

Sterlite Industries (India) Limited Vs Hagrpotra for Trading Company Ltd. and Distribution and ICC International Court of Arbitration

Court: Madras High Court (Madurai Bench)

Date of Decision: Aug. 20, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 39 Rule 1
Constitution of India, 1950 â€” Article 226, 227

Citation: (2010) 5 LW 311

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: A.L. Somayaji, for N. Anandhapadmanabhan, for the Appellant; R. Murari, for Sarvabhauman Associates for Respondent 1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Ramanathan, J.

Heard both sides.

2. The revision Petitioner is the Plaintiff in O.S. No. 59 of 2009, on the file of the Principal District Court, Tuticorin. The revision Petitioner herein

filed a suit for declaration that no enforceable contract No. 4 dated March 25, 2009 has been concluded between the Plaintiff and the first

Defendant and consequential relief of restraining the Defendants 1 and 2 from proceeding in any manner whatsoever including any arbitral/legal

proceedings. Along with the suit, the Plaintiff/revision Petitioner filed I.A. No. 228 of 2009 for the relief of Ad-interim injunction, restraining the

Respondents/Defendants from acting upon the said contract No. 4, dated 25 March 2009 or by making any claim upon the revision Petitioner

herein or utilising/enforcing the said alleged contract No. 4, dated March 25, 2009 in any manner whatsoever including in any arbitral/legal

proceedings.

3. In the plaint as well in the petition, the revision Petitioner has stated in detail that the contract No. 4 was not accepted by the Plaintiff and the

Defendants cannot take any action under the said contract. I purposely do not want to dwell on the merits of the averments made in the plaint as

well in the interlocutory application, having regard to the scope of the revision petition filed by the revision Petitioner.

4. The learned District Judge, Tuticorin, after hearing the arguments of the learned Counsel appearing for the Plaintiff, did not grant any ad-interim

injunction nor refused to grant any injunction, but issued notice to the Respondents returnable by 05.10.2009, by order, dated 16.09.2009. This

act of the learned District Judge, in ordering notice without passing any order in I.A. No. 228 of 2009 in O.S. No. 59 of 2009 is challenged in this

civil revision petition by invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

5. Mr. A.L. Somayaji, the learned Senior Counsel appearing for the Plaintiff/revision Petitioner elaborately argued on the merit of the Plaintiffs case

and also brought to my notice the various clauses in the agreement and the correspondence between the parties and submitted that the Plaintiff

never agreed to the contract No. 4 as alleged by the Defendants and as per the contract No. 4, the Respondents can invoke the arbitration clause

and the arbitration will take place in the foreign country and when the contract itself is disputed, they should not proceed with the arbitration and if

injunction is not granted, the Respondents will invoke the arbitration clause under the contract aforesaid immediately and therefore, the lower Court

ought to have granted injunction and the lower Court failed to exercise its power conferred on it and hence, this civil revision petition is filed.

6. Mr. R. Murari, the learned Counsel appearing for the 1st Respondent submitted that filing of revision petition by invoking Article 227 of the

Constitution of India, amounts to abuse of process of law and the Court has not passed any order against the revision Petitioner and there is no

failure to exercise the jurisdiction and hence, the civil revision petition itself is not maintainable.

7. The learned Counsel appearing for the 1st Respondent also took me the through typed set of papers to justify the invocation of arbitration

clause and according to him, as per contract No. 4, the Respondents are entitled to invoke the arbitration clause and the revision Petitioner cannot

restrain the Respondents from invoking the arbitration clause and it is also prohibited under Specific Relief Act.

8. I have given my anxious consideration to te submission made by both the counsels.

9. As stated supra, I do not want to go into the merits of the rival contention as that it will affect the decision to be taken by the learned District

Judge, Tuticorin. The power of this Court under Article 227 of the Constitution of India, has been discussed elaborately in the judgment reported

in Surya Dev Rai Vs. Ram Chander Rai and Others, . In the aforesaid judgment, the Honourable Supreme Court observed the distinction between

the powers to be exercised by the High Court under Article 226 and 227 and held as follows:

1....

2....

3....

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

juridical 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 above said 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 at the conclusion of the proceedings in an appeal or revision

preferred there- against and entertaining a petition invoking certiorari or supervisory jurisdiction of 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 lies.

Therefore, from the above passage, 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 under Article 227 of the

Constitution of India.

10. In this case, it cannot be stated that the District Court has no jurisdiction to entertain the application for injunction. It can not be stated that the

District Judge has failed to exercise the jurisdiction conferred on it by issuing notice. In my opinion, by issuing notice to other side without passing

any order on the injunction cannot be stated to be an act, which amounts to failure to exercise the jurisdiction.

11. Further, under Order 39 Rule 1 Code of Civil Procedure, the discretion has been given to the Court either to grant or refuse to grant injunction

and there is no compulsion on the part of the court to grant ad-interim temporary injunction and when the court on the basis of the allegations made

in the plaint and affidavit filed in support of the interlocutory application before passing any order thought fit to order notice to other side, such act

of the court cannot be brought under the 3rd category that the court has failed to exercise the jurisdiction in a manner permitted by law.

12. It is well known that grant of injunction is a discretionary remedy and the court has to assess the facts and circumstances and the damage that

may be caused if injunction is not granted immediately. The learned District Judge for the reasons best known to him, after hearing the arguments

only adjourned the case, by ordering notice to the other side and that act of the learned District Judge cannot be termed as failure to exercise the

jurisdiction or failure to exercise the jurisdiction in the manner not permitted by law. Therefore, as per the dictum laid down by the Honourable

Supreme Court, in the above judgment, in my opinion, against the order of ordering notice" to the Respondents in an injunction application, the

parties are not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

13. Further in the judgment reported in 2008 (9) SC 1 : 2009 (1) L.W. 517, in the case of Shamshad Ahmad and Ors. v. Tilak Raj Bajaj

(Deceased) through L.Rs. and Ors. held that though powers of a High Court under Articles 226 and 227 are very wide and extensive over all

courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law.

The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error.

14. Further, the Honourable Supreme Court in the judgment reported in Surya Dev Rai Vs. Ram Chander Rai and Others, . held that supervisory

jurisdiction is not 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.

Therefore, even assuming that by non-granting of ad-interim temporary injunction, a grave injustice or gross failure of justice has occasioned that

cannot be considered unless error is manifest and apparent on the face of the record.

15. In my opinion, if such civil revision petitions are entertained then it is not possible for the lower Court to function effectively and the lower

Court will be forced to pass one order or another when an application for injunction is filed. As stated supra, injunction being a discretionary

remedy, the trial Court cannot be compelled to grant injunction immediately on the presentation of the plaint and the act of the court in ordering

notice to the Respondents cannot be termed to be illegal, which warrants interference under Article 227 of the Constitution of India.

16. Hence, in my opinion, the civil revision petition filed by the revision Petitioner is not maintainable and the learned District Judge is directed to

dispose of the injunction application I.A. No. 278 of 2009 within a period 15 days from the date of receipt of a copy of this order, without being

influenced any of the observations made by this Court, while passing the order and the learned District Judge is also directed to dispose of the

injunction application purely in accordance with law. It is further made clear that this Court has not expressed any opinion on the merits of the case

and therefore, the learned District Judge, is directed to come to the independent conclusion on the basis of the materials available before him and

on the basis of the arguments of the both the parties.

17. With the said observation, this civil revision petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.