(1976) 01 CAL CK 0018

Calcutta High Court

Case No: Suit No. 519 of 1973

Hanuman Estates Pvt. Ltd.	APPELLANT
Vs	
Dhanuka Industries Pvt. Ltd.	RESPONDENT

Date of Decision: Jan. 30, 1976

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 152
- West Bengal Premises Tenancy Act, 1956 - Section 17(2)

Citation: (1976) 2 ILR (Cal) 578

Hon'ble Judges: R.M. Datta, J

Bench: Single Bench

Judgement

R.M. Datta, J.

This is one of those hard cases where the justice of the case demands that the prejudice caused to the Applicant by an act of Court should be removed; yet the relief cannot be granted for want of jurisdiction of this Court. The decided cases hold that the jurisdiction, under the circumstances of this case, can be exercised only by the appeal Court which has since taken seisin over the matter and the lower Court has become functus officio even for the purpose of correcting an error in the order as settled by the Department.

2. The facts are somewhat strange and peculiar and shortly put, they are as follows:

A suit for ejectment being Suit No. 319 of 1973 was filed on June 4, 1973, by Hanuman Estates Pvt. Ltd. against Dhanuka Industries Pvt. Ltd. In that suit by orders of the Court the Defendant Dhanuka Industries Pvt. Ltd. was directed to deposit and they deposited in Court from time to time a total sum of Rs. 60,000. The order was passed u/s 17(2) of the West Bengal Premises Tenancy Act, 1956, as amended. There were several proceedings in between but it is not necessary to refer to the same inasmuch as those are not relevant for the purpose of this application. After the said sum was deposited the income tax Authorities asked for leave to intervene and

sometime on or about December 10, 1973, the department applied for withdrawal of the said sum by reason of an attachment thereon under the provisions of the income tax Act. ,After hearing all the parties on March 20, 1974, this Court delivered a written judgment, the operative portion whereof ran as follows:

Under those circumstances, in my opinion, the Petitioner is entitled to an order and I make an order in terms of prayer (a) of the notice of motion. It is stated in Court by Mr. Sengupta that certain other sums have already been deposited by the Defendant besides the said sum of Rs. 60,000. The same is beyond the scope of and hence, cannot be considered in this application. The Petitioner would take such steps in respect thereto as the Petitioner might be advised. Each party will pay and bear its own costs. The operation of the order is stayed for 10 days.

3. Under the Rules of this Court the said order was to be settled by the Department of this Court and in the usual course draft orders were issued to the three Solicitors, viz., Mr. S.K. Mitra for the income tax Department, Messrs. Khaitan and Co., for Dhanuka Industries Pvt. Ltd. and Messrs. G. More and Co. for Hanuman Estates Pvt. Ltd.

4. The original draft orders were called for by this Court from the Department and it appeared therefrom that none of the Solicitors appeared on the date of the settlement of his said order either on behalf of the income tax Department or on behalf of the two parties to this suit but only two clerks appeared from the said two Solicitors of the parties. Some corrections were suggested in one of the drafts which was returned by one of the said two Solicitors after approving the same. It was not clear which Solicitor sent it after correction since it was not signed by any Solicitor or anybody on his behalf. Be that as it may, so it appears from the draft orders that initially the Department concerned prepared and typed out the drafts in such a way that it did not conform to the judgment delivered by this Court. What was settled as the settled order was as follows:

It is ordered that the said Applicant be at liberty to apply to this Court for withdrawal of the sum of Rs. 60,000 if he be so, advised And it is further ordered that parties appearing as aforesaid do bear and pay their costs of and incidental to this application to be taxed but the Taxing Officer of this Court And it is further ordered that the operation of this order be and the same is hereby stayed for a period of 10 days from the date hereof.

5. It is necessary here to set out the prayer (a) of the petition in terms whereof the order herein was made by this Court on March 20, 1974.

(a) The entire amount of Rs. 60,000 was deposited in this Hon''ble Court by the Defendant be directed to be paid to your Petitioner.

6. The above order was settled on or about August 30, 1974. But, in the meantime, on or about March 29, 1974, Dhanuka Industries Pvt. Ltd. preferred an appeal from

the order of this Court and obtained an ad interim order for stay of the operation of the order of this Court but on condition that Dhanuka Industries Pvt. Ltd. would not withdraw the amount lying in Court. The said interim order was confirmed by the order dated April 30, 1974.

7. It seems that immediately after the order was settled on or about August 30, 1974, the parties, namely, the Plaintiffs and the Defendants became conscious of the position and then came to a settlement and filed a terms of settlement on September 15, 1975, whereby the said suit being Suit No. 319 of 1973 Hanuman Estates Pvt. Ltd. v. Dhanuka Industries Pvt. Ltd. was settled. On the very next day, i.e. on September 16, 1975, an ex parte application was moved before the learned Judge taking interlocutory matters by Hanuman Estates Pvt. Ltd. for an order for payment of the total sum of Rs. 99,345-12 which was then lying deposited in Court in terms of the consent decree filed. On the very same day an order was made by Basu J. to that effect. Admittedly, this application was moved and the order was obtained without notice to the income tax Department in spite of the fact that the income tax Department was a party to the said pending appeal in which Dhanuka Industries Pvt. Ltd. were restrained from withdrawing the amount.

8. On coming to know of this order the income tax Department mentioned the matter before the Appeal Court on September 26, 1975 and obtained an order whereby the Registrar, Original Side of this Court, was directed not to part with the said sum lying with him.

9. It appears that to by-pass the said order of the Appeal Court the said two parties, namely, Dhanuka Industries Pvt. Ltd. and Hanuman Estates Pvt. Ltd. combined together and mentioned the appeal on September 30, 1975, upon notice to the income tax Department in Appeal No. 112 of 1974 and obtained an order of dismissal of the appeal as follows:

The Court : The learned Counsel for the Appellant has submitted that his client does not want to proceed with the appeal. In these circumstances, he has stated that he has no opposition to the appeal being dismissed.

We are, therefore, of the opinion that the appeal be treated as on to-day''s list and the appeal be dismissed. All interim orders stand vacated; there will be no order on this application and no order as to costs.

This order will not be given effect to till 1.30 p.m. on Tuesday next, 3.10.75.

10. It is stated before me that on behalf of the income tax Department it was represented before the Appeal Court that there was discrepancy between the judgment and the order as settled. But the learned Counsel appearing on behalf of Hanuman Estates Pvt. Ltd. represented that no judgment was delivered by the trial Court. Under those circumstances, the effect of the order was stayed by the Appeal Court till December 3, 1975.

11. On October 1, 1975, on behalf of the income tax Department the matter was again mentioned and it was represented before the Appeal Court that the trial Court actually delivered a judgment and upon that it was ordered by the Appeal Court on October 1, 1975, as follows:

The order made herein dated 30th September, 1975, is varied to the following extent:

Judgment and the order dated 20th March, 1974, of R.M. Datta J. is affirmed'' be added after ''and the appeal be dismissed''.

The last paragraph of the order dated 30th September, 1975, be deleted.

12. On the same day, i.e. on October 1, 1975, the matter was mentioned before Basu J. then taking interlocutory matters and after hearing the parties his Lordship was pleased to recall his Lordship''s order for payment.

13. Thereafter, on December 16, 1975, the income tax Department made the present application, inter alia, for an order that (a) the order dated March 20, 1974, as drawn up, completed and filed, be directed to be cancelled and/or annulled; (b) the Registrar, High Court, Original Side, be directed to take step for drawing up and to complete the order dated March 20, 1974, in conformity with the judgment dated March 20, 1974; (c) the order dated March 20, 1974, be amended and/or rectified and/or modified in conformity with the judgment dated March 20, 1974; (d) the Registrar, Original Side, be directed not to act on the order dated March 20, 1974, as drawn up, completed and filed until the hearing of this application.

14. An ad interim order was obtained from this Court in this application on December 16, 1975, whereby the Registrar was directed not to make any payment in respect of the sums lying deposited with him.

15. From the facts as stated above it is quite clear that the order as made by this Court and the order as drawn up and settled by the Department of this Court are not in conformity with each other. The undisputed position is that the order as drawn up and filed is not in conformity with the order of the Court as made, as would appear from the judgment delivered by this Court. It is clearly and obviously an erroneous order and it did not convey the real nature and character of the order as passed. An order was passed in terms of prayer (a) of the Notice of Motion whereby the amount to the extent of Rs. 60,000 which was lying deposited in this Court, was directed to be paid to the income tax Department, but the order as drawn up showed that liberty was given to the income tax Department if they would be so advised, to make another application to this Court for withdrawal of the sum of Rs. 60,000. In other words, the very same application on which an order was passed in favour of the income tax Department was to be made again if the sum of Rs. 60.000 was to be withdrawn from this Court. It is surprising and curious how such an order came to be settled by the Department of this Court. By no stretch of

imagination such an order could be settled in that manner. The Solicitor for the income tax Department was served with a copy of the draft order, but neither the Deparment nor the Solicitors or their clerks appeared at the time of the settlement of the order nor was the defect pointed out by any of them at the time of the settlement of the order. In any event, the ultimate responsibility was that of the Department concerned in settling this order in conformity with the judgment passed by the Court.

16. Even though this order was wrongly drawn up and settled, yet it could be corrected by this Court if the matter was brought to the notice of this Court immediately thereafter, but the difficulty has arisen because the Appeal Court has already taken seisin over the matter and has passed an order thereon affirming both the judgment and the order dated March 28, 1974, of this Court and dismissing the appeal.

17. The short question before me is whether in view of the said orders of the Appeal Court dated September 30, 1975 and October 1, 1975, this Court can any longer exercise jurisdiction over its own order and amend the same or whether this Court is functus officio and without jurisdiction in view of the said two orders passed by the Appeal Court. Mr. Chakraborty, learned Counsel appearing for the income tax Department has referred to Rule 1 of chap. XVI of the Original Side Rules which requires that the decree or order must be drawn up in accordance with the judgment. It is contended that, as this was a written judgment delivered by this Court, the order settled herein was bound to be in accordance with the order as passed in the judgment. The same having not been done in that manner, this Court would be in a position to correct the same. This correction is to be made u/s 152 of the CPC and as such, even though this order is settled, yet it could be corrected by the Court passing the said order. The fact that the Appeal Court has affirmed the judgment and order of this Court, according to the learned Counsel, did not alter the position. It is contended that the Appeal Court has passed an order without hearing the appeal on its merits and on the basis of the concession made by the parties by not pressing the same and in getting the same dismissed. What is required to be amended is to direct the Department concerned to draw up the order in accordance with the judgment passed and if that would be done that would not in any way affect the Appeal Court order.

18. Mr. Chakraborty in support of his argument referred to the case of Ahidhar Ghose v. The Secretary of State for India in Council 36 C.W.N. 665 where Rankin C.J. sitting with Costello J. permitted the decree to be amended even after the judgment of the High Court had been affirmed by the Privy Council''. The learned Counsel referred to the case of Kalidas Rakshit and Anr. v. Saraswati Dassi and Ors. 46 C.W.N. 982 where Mitter J. sitting with Khundkar J. in dealing with such a point observed as follows:

This order was passed after this Court had on appeal confirmed his (Additional Subordinate Judge) decree. No doubt an application u/s 152 of the CPC to supply the said omission should have been made to this Court, for on the confirmation of the decree of the learned Additional Subordinate judge by this Court the only decree in existence in the eye of law was the decree of this Court, but this technical defect is of no moment, for we can supply an omission which as we have pointed out is an obvious one.

19. In any event the Court treated that case as a special one and did not disturb the order of the learned Additional Subordinate Judge whereby he supplied the omission in the decree after the same was confirmed on appeal by the High Court. The above observation, however, is against the contention of Mr. Chakraborty and the proper Court where the application should be made, according to the Bench decision of this Court, is the Appeal Court which had confirmed the said decree. The last case cited by Mr. Chakraborty was the case of Sachindra Nath Kolya Vs. Probodh Chandra Sarkar, where another Bench of this Court, under similar circumstances, held that the High Court which had disposed of the appeal could grant the amendment in revision against the order of the trial Court allowing the amendment of the order, when the Plaintiff had made a substantive application to the High Court u/s 152. In such a case the question of jurisdiction was not considered to be material. In that case when the matter came up before the Plaintiff made a substantive application to the High Court u/s 152 and on the basis of that application the High Court did not feel any difficulty to make the order allowing the amendment of the trial Court order.

20. This point was fully gone into and considered by another later Bench of this Court in the case of Sm. Chandra Kala Devi and Others Vs. Central Bank of India Ltd., . In that case, the said cases Supra and Supra were considered. S.R. Das Gupta J. sitting with N.K. Sen J. held that after a decree had been appealed from and the Appeal Court had made a final order in the said appeal either allowing or dismissing the appeal'', the lower Court would cease to have all jurisdiction over the matter. The decree in effect would become the, decree of the appellate Court and the jurisdiction to amend the decree would be in the Appeal Court and not in the Court below. The lower Court would become functus officio in the matter.

21. Mr. Chakraborty, the learned Counsel, contended that the above decision did not consider the earlier Bench decision (3), but in my opinion, that case cannot help Mr. Chakraborty''s clients, inasmuch as there the order was made not on the basis of the application made before the trial Court but on the basis of the substantive application made before the High Court. The observations as set out above would clearly show that it was the High Court where the application should have been made, under such circumstances and not before the Subordinate Judge.

22. That being the position, even though 1 was anxious to make an order granting relief as prayed for, I consider that I am bound by the above authorities cited before

me and I must act in accordance with law. That being the position, I hold that in view of the order of the Appeal'' Court dismissing the appeal and affirming the judgment and decree of this Court, this Court has become functus officio and has ceased to possess all jurisdiction over the matter and accordingly, the application cannot succeed. Under the circumstances the application is dismissed, but in the facts and circumstances of this case there will be no order as to costs.

23. It is to be recorded that Mr. Chakraborty mentioned this matter before the Appeal Court on January 22, 1976 and obtained an order to the following effect:

The order passed by the Appeal Court on 1.10.75 is not intended to interfere in any way to the hearing of the pending application before the learned Judge who will dispose of the same on merit.

I have considered the application on merit and I have found that this Court has ceased to have any jurisdiction over the matter.

24. In the facts and circumstances of this case, there will be an order for injunction restraining any of the parties: from withdrawing the amount lying with the Registrar, Original Side of this Court, until three weeks from date hereof. In any event, the Registrar is directed not to part with this money until expiry of three weeks from date hereof.