

(1969) 04 CAL CK 0002**Calcutta High Court****Case No:** Suit No. 467 of 1969

Hindusthan Steel Limited

APPELLANT

Vs

Priyabrata Bose

RESPONDENT

Date of Decision: April 18, 1969**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

Citation: (1972) 1 ILR (Cal) 236**Hon'ble Judges:** Ghose, J**Bench:** Single Bench**Advocate:** Somendth Chatterjee, for the Appellant; B.N. Sen, for the Respondent**Final Decision:** Dismissed

Judgement

Ghose, J.

This is an application made by the Defendants excepting the Defendants Nos. 6, 46, 55, 74, 75, 76, 77/ 86, 88, 95 and 96 in this suit for, inter alia, an order of injunction restraining the Plaintiff, its officers, servants and agents from giving any effect or any further effects to the two notices both dated March 31, 1969, or from in any way acting upon the said notices or enforcing the same. This application has been made in the suit filed by the Plaintiff. The suit was filed by the Plaintiff, inter alia, for an injunction restraining the Defendants from committing acts of nuisances alleged in the plaint at the Plaintiff's office at No. 13 Camac Street, Calcutta (in protest against alleged acts of victimization by the Plaintiff by transferring the Defendants Nos. 1 to 4 to Rourkela). The Defendants Nos. 1 to 4 are the office-bearers of the union of the employees of the Plaintiff. After instituting the suit the Plaintiff made an application for an order of temporary injunction restraining the Defendants in the suit from committing the acts of trespasses and nuisances mentioned in the said petition. Upon the said application on or about February 11, 1969, an ex parte order was made restraining the Defendants from watching and besetting or causing or procuring for watching and besetting the entrances or approaches of the said

building or the said office or preventing the employees, the managerial staff and the customers of the Plaintiff from approaching or entering the said office of the said building or to prevent them from working therein or intimidating or coercing the employees, the managerial staff and the customers of the Plaintiff or obstructing the entrances and approaches of the said office and the said building or interfering with the use and the enjoyment of the said office by the Plaintiff or forming or causing to form unlawful assemblies in front of the office or the said building or holding or causing demonstration except 25 yards away from the entrance of the said office.

2. On the returnable date of the said motion the said ex parte ad interim order passed by me on February 11, 1969, was modified as follows:

There will be an ad interim order of injunction restraining the Plaintiff-Petitioner from giving any effect to the orders of transfer in respect of Respondents Nos. 1, 2, 3 & 4 till the disposal of this application.

There will also be an ad interim order of injunction restrain-in the Plaintiff-Petitioner from taking or initiating or continuing any disciplinary proceedings as against any of the Respondents till the disposal of this application.

The Plaintiff-Petitioner is also restrained from taking any step on the ground of any of the Respondents absenting themselves from the office on the date of hearing or on the adjourned date of hearing of this application.

A/O by 3rd March, A/R 13th March and the motion to appear in the list on the 17th March 1969.

Leave given to send notice by registered post. Leave is also given to file further affidavit of service in respect of the Respondents who have not attended the Court to-day.

3. At the final hearing of the said application on March 18, 1969, I passed the following order:

Save as hereinafter ordered, the ad interim order is made absolute.

Ad interim order of injunction restraining the Plaintiff-Petitioner from giving any effect to the orders of transfer in respect of Respondents 1 to 4 shall continue for 3 months from date in order to enable Mr. Chatterjee's clients as also the Petitioner to take recourse to other proceedings including proceedings before the conciliation officer or under the Industrial Disputes Act. Liberty is given to Mr. Chatterjee's clients to mention this part of the order prior to the expiration of 3 months or after the expiration of 3 months. The order of injunction restraining the Plaintiff-Petitioner from taking or initiating or continuing any disciplinary proceedings as against any of the Respondents meaning disciplinary proceedings in respect of the matters as mentioned in the petition and affidavits in this application.

This order is made without prejudice to the rights and contentions of either the Petitioner or any of the Respondents to take any steps under the general law or Industrial Disputes Act that he or they may be advised. Costs costs in the cause.

4. Inasmuch as I passed the aforesaid order of injunction in the aforesaid terms against the Defendants, I also passed an order of injunction restraining the Plaintiff from giving effect to the orders of transfer as against the Defendants Nos. 1 to 4 as well as taking any disciplinary proceeding or continue any disciplinary proceeding against any of the Defendants for the alleged misconduct on their part mentioned either in the petition or affidavit-in-opposition or reply.

5. Following the judgment of the Hon"ble Sabyasachi Mukharji J. in Suit No. 1505 of 1968 [Reserve Bank of India v. Ashis Kumar Sen and Ors. Suit No. 1505 of 1968 decided by Sabyasachi Mukharji J] I passed the aforesaid order of injunction against the Plaintiff.

6. On April 3, 1969, Mr. Somenath Chatterjee mentioned this matter again before me and said that on the previous afternoon, i.e. in the afternoon of April 2, 1969, Mr. Chatterjee's clients, namely the Applicants in the present application, excepting the Defendants Nos. 1 to 4, were served with notices of transfer from Calcutta to Rourkela and that (they were served also with an order that the purchase office of the Plaintiff at Calcutta had been closed. The aforesaid two orders, according to Mr. Chatterjee, were passed by the Plaintiff with a view to make the aforesaid orders passed by this Court on the application of the Plaintiff infructuous and to destroy the infant trade union of the employees of the Plaintiff at its Calcutta office. The two notices dated March 31, 1969, have been annexed to the petition of the Applicants in the instant proceeding and marked with letters "A" and "B" respectively. The said orders have been passed mala fide, according to the Petitioners, with a view to by-pass the orders mentioned above passed by this Court as well as to take away the legitimate trade union rights of the Petitioners.

7. According to the Petitioners, the Petitioners cannot do any trade union activities or demonstration in protest against the aforesaid illegal and wrongful orders of transfer and closure of the purchase office at Calcutta in view of the aforesaid order or injunction passed by this Court on March 18, 1969. The Petitioner states that for the aforesaid reason this Court should pass an order of injunction restraining the Plaintiff from closing its purchase office at Calcutta or from transferring the Applicants as contemplated by the said notices both dated March 31, 1969. The relief, according to Mr. Chatterjee, claimed by the Applicants in the instant application is connected with and incidental to the Plaintiff's cause of action in the suit. Therefore, Mr. Chatterjee contends he is entitled to this relief in the instant application.

8. Mr. Chatterjee contends that although the Applicants are the Defendants in the suit, such order can be made in the instant application and he relies on various

decisions in support of his contention. I shall presently deal with the decisions cited by Mr. Chatterjee.

9. The first case cited by Mr. Chatterjee is that of *Collision v. Warren* (1901) 1 Ch. 812. In the said case the Plaintiff, who was the proprietor of a hotel, executed a deed of arrangement for the benefit of his creditors. He assigned to the Defendant Warren as trustee for the creditors his business of the said hotel except the leasehold house wherein the business was carried on upon the trust "to carry on the said business of a hotel proprietor". In the said deed of arrangement the Plaintiff provided that so long as the said business would be carried on, the trustee and/or the committee of inspection would

in the meantime...engage the services of the said debtor who and whose wife and whose family shall during such engagement be entitled to reside and board on the said premises as Manager of the said business....

Under the said arrangement the Plaintiff continued to reside in the hotel as manager in the service of the Defendant trustee.

10. Due to the misconduct on the part of the Plaintiff, the trustee under the instructions of the committee of management dismissed him from the office of manager and asked him to leave the premises. On receipt of the notice of dismissal the debtor instituted a suit, *inter alia*, claiming

(a) a declaration that the Plaintiff was entitled to be engaged as manager pursuant to the said deed of arrangement; (b) that the trusts of the deed might be carried out; (c) injunction ; (d) damages for breach of trust.

11. In the said action the Defendant gave notice of motion for, *inter alia*, an order of injunction restraining the Plaintiff, his wife or members of his family from remaining in the said hotel during the pendency of the action and-for an injunction restraining the Plaintiff until the trial from interfering with the conduct or management of the business of the hotel. The Defendant alleged in the evidence that he intended to file a counter-claim claiming the reliefs as claimed in the said notice of motion. It was held that although counter-claim was not filed till then, the Defendant was entitled to make an application for the aforesaid relief inasmuch as the relief claimed by the Defendant arose out of and was connected with the same deed of arrangement on the basis of which the Plaintiff himself had issued the writ in the said action.

12. The next case cited by Mr. Chatterjee is of *Carter v. Fey* (1894) 2 Ch. 541 wherein it was held that a Defendant who had not filed a counterclaim could not apply for an injunction against the Plaintiff unless the relief sought by the injunction was incidental to or arose out of the relief sought by the Plaintiff.

13. It was further held that if the Defendant desired any other relief before delivering a counter-claim he had to institute a cross suit. At p. 544 of the said report Lindley L.J. observed as follows:

If the Defendant's application for an injunction were in any way connected with or incidental to the object and purpose of the Plaintiff's action, he would have good ground for his contention ; but it has really nothing to do with the relief sought by the Plaintiff and therefore, in my opinion, the Defendant is wrong. If he cannot wait till the time for delivering a counterclaim, he must issue a writ in an action of his own.

14. Similar were the observations of Lopes L.J. and David LJ. in the said case. These observations were made although in the said case, the claim of the Defendant arose out of the same deed of dissolution dated May 12, 1893. Under the said deed of dissolution the Plaintiff and the Defendant, who had been partners as wine, ale and spirit merchants, had their partnership dissolved upon the terms mentioned in the said deed dated May 12, 1893. It was agreed by the Plaintiff and the Defendant in the said deed that the name of the Defendant would be deleted from the name of the firm on all signboards, labels and other advertisements and that the Defendant would not for a period of five years carry on directly or indirectly the business of wine, ale and spirit merchant in the city of Winchester or within a radius of two miles. The Plaintiff filed a suit claiming perpetual injunction restraining the Defendant from carrying on directly or indirectly the business which he covenanted not to carry on in the said city or within a radius of two miles. In the said action the Defendant applied for a temporary injunction restraining the Plaintiff from exhibiting the name of the Defendant in the signboards and using the name of the Defendant on vans, signboards or labels of the said business prior to filing the counter-claim. It was held that the relief claimed by the Defendant was not incidental to nor did it arise out of the relief claimed by the Plaintiff in the action notwithstanding the special provisions of O. L, Rule 6 of the Rules of the Supreme Court of England.

15. The next case relied on by Mr. Chatterjee is that of B.F. Varghese v. Joseph Thomas. AIR 1957 TC. 286 wherein it was held as follows:

The main argument addressed by learned Counsel is that the Court below had no jurisdiction to pass an interlocutory mandatory injunction in the manner adopted and that at the instance of a Defendant in a case. According to Mr. K. T. Ninan learned Counsel for the Plaintiff Revision Petitioner an injunction can be granted in favour of a Defendant only in a case coming under Order 39, Rule 1 and that was not the case here and that a mandatory injunction in interlocutory proceedings is an exceptional remedy that could be granted under the inherent powers of Court only to the Plaintiff in a suit contemplated by Order 39, Rule 2.

The Court below got over the difficulty by saying that if inherent powers of the Court could be exercised in exceptional circumstances on behalf of the Plaintiff there was no reason not to extend the same jurisdiction in similar circumstances on behalf of the Defendant and it went on to find that the circumstances here were sufficiently exceptional as to require its intervention. " I entirely agree with this reasoning. It is

observed in Mulla's CPC 12th edition, p. 1160: The Courts in England have the power to grant mandatory injunction on interlocutory applications. And so have chartered High Courts in the exercise of their ordinary original jurisdiction.

The same power is possessed by Courts in the moffussil. The case of *Collision v. Warren* (1901) 1 Ch. 812(A), cited in the English Annual Practice, is also very instructive in this connection. Buddy J. posed with this question at the initial stage as to whether the Defendant can move for an injunction against the Plaintiff without filing a counter-claim or issuing a writ in a cross action and answered the same in the light of earlier authorities by saying that in some cases and only in some cases he can, viz. where his claim to relief arose out of the Plaintiff's cause of action or was incidental to it.

In this case it was clear that the Plaintiff's interference with the door passage and the smoke tiles in the roof, tended to discredit the temporary injunction order passed by the Court. If the Plaintiff felt aggrieved that the order had not gone far enough he must have taken the matter in appeal at least by approaching the Court once again for redress. It was not for him to take the law into his own hands and change the scope of the earlier order in the case.

If the Court below did not go further and vindicate its dignity by contempt process the Plaintiff has to feel thankful therefore. The order of the Court below cannot in the circumstances be complained against and I affirm it. The Plaintiff will however have one week's more time from to-day to comply with the direction made in the order. The Revision petition fails and is dismissed with costs.

16. Thus, following the aforesaid case of *Carter v. Fay* (1894) 2 Ch. 541 his Lordship passed an order of injunction in favour of the Defendant against the Plaintiff. But the said English cases were decided on the special procedure and rules of the Supreme Court of England. In England the Defendant is entitled to deliver a counter-claim in answer to the Plaintiff's claim in an action. If the Defendant proves the averments made in his counter-claim, he is entitled not only to have the claim of the Plaintiff dismissed but also to obtain a decree in his favour on the counter-claim. Thus, in England, if a counter-claim is delivered a Defendant also is in the nature of a Plaintiff in all actions. That is not the case in India. In India, under the Code of Civil Procedure, only in a money suit the Defendant is entitled to claim a set off in respect of his claim as against the Plaintiff. The set off may be claimed in respect of a certain sum where the Defendant's claim does not arise out of the same transaction on the basis whereof the Plaintiff institutes his suit. In a case, where the Defendant's claim for set off arises out of the same transaction on the basis whereof a suit is filed, the Defendant is entitled to claim set off in respect of damages suffered by him due to the default on the part of the Plaintiff. In India, there is no provision to pass a decree in favour of the Defendant save and except in suits for partition and for dissolution of partnership. I am not considering the cases of the Defendants who jointly with the Plaintiff are entitled to a decree in a suit but do not join in the suit and so are

made Defendants. Only in the case of a suit for partition and a suit for dissolution of partnership each of the Plaintiffs and the Defendants are in the position of the Plaintiff and the Defendant vis-a-vis one another. In such actions, the Defendant certainly may apply for interim relief for protection of joint properties or for protection of partnership properties.

17. In England, as soon as a counter-claim is delivered the Defendant also becomes a Plaintiff vis-a-vis a Plaintiff in the suit so far as counter-claim is concerned. In England, even before a Defendant delivers his counter-claim he may apply by way of an interlocutory application for interim relief by virtue of a special provision, e.g. O. L, Rule 6 of the Rules of the Supreme Court. The said Rule is as follows:

6. An application for an order u/s 45 of the Act or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the Plaintiff for an order under the said Section 45 it may be made either ex-parte or with notice, and if for an order under Rule 2 or 3 of this Order it may be made after notice to the Defendant at any time after the issue of the writ of summons and, if it be by any other party, then on notice to the Plaintiff and at any time after appearance by the party making the application.

18. There is no corresponding provision in our country.

19. Mr. Chatterjee also contended that Section 151 confers unlimited power on Court to pass any order in an action for the ends of justice and relied on *Jai Berham v. Kedar Nath Marzuari* (1922) L.R. 49 351 (355). Mr. Chatterjee also relied on the case of *Hukum Chand Baid v. Kamala Nand Singh* ILR (1906) Cal. 927 (last two paragraphs of the headnote as well as the passages at the middle of p. 932 and also passages at pp. 940 and 941 of the said report). The said passages deal with inherent power of the Court. That case, in my opinion, merely lays down that Court has inherent power to do all that is necessary for the purpose of doing justice to the parties and preservation of suit property. Mr. Chatterjee further relied on the case of [Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal](#), and in particular the observation made in para. 22 of the said judgment.

20. Mr. Chatterjee submitted before me that this fact of passing, the order for closing down the purchase office at Calcutta although a subsequent fact should be taken notice of by the Court and relied on the cases--*Ram Ratan Sahu v. Mohant Sahu* (1907) 6 C.L.J. 74 (78, 79), *Rai Charan Mandal v. Biswanath Mandal* (1914) 20 C.L.J. 107, *Nuri Miah v. Ambica Singh* ILR (1916) Cal. 47 (55) and [Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others](#), and the judgment of Sabyasachi Mukharji J. passed in the Reserve Bank case (Supra) mentioned above. It is settled law that in order to shorten litigation and to do complete justice to the parties to a proceeding the Court has power to take notice of subsequent facts as decided in the aforesaid decisions cited by Mr. Chatterjee. Nobody can quarrel with the said proposition. Mr. Chatterjee contends that the said principle should apply also to the

maintenance of status quo during the interim period.

21. It appears to me that in India except in a partition suit or in a suit for dissolution of partnership no interim order can be passed by the Court in favour of a Defendant because all interim orders must be in aid of the relief that may be granted at the final hearing. See [Tarini Gupta Chowdhury Vs. Sm. Gouri Gupta Chowdhury](#) . In the instant case, the Plaintiff's claim in the suit and the subject-matter of the suit are alleged acts of tort committed by the Defendants at the Plaintiff's office at No. 13 Camac Street, Calcutta, and relief therefrom. The said acts of the Defendants have been set out in paras. 14 and 15 of the plaint. The said paragraphs are as follows:

Since 27th January, 1969, the Defendants and each of them have wrongfully, illegally, maliciously and mala fide combined and/or agreed among themselves and/or have conspired and/or combining and conspiring among themselves to effect inter alia the following unlawful purposes with a view to injure the Plaintiff in carrying on its lawful business:

- (a) To compel the Plaintiff to carry on its business and administration of its said office and/or to run the said office in accordance with the distastes and demands of the Defendants.
- (b) Wrongfully and without legal authority to watch and beset or cause or procure to be watched or beset the said entrances of the said building and premises and the said entrances to the said office and approaches thereof in such a manner as to prevent any one including the managerial staff and the customers of the Plaintiff from approaching or entering the said office.
- (c) To intimidate or coerce the managerial staff and the customers of the Plaintiff.
- (d) Obstructing the said entrances and approaches for the purpose of compelling the managerial staff to keep away from the said office and to prevent them from carrying on their lawful work therein.
- (e) To unlawful interfere with the use and enjoyment of the said office by the Plaintiff or to exercise the Plaintiff's right over or in accordance therewith.
- (f) To compel the Plaintiff by threats of unlawful acts.
- (g) To adopt a course which would cause damage to the Plaintiff in his business and to prevent the Plaintiff from carrying on his lawful business.

15. In furtherance and execution of their said conspiracy and/or combination as aforesaid the Defendants Nos. 1, 2, 3 and 4 and each of them have committed various wrongful and illegal acts within and outside the said jurisdiction. The particulars are as follows:

- (a) Since 27th January, 1969, the Defendants wrongfully and without legal authority watched and beset wrongfully and without legal authority to watch and beset the

said entrances and approaches to the said building, premises and the said office within the said jurisdiction every day regularly during the hours from 1 p.m. to 1-30 p.m. and 4-30 p.m. onwards (hereinafter referred to as the said hours), in such a manner as is calculated to coerce and prevent the managerial staff and the customers of the Plaintiff from approaching the said office, to obstruct the said entrances and approaches. On the 27th January, 1969, and every day thereafter the Defendants and each of them are continuing the aforesaid acts for the purpose of intimidating, threatening and/or scaring away and /or persuading and/or inducing the managerial staff and the customers as aforesaid to abstain from attending the said office and preventing them from carrying on any business there.

(b) Since 27th January, 1969, and every day thereafter the said Defendants at the said hours have formed and/or have caused to form unlawful assemblies at and near the said entrances of the said building premises and said office within the said jurisdiction and its surrounding areas, and thus have caused and/or causing obstruction to ingress into an egress from the said office.

(c) The Defendants have since 27th January, 1969, and every day thereafter held and/or holding demonstrations and/or causing demonstrations to be held in front of the office and the said building within the said jurisdiction regularly every day during the aforesaid hours and have caused and /or causing inflammatory and provocative speeches to-be made and slogans to be raised therein, intending to incite violence and breach of peace. Loud-speaker and microphones- are being used for such purpose.

(d) Since 27th January, 1969, the Defendants in course of the aforesaid" unlawful assemblies and demonstration have been continuously threatening and intimidating the managerial staff and the customers of the Plaintiff within the said jurisdiction with physical violence and gestures and also by using filthy and abusive language against them, resulting in vexation, harassment. and annoyance to them. Particulars of filthy and abusive languages are as follows:

(a) KUTTA (meaning, dog)

(b) SAALAH

(c) NIPAT JAAK (meaning, put an end to)

(d) KHOON KARBO (meaning, shall murder)

(e) DALAL (meaning, procurer)

(f) !KABAR DEBO (meaning, shall put in grave).

(e) The Defendants in the course of their wrongful and illegal assemblies and demonstrations as aforesaid are continuing to trespass and/or causing such trespass to be committed at the said office within the said jurisdiction, and in particular, to the said entrance thereof.

(f) The Defendants are further causing trespass of the said office within the said jurisdiction by defacing its wall with scribbling of abusive and provocative slogans thereon and/or by affixing thereon posters containing such abusive and provocative materials.

(g) The Defendants since 27th January, 1969, from time to time and holding meetings at or near the said office to devise ways and means to carry out their illegal activities as aforesaid by means of the aforesaid wrongful acts including the said watching and besetting, assemblies, demonstrations, threats, intimidations, abuse and violence.

(h) Since 27th January, 1969, the Defendants and/or some of the Defendants are regularly during the hours of 1 p.m. to 1-30 p.m. entering the chambers of the officers of the Plaintiff at the said office and making further demonstrations, assemblies in the said chambers. The said Defendants or such of them as are taking part in such wrongful assemblies and demonstrations are also raising slogans and indulging in violent and abusive language towards the officers. In course of such wrongful entry into the chambers of the officers, a peon of the Plaintiff, namely Achhaiber Singh, the Defendant No. 76 who originally did not agree to combine or join the other. Defendants and/or tried to resist such illegal acts, was pushed and assaulted. After the said incident on the 27th January, 1969, all the peons of the Plaintiff have joined the other Defendants in their wrongful activities.

(i) In particular, the Defendants Nos. 1, 2, 3 and 4 and each of them are wrongfully and illegally entering the said office of the Plaintiff and inciting the other employees of the Plaintiff working inside the said office, to carry on the aforesaid wrongful and illegal activities, demonstrations, assemblies, watching and besetting and have thereby committed and/or continuing trespass in the Plaintiff's said premises and/or also wrongfully and illegally interfering with the business and work of the Plaintiff at the said office.

(j) The Defendants have so far confined their wrongful acts and activities as aforesaid during the aforesaid hours of 1 p.m. to 1-30 p.m. and after 4-30 p.m. only on account of ensuing elections. The Defendants and each of them have threatened the Plaintiff that such assemblies and demonstrations will be stepped up after the elections and the same will continue throughout the working hours after the elections are held and/or the results of the elections are published. The Defendants have further threatened the Plaintiff that after the decisions they will be joined by other outside demonstrators and agitators in such assemblies and demonstrations. The same decision was taken by the Defendant on the 5th February, 1969, when they held a meeting near the entrance to the said building where the Defendants wrongfully and illegally invited and collected a lot of outsiders.

22. The reliefs claimed by the Plaintiff in the suit are set out hereunder:

1. A perpetual injunction restraining the Defendants and each of them, their servants agents and associates, from
 - (a) compelling the Plaintiff to conduct its business in accordance with the dictates and demands of the Defendants,
 - (b) watching and besetting or causing or procuring for watching and besetting of the said entrances and approaches to the said building and said office,
 - (c) preventing the employees, the managerial staff and the customers of the Plaintiff from approaching or entering the said office of the said building or to prevent them from working therein,
 - (d) intimidating or coercing the employees, the managerial staff and the customers of the Plaintiff,
 - (e) obstructing the entrances and approaches of the said office and the said building,
 - (f) compelling the employees and the managerial staff of the Plaintiff to keep away from the said office,
 - (g) preventing the customers of the Plaintiff from approaching or entering the said office,
 - (h) interfering with the use and enjoyment of the said office by the Plaintiff or with the exercise of the Plaintiff's right over or in accordance therewith,
 - (i) preventing or interfering with the Plaintiff from carrying on its lawful business,
 - (j) injuring the Plaintiff in carrying on its said business,
 - (k) forming or causing to form unlawful assemblies in front of the said office and the said building and its surrounding areas and causing obstructions to and interfering with the ingress to or egress therefrom,
 - (l) holding or causing demonstrations in front of the said office and of the said building and making or causing speeches to be made or raising slogans in front of the said office and the said building,
 - (m) threatening the employees, the managerial staff and the customers of the Plaintiff with physical violence, gestures or annoying or harassing them with filthy or abusive language,
 - (n) from committing criminal assault, violence and trespass to the said office and its entrances,
 - (o) defacing the walls of the said office or its surrounding areas and/or fixing posters thereon.

2. A perpetual injunction restraining the Defendant) N05. 1, 2, 3 and 4 and each of them from trespassing into the said office and/or the said building and/or interfering with the business of the Plaintiff inside the said office and from committing any nuisance inside the said office and/or the said building.

3. Alternatively, a perpetual injunction may be granted in such other form as this Honourable Court may deem it fit and proper.

4. In addition, damages for Rs. 30,000 and Rs. 1,00,000.

5. In the alternative, an enquiry into the damages suffered by the Plaintiff and in addition a decree for the sum as may be ascertained on such enquiry.

6. Injunction.

7. Costs.

8. Such further or other reliefs as may be deemed fit and proper.

23. The order for transfer of the purchase office from premises No. 13 is in my opinion no way connected with the subject matter of the suit or the reliefs claimed therein.

24. According to Mr. Chatterjee, the Plaintiff obtained the aforesaid orders of injunction against the Defendants on the limited representation that the purchase office would continue to be in Calcutta. Mr. Chatterjee contends that in view of the aforesaid orders of injunction the Applicants in the instant case have been prevented from taking part in trade union activities against the proposed transfer of the Applicants except the Defendants Nos. 1 to 4 and closing down of the purchase office in Calcutta. In my opinion, Mr. Chatterjee's contentions are untenable. Only the illegal acts of the Applicants have been restrained by the aforesaid orders of injunction. The Applicants are entitled to take up their bona fide and genuine trade union activities in furtherance of their trade union rights against the proposed transfer or closure of the Calcutta office.

25. Section 151 of the CPC governs the procedure and not the substantive rights of the parties.

26. In the instant case, *prima facie* it appears to me that an employer is entitled to close his office or place of business or transfer the same from one place to another. Ordinarily, in the absence of special contract or Statutes an employee is not entitled to object to the same. In the instant case, no special terms of a contract or special provisions of any Statute have been placed before me to show that the Applicants are legally entitled to object to (the transfer of the employees from Calcutta to Rourkela or from closing the purchase office in Calcutta. If the Applicants are not entitled to compel the Plaintiff to continue its purchase office in Calcutta or to keep all the Applicants at the Calcutta office, no order for injunction against the same can be passed. Even if the said orders were passed *mala fide*, as urged, the Applicants

cannot challenge the same. In any event, the claim of the Applicants for keeping open the purchase office of the Plaintiff in Calcutta or to prevent the Plaintiff from transferring its employees from the Calcutta office to Rourkela is, in my opinion no way connected with the subject-matter of the suit in the instant case or to any relief claimed therein. For the aforesaid reasons I am of the view that no relief can be granted to the Applicants in the instant application. Mr. Chatterjee's reliance on the passage at p. 1201 of The Annual Practice (1965 ed.), is, in my opinion, of no assistance to Mr. Chatterjee inasmuch as the said observations are based on the special provisions of O. L. r. 6 of the Rules of the Supreme Court. The said observations relied on by Mr. Chatterjee are to the following effect:

A Defendant may now, under the above Rule, make after appearance an interlocutory application for an injunction [Sargent v. Read (1876) 1 Ch.D. 600]. The relief sought by the Defendant must arise in respect of the Plaintiff's action, or be incident to the Plaintiff's cause of action. If the relief sought by the Defendant is outside the Plaintiff's action, the Defendant cannot move for an injunction until he has delivered a counter-claim, but must institute a cross action [Carter v. Fey (1894) 2 Ch. 541, 546 ; Collision v. Warren (1901) 1 Ch, 812].

For the aforesaid reasons this application must fail.

27. Mr. B.N. Sen, appearing on behalf of the Respondent, has relied on several decisions on the questions of the rights of the employer to close the business or the office or place of business. The said decisions are as follows: K.N. Joglekar and Others Vs. Barsi Light Railway Co. Ltd., , Raj Kumar Singh Vs. Authority under Payment of Wages Act and Another, , Indian Hume Pipe Co. Ltd. Vs. Their Workmen, , Kalinga Tubes Ltd. Vs. Their Workmen, and Padam Sen and Another Vs. The State of Uttar Pradesh, . It is not necessary for me to consider the said cases in detail in the instant application.

28. In the premises, this application is dismissed. Costs cost in the cause. Interim injunction passed by A. K. Sinha J. will continue until 3 p.m. on Tuesday next.