

(1997) 02 CAL CK 0006

Calcutta High Court

Case No: F.M.A.T. No. 1059 of 1996

Union of India (UOI)
and Others

APPELLANT

Vs

Promod Kumar
Kishorepuria

RESPONDENT

Date of Decision: Feb. 26, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 3 Rule 4, Order 3 Rule 5
- Constitution of India, 1950 - Article 226

Citation: (1997) 2 CALLT 220

Hon'ble Judges: Samir Kumar Mookherjee, J; Rabin Bhattacharyya, J

Bench: Division Bench

Advocate: R.N. Bajoria, P.K. Dutta and B. Mookherjee, for the Appellant; B.C. Roy, Dipankar Ghosh, Anjan Mukherjee, Bhaskar Sen, Milon Mukherjee, Sunil Chatterjee, C.N. Mukherjee, Y. Dastoor, S. Mukherjee and D. Ghosh, for the Respondent

Final Decision: Allowed

Judgement

Samir Kumar Mookherjee, J.

The present appeal is directed against orders of learned single Judge, dated 12th and 17th March, 1996, in CO. No. 4794(W) of 1996. The appeal had been heard out by us on assignment on 10th of May, 1996 by the learned Chief Justice. The subject matter of challenge in the writ application is an order of detention, dated 15th of November against the petitioner. By the orders, impugned in the appeal, the learned single Judge, while dealing with the prayers for interim order, allowed the same until further orders, almost ex parte, as will appear from facts which follow, with liberty to the respondents to pray for vacation of the same upon notice and ultimately maintained the same by rejecting the prayer for recalling of the said orders by the appellants.

2. In course of hearing of the appeal, consistently with the forensic diversity of the Counsel of the contesting parties, in-depth submissions were made, toughing the validity of the proceeding impugned in the writ application, but the uncommon and peculiar nature of the facts, under which the interim order had been passed and maintained by the learned single Judge, has persuaded us, as an appellate court, to dispose of the entire appeals on a technical point as we have felt that any other mode of disposal would militate against the concept of Justice. The facts, which we have taken into consideration, substantially appear on the face of the orders of "he learned single Judge, assailed before us, and to some extent, from the materials already on records of the case.

3. The writ application, affirmed on 11th of March, 1996, had been mentioned on 11th March, 1996 and was sought to be moved before the learned single judge on 12th of March, 1996, after being listed, at the first sitting of the court. The application was not listed and the learned single Judge directed service of copy of a notice on Mr. Pramod Ranjan Roy, a learned Senior Advocate, who allegedly normally appeared for the respondents in such matter and fixed up 1-00 P.M. on the same date for taking up of the application. From the endorsement made on the copy of the letter, to which the copy of the writ application was an enclosure, it appears, that the learned senior Advocate noted that at 1-00 P.M. he appeared before the learned court with Mr. Sadhan Roy Chowdhury as his learned junior, and requested for regularisation of the matter. The order sheet, dated 12th of March, 1996 further reveals that no Vakalatnama had been filed, The learned trial Judge treated the application to be on the day's list in view of the "urgency submitted not opposed by the learned Advocates for the respondents" granted six weeks time for filing affidavit-in-opposition and two weeks for filing of the reply; the matter was directed to appear nine weeks hence and the interim order was made operative untill further orders with liberty for vacation as aforesaid. The last two lines of the order sheet of the said date further recorded that the matter was to be "treated as part-heard in view of lengthy submissions made, as submitted" and respondent No. 5 was permitted to be impleaded. On 15th of March, 1996 on behalf of respondent Nos. 1 and 5, who were Union of India, Ministry of Finance and Commissioner of Customs, Calcutta, after filing a Vakalatnama dated 14th of March, 1996, Mr. Bajoria, with his learned advocates on record for the said respondents, appeared with an assertion that the order, dated 12 of March, 1996 of the learned trial Judge, be recalled as neither Mr. Pramod Ranjan Roy or Mr. Sadhan Roy Chowdhury was authorised to represent the respondents. The learned single Judge directed appearance of the application as to be mentioned" on Monday, in presence of the learned Advocates for the petitioner as also Mr. Pramod Ranjan Roy and Mr. Sadhan Roy Chowdhury, learned Advocates, who purported to represent the respondents. It appears from the order, dated 18th of March, 1996, that Mr. Pramod Ranjan Roy, inter alia, contended that he was authorised to represent the Union of India and not the other learned Advocates, i.e. Mr. Bajoria or Mr. Biswajit Mukherjee and the Vakalatnama filed by Mr. Biswajit Mukherjee on behalf of the Union of India was not a proper Vakalatnama as the signatory had no authority to appoint such Advocates on behalf of the Union of India. Mr. Roy claimed to represent respondents Nos, 1 to 4. It is

pertinent to note that the Vakalatnama filed by Mr. Bajoria's junior was on behalf of respondents Nos. 1 and 5, the latter one having been added as party as stated above, in terms of the liberty granted by court to the petitioners on 12th of March, 1996. The learned single Judge appears to have taken the situation as unfortunate but declined to embark upon any enquiry as to which of the two sets of learned Advocates would or should have the authority to represent the Union of India. Upon expression of a view that Mr. Pramod Ranjan Roy, represented the respondents and Mr. Bajoria's authority was doubtful the learned Judge maintained the interim order. The learned Judge further recorded that the service on Mr. Roy was effected with an inadvertent statement in the letter of learned Advocate on Record for the petitioner that the court desired the copy to be served on Mr. Pramod Ranjan Roy, which the court recorded not to have desired, because the court had no knowledge as to who represented the Union of India but merely wanted the respondents to be notified. The order, dated 18th of March, 1996, appears to embody the reasons in purported justification of the interim order issued on 12th March, 1996

4. From the facts, which we have noted above, one position stands admitted that there was a dispute about the authority of two sets of learned Advocates to represent the respondents and so far as Mr. Pramod Ranjan Roy or his learned Junior was concerned, no Vakalatnama had been filed till 18th of March, 1996 but so far as Mr. Bajoria and his learned junior was concerned a Vakalatnama, at least, with regard to two of the respondents was on record before the learned single Judge and as such according to the Rules governing such applications, it could be said that Mr. Bajoria had authority to represent the respondents and Mr. Pramod Ranjan Roy's appearance on behalf of the respondents could not be said to be duly authorised particularly when even subsequently no such Vakalatnama could be filed by Mr. Pramod Ranjan Roy's learned junior. In this connection, reference may be made to Rules 34 and 53 of the Rules of this court relating to application under Article 226 of the Constitution of India and Order 3, Rules 4 and 5 of the Code of Civil Procedure. It is also an admitted position that the learned Judge did not intend to grant interim order *ex parte* but had been considering the prayer for interim order as if in presence of the respondents. Since the respondents cannot be said to have been represented in law by Mr. Pramod Ranjan Roy on that date the court should have insisted upon filing of power by Mr. Ray Chowdhury we do not think it necessary for us to enter into the merit of any other contentions raised before us but because of this technical flaw, we set aside the impugned orders and remand the matter back to an appropriate Bench for the prayer for interim order being heard out in presence of both the contesting parties, represented through their sets of learned Advocates. We keep on record that it will be open to the learned single Judge, who may constitute the appropriate Bench for this application, to deal with the matter on merit on the basis of an independent assessment.

The appeal is, therefore allowed. There will be no order as to costs.

Rabin Bhattacharyya, J.

5. I agree.