing and Construction Co. P. Ltd. New Delhi v. Sarup Singh & Ors., [1970] 2 SCR 368; The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad & Anr. v. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad, A.I.R. 1973 S.C. 76; applied. M/s Mechelec Engineers & Manufacturers v. M/s Basic Equipment Corporation [1977] 1 S.C.R. 1060 referred to. Dewan Daulat Ram Kapur v. New Delhi Municipal Committee & Anr. ILR 1973 (1) Delhi 363 distinguished. CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1202 of 1976. Appeal by Special Leave from the Judgment and Order dated the 21st Feb. 1975 of the Delhi High Court in Civil Revision No. 479 of 1974.

F.S. Nariman, B.P. Maheshwari and Suresh Sethi, for the Appellant.

Mahendra Narain Advocate of Rajendra Narain & Co., for the Respondent.

The Judgment of the Court was delivered by BEG. 3. After issuing a notice to show cause why special leave should not be granted, this Court granted, on 13th October, 1976, the leave prayed for to appeal against the judgment and order of a learned Judge of the Delhi High Court. That Court had interfered under Section 115 Civil Procedure Code, with the concurrent findings of the Trial Court and the Appellate Court in this case that, as the plaintiff could not make out a prima facie case, no interim injunction could be granted to the respondent to restrain the appellant, the Municipal Corporation of Delhi, from realising a sum of Rs. 27,216/- on account of house tax from the plaintiffs pending the disposal of a suit for a permanent injunction. This Court directed a hearing of this appeal on 28th October, 1976. Accordingly, the appeal is now before us.

The plaintiff had purchased a house in South Extension, New Delhi, on 21st February, 1969, free from all encumbrances, demands, or liabilities under the sale deed, and the vendor, Mohan Singh, had undertaken to discharge these dues. It was, therefore, decided in a previous suit that the defendant-appellant could not recover the whole amount sought to be recovered as house tax from him. The respondent was absolved from liability for the period before the sale. But, the plaintiff was liable to pay the tax for the period after the purchase. He had also paid Rs. 6,992/-. It appears that proceedings for realisation of dues subsequent to the purchase had then been taken by the appellant corporation. The plaintiff's suit for a permanent injunction was brought on the ground that this assessment of house tax had proceeded on an erroneous basis. It is matter of admission between the

parties that the house on which the house tax was levied had not been let to any tenant since its construction. The Trial Court had found that, from the plaintiff's statement of accounts of tax, it appeared that the demand which was being recovered from him was in respect of the period subsequent to 31st March, 1969 and was based on a rateable value of Rs. 37800/per annum which had been provisionally adopted subject to results of proceedings in Courts of appropriate jurisdiction as to what the correct basis of assessment was. The Trial Judge had granted an interim injunction initially, but, after hearing parties, had vacated it on 18th October, 1973, as he had found that no prima facie case was made out to grant it.

On an appeal by the plaintiff, the Appellate Court, after considering all the questions raised before it, dismissed the appeal. It gave the following finding on the question of balance of convenience raised before it:

"The balance of conveniences is also in favour of the defendant. The defendant renders services as a civic body most of the amount which it spends has to come from owners of property in the form of property taxes. If the plaintiffs do not pay the property tax then the defendant might not be able to carry out its duty. The plaintiffs have also been unable to show that they would suffer irreparable injury if an injunction is not granted to them. If they ultimately prove that they are not liable to pay full amount demanded by the defendant as property tax then the plaintiffs could compel the defendant either to refund the amount realised in excess or to adjust the amount recovered in excess towards property tax for future years. The plaintiffs do not suffer irreparable injury if they are not granted the temporary injunction."

The High Court, while agreeing with the view of the Appellate Court that the balance of convenience was in favour of discharging the interim injunction, held that, as there was a prima facie case that the assessment had been erroneously made, the principle of balance of convenience did 'not apply here. The learned Judge thought that the principles of assessment applicable to such cases had been already laid down by the Full Bench of the Delhi High Court in *Dewan Daulat Ram Kapur v. New Delhi Municipal Committee & Anr.*(C) He observed:

"One of the principles laid down by the Full Bench decision is that where premises were never let at any time, Annual value be fixed in accordance with section 6(1i) (A) (2) (b) or S. 6(1) (B) (2) (b) by ascertaining market value of land and reasonable cost of construction. The facts noticed above, but missed by the Courts below, prima facie establish that the property was never let out; the prima facie materials which are available, inclusive of what the D.M.C. itself had conceded, show the plaintiffs were occupy-

ing the property for their own use. The plaintiffs' case therefore, prima facie, falls within the above principle. Failure to perceive the above had resulted in the Courts below declining to exercise jurisdiction vested in them in the manner it should have been exercised".

Hence, the learned Judge interfered and granted the interim injunction prayed for by the plaintiff. Mr. F.S. Nariman, appearing for the appellant Corporation,' points out that Dewan Daulat Ram Kapur's case (supra) was one where premises had been let, but, in the case before us, it was a matter of admission by both sides that the premises had never been let out to a tenant. Section 6(1) (A) (2) (b) of the Delhi Rent Control Act relates to cases where standard rent has to be fixed of residential premises let out at any time on or after 2nd June, 1944. And, Section 6(1) (B) (2) (b) of the Delhi Rent Control Act relates to premises other than residential premises which had been let out at any time after 2nd June, 1944. The Full Bench decision of the Delhi High Court in Dewan Daulat Ram Kapur's case (supra) (1) I.L.R. 1973 (1) Delhi p.363.

was that it was not incumbent on the Corporation to ascertain the hypothetical standard rent of premises in accordance with the provisions of the Rent Act in order to fix the annual value or rateable value where premises had been let but no standard rent had been fixed and assessment was sought to be made on the basis of agreed rent. It was also decided there that in cases before the High Court on that occasion, reasonable cost of construction as well as the market price of land to be taken into account in assessing the property tax.

It is difficult for us to, see what bearing the provisions cited from the Delhi Rent Control Act or the Full Bench decision of the High Court could have on the case now before us. It seems to us that Mr. Nariman is correct in submitting that the learned Judge of the High Court had himself misapprehended the law in holding that the Courts below had failed to find a prima facie case because of a misconception of law. However as no one has appeared on the date of the final hearing on behalf of the respondent, who had appeared through Counsel to answer the show cause notice issued by this Court before granting special leave, we refrain from deciding the question whether the provisions cited by the learned Judge of the Delhi High Court have any bearing on the case before us or not. This is a matter which will be decided in the suit itself. We, therefore, leave it expressly open for determination.

Mr. Nariman, learned Counsel for the Corporation, is we think, on very firm ground in contending that balance of convenience could not be ignored in such cases and that the learned Judge of the High Court erred in holding that it could be.

It also seems that the attention of the learned Judge was not directed towards section 41 (h) of the Specific Relief Act, 1963, which lays down that an injunction, which is a discretionary equitable relief, cannot be granted when an equally efficacious relief is obtainable in any other usual mode or proceeding except in cases of breach of trust. Learned Counsel for the appellant Corporation points out that there was the ordinary machinery of appeal, under section 169 of the Delhi Municipal Corporation Act, 1957, open to the assessee respondent. It had not even been found that the respondent was unable to deposit the necessary amount before filing the appeal. However, we abstain from deciding the question whether the suit is barred or not on this ground. All we need say is that this consideration also has a bearing upon the question whether a prima facie case exists for the grant of an interim injunction. In *M/s. Mechelec Engineers & Manufacturers v. M/s. Basic Equipment Corporation* (D), also we found very recently that, as in the case before us now, a learned Judge of the Delhi High Court had overlooked the principles governing interference under Section

115 Civil Procedure Code laid down by this Court in Baldevdas Shivilal & Anr. v. Filmistan Distributors (Indict) (P) Ltd. & Ors.(2); D.L. Housing & (1) [1977] 1 S.C.R. 1060. (2) [1970] 1 S, C.R. 435.

Construction Co. Pvt. Ltd. New Delhi v. Sarup Singh & Ors(1).; The Managing Director .(MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad & .Anr. v.Ajit Prasad Tarway, Manager (Purchase & Stores) Hindustan Aeronautics Ltd., Balanagar, Hyderabad.(2). We direct the attention of the learned Judges concerned to the law declared by this Court. We allow this appeal and set aside the judgment and order of the Delhi High Court and restore that of the Appellate Court. The parties will bear their own costs in this Court.

M.R.

(1) [1970] 2 S.C.R. 368.

(2)A.I.R. 1973 S.C. 76.

Appeal allowed.