

(1971) 02 MP CK 0005

Madhya Pradesh High Court (Indore Bench)

Case No: C.R. No. 392 of 1969

Rama and another

APPELLANT

Vs

Mangilal

RESPONDENT

Date of Decision: Feb. 9, 1971

Citation: (1973) 18 MPLJ 973

Hon'ble Judges: H.R. Krishnan, J

Bench: Single Bench

Advocate: S.D. Sanghi, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision: Allowed

Judgement

H.R. Krishnan, J.

This is an application in revision by the defendants in a suit for permanent injunction from the dissident order of the appellate Court granting a temporary injunction of a mandatory nature in favour of the plaintiff-non-applicant, directing the defendants (applicants here) to break down part of the wall constructed by them around their house so that the cattle coming out of the plaintiff's house may be able to go out through the opening.

The facts of the case are comparatively simple and the difference in the factual allegations will be resolved after hearing in the trial Court. At this stage the point for consideration is whether in a situation like this the exceptional course of granting a mandatory injunction to break down part of a structure can be granted, and whether the status quo that is sought to be restored should be the status quo on the date of the intitation of the proceedings or the status quo on an earlier date when according to the plaintiff his encroachment started.

The facts for our purposes can be summarised thus: In village Kogawan the parties live in contiguous structures both of which had been the property of one person in the past. The plaintiff is an earlier purchaser of his portion of the original property from the mother of the person from whom the defendants purchased recently. After

the purchase the defendants built a new house and as usual with new houses put up an enclosing wall for security and privacy. Part of the enclosing wall lies to the west of the plaintiffs house in which direction the plaintiff contended there had been always an opening. According to the plaintiff, this opening on the western side was meant for the ingress and egress of his cattle which otherwise may have to go in and out by the main entrance to the north of the house used by the members of the family. He urged that he had a right of easement for the passage of this cattle in the direction in which the defendant had put up his wall and accordingly prayed that by an order of mandatory injunction the defendants should be directed to make an opening in their wall sufficient for the movement of the plaintiff's cattle in that direction. The defendants joined issue and the suit is pending.

Meanwhile the plaintiff prayed for a temporary injunction for the duration of the suit, the injunction being one of a mandatory nature calling upon the defendants to make a breach in the wall even now with security being afforded by the plaintiff to compensate the defendants in case he the plaintiff lost the suit. The defendants opposed it because it was a serious matter to break down a structure already put up in due course by the defendants before the commencement of the suit. The defendants again led evidence by affidavit to show that the cattle of the house of the plaintiff had never been moving in that direction. The plaintiff, for his part, produced a sale deed in which he urged that a sketch map however crude had been included indicating an opening or door on the western side of this house. The trial Court refused to grant the temporary injunction while the appellate Court felt that all the requirements for a temporary injunction were found here and though it involved breaking down of a structure and the nature of a mandatory injunction, it should be granted. From that the defendants have come up in revision, the temporary mandatory injunction for breaking down part of the wall having been stayed for the duration of the present proceeding.

The defendants have urged on the basis of case law reported in [Durg Transport Co. Private Ltd. Vs. Regional Transport Authority and Others](#),) following *Nandan Pictures v. Art Picture Ltd.* A I R 1956 Cal. 424 and also three unreported single Bench rulings of this Court, that a mandatory injunction of a temporary nature should be granted very sparingly, and if granted should be only for the restoration of the status quo as it stood on the date of initiation of the proceedings and not earlier. Even if on the basis of certain English rulings abstracted in Halsbury Volume 21 Article 760 (Third Edn.) a mandatory injunction of a temporary nature can be made for restoring the status quo of a period earlier than the initiation of the proceedings, it can be done only where before the commencement of the suit the defendant has in spite of being cautioned of the possibility of a suit and motion for temporary injunction, tries to overreach the Court by hurrying up so as to forestall the plaintiff.

It is obvious that a mandatory injunction especially where it involves the breaking down of a structure is a very serious matter. Certainly when it is made after the hearing of the parties at length there can be no objection. But when it is to be made as a temporary measure its effect is for the duration of the suit to grant exactly what the plaintiff wants. Certainly some sort of protection can be afforded to the defendant by calling upon the plaintiff to undertake to compensate the defendant if the plaintiff loses the suit. But this is rather poor protection because for the duration of the suit the defendant may be suffering very considerable inconvenience. This does not mean that in no event should a temporary mandatory injunction be granted. It should be granted only exceptionally and it is further agreed by all the Courts that the only purpose of granting such a temporary mandatory injunction is to restore the status quo. The defendant applicant has asserted that all the Courts have meant by "status quo" the situation prevalent at the initiation of the suit, and not the situation during an earlier period. On the other hand, the plaintiff has urged that though in some of the reported cases the status quo that was to be restored was that on the date of the proceedings, it was not exclusive and in appropriate cases the status quo sought to be restored could be that on an earlier date, that is the date on which the plaintiff pleaded the first infringement. In the instant case, if the mandatory temporary injunction cannot be granted so as to restore the status quo prevalent on a date earlier than the commencement of the suit, the order of the appellate Court has to be vacated. If, on the other hand, the temporary mandatory injunction can be granted for the restoration of status quo prevalent on an earlier date, we will have to examine whether in the circumstances of the case it would be fair and reasonable to grant such an injunction.

On this crucial point there is no reported decision by this Court. However, the Divisional Bench case reported in *Drug Transport Co. v. Regional Transport Authority* (supra) comes nearest to it. Actually it was not dealing with any temporary injunction but was dealing with a stay order. However by analogy the stay order and ad interim injunction were bracketed.

A stay order or an ad interim injunction is issued to maintain and preserve the status quo existing at the time of the institution of the proceedings. The real point, which has to be decided when an application for stay or for a temporary injunction is made, is not how the question ought to be investigated but it is whether the matter should not be preserved in status quo until the question can be finally disposed of. A stay order or an order of injunction is not granted to disturb the status quo. It is no doubt granted to restore the status quo, but it is never granted to establish a new state of things differing from the state which existed at the date when proceedings were instituted.

These principles are derived from the Calcutta decision reported in *Nandan Pictures v. Art Picture Ltd.* (supra):

It is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an ad interim order pending the decision of the application itself are almost unknown. Injunctions are a form of equitable relief and they have to be adjusted in aid of equity and justice to the facts of each particular case.

If a mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the status quo and not granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted. The one case in which a mandatory injunction is issued on an interlocutory application is where, with notice of the institution of the plaintiff's suit and the prayer made in it for an injunction to restrain the doing of a certain act, the defendant does that act and thereby alters the factual basis upon which the plaintiff claimed his relief. An injunction issues in such a case in order that the defendant cannot take advantage of his own act and defeat the suit by saying that the old cause of action no longer survived and a new cause of action for a new type of suit had arisen.

The Single Bench decisions in unreported cases Civil Revision No. 333 of 1958 (Durgashankar v. Ratanlal, disposed of on 27-7-1959; Civil Revision No. 324; Valaji v. Hirji, decided on 20-1-1962; and Civil Revision No. 527 of 1965 Nanoaram v. Motilal, decided on 30-9-1956) follow the same principle.

I am aware that any cast-iron rule that in no event a temporary mandatory injunction can be granted for restoring a state of affairs antecedent to the commencement of the suit, may cause real hardship in certain genuine cases. There may be instances where the defendant expressly cautioned by the plaintiff that he is going to the Court and is moving it for a temporary injunction and that till such an order comes the defendant should desist, still goes ahead and tries to face the plaintiff and the Court with a fait accompli. To refuse in such a situation the temporary mandatory injunction on the ground that a new state of affairs has come into existence on the date of the suit would certainly be inequitable. But such cases can be met on the following lines. Where the plaintiff wants a departure from the established principle that such a mandatory injunction on interlocutory application should be granted only for the restoration of status quo on the date of the suit; he should establish that he has been diligent and had made an express request of the defendant that he should desist because the plaintiff intends to file a suit, to make an interlocutory motion for temporary injunction. Merely protesting against the act of the defendant will not do. But the plaintiff should establish that he put the defendant on guard against the possibility of an interlocutory motion for temporary injunction and in spite of it the defendant went ahead. That is not the position here. The plaintiff states that he objected to the defendant's constructing the wall which is quite likely. But even he does not state that he requested the defendant to desist because a suit was going to be filed and an interlocutory motion made.

In these circumstances the order of the appellate Court which amounts to the restoration of a status quo prevalent on a date earlier than that of the commencement of the suit is not proper. Accordingly the application in revision is allowed and the order of the appellate Court set aside and that of the trial Court restored. The suit has already been pending for more than two years and the trial Court should dispose it off without avoidable delay. The non applicant shall pay the costs of the revision application along with pleaders fee calculated according to rules.