
(1976) 07 CAL CK 0024

Calcutta High Court

Case No: Civil Revision No. 1694 of 1974

Debabrata Mukherjee

APPELLANT

Vs

Gouripur Company Ltd.

RESPONDENT

Date of Decision: July 2, 1976

Acts Referred:

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

Citation: (1976) 2 ILR (Cal) 280

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: Sunit Krishna Dutta and Joydeb Mukherjee, for the Appellant; J.N. Roy, Sankar Mitter and Sailendra Nath Dutt, for the Respondent

Judgement

Chittatosh Mookerjee, J.

The only point in this Rule is whether the misc. judicial case started by the learned Munsif, Second Court, Barasat, upon an application made under Order XXXIX, Rule 1, Sub-rules (2) and (3), as amended by the Calcutta High Court, should be heard first before the disposal of the application for temporary injunction made by the Petitioner in connection with T.S. No. 56 of 1975. The Petitioner has brought the said suit against" the opposite parties, inter alia, for declaration and certain consequential reliefs. On February 1975, the learned Munsif issued a show-cause notice upon the Defendants why the Plaintiffs" prayer for temporary injunction should not be granted. The learned Munsif also passed an ad interim injunction in favour of the Plaintiff.

2. In short, the case of the Petitioner is that the opposite parties have violated the said ad interim order of injunction. The present opposite parties are contesting both the temporary injunction matter and also the above misc. case.

3. I do not propose to prejudice the matters by considering the merits of the respective claims nor is it possible within the limited scope of the present Rule. But,

at the same time, I am not prepared to accede to the prayer of the Petitioner that the misc. judicial case brought by him should have precedence and the same should be heard before the temporary injunction matter is taken up.

4. The question of the ad interim injunction is still subjudice and it is premature to consider whether the Defendants or any of them are in contempt and whether they are required to purge themselves of the same. The said question might arise only after the disposal of the said misc. judicial case. Further, in the instant case, the Defendants themselves have not applied to the Court for granting any aid in their favour. They have prayed that they may be allowed to raise defences to the application for temporary injunction filed by the Petitioner. One of the contentions of the opposite parties, I understand, is that the civil Court has no jurisdiction to grant the interim order prayed by the Plaintiff, Petitioner.

5. The judgment delivered by Sir Asutosh Mookerjee J. in [Raj Rajeswari Jiu and Others Vs. Gati Krishna Chakrabarti and Others](#), is clearly distinguishable on facts. In the said case the Court declined to entertain an appeal by a party who had committed, breach of an undertaking to pay deficit court-fees upon his memorandum of appeal filed in the lower appellate Court and the lower appellate Court acting upon the said undertaking had allowed the Appellant to proceed with the appeal before it. This Court while dismissing the appeal found that the Appellant had, in fact, gone back on his said undertaking and after the result of his appeal was unfavourable he had failed to pay the deficit court-fees which he undertook to pay. Thus, it was found that the Appellant was guilty of misconduct amounting to contempt; therefore, he was disentitled to prosecute the second appeal in this Court. In the instant case, as already stated, the opposite parties have not yet been adjudged as contemnors and the opposite parties are only seeking to raise their defences to the application for temporary injunction made by the Petitioner.

6. Sir Asutosh Mookerjee in *Dharmapal and Anr. v. Mohunt Krista Dayal* (1909) 10 C.L.J. 631 (635, 636) pointed out that the Rule that the party in contempt cannot be heard is neither inflexible nor of universal application and the Court has a discretion in the matter. The learned Judge observed that because a party is found to be in contempt, the Court is not bound to deny him all assistance or protection, but the Court will act in such a manner as will maintain its own dignity and at the same time subserve ends of justice. I respectfully agree with the above observations in *Dharmapal v. Mohunt Krista Dayal* (1909) 10 C.L.J. 651 (635, 636).

7. In the above view, I do not propose to interfere with the discretionary order of the Court below, but at the same time I direct the learned Munsif to dispose of both the pending ad interim injunction matter and the misc. judicial case expeditiously. It would be open to the learned Munsif to fix dates of the two matters if not already done according to his convenience and to dispose of them as early as possible. He need not keep either of the cases adjourned till the disposal of the other.

8. The Rule is disposed of as above without any order as to costs.