

(1974) 01 CAL CK 0009**Calcutta High Court****Case No:** Civil Rule 2618 (M) of 1972

Amalesh Mukherjee

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision: Jan. 14, 1974**Citation:** 78 CWN 530**Hon'ble Judges:** Amal Kumar De, J**Bench:** Single Bench**Advocate:** Mahitosh Majumdar and Rupen Mitra, for the Appellant; Tapas Banerjee and Malay Ghose, for the Respondent**Judgement**

Amal Kumar De, J.

Petitioner in this Civil Rule is the Plaintiff in Title suit No. 509 of 1972 in the City Civil Court, Calcutta and is the appellant in P.M.A.T. No. 1941 of 1972. He is a cashier in the State Bank of India. On 19.4.72 he was employed in that capacity, in the Alipore Branch of the State Bank. In compliance with the instructions received from the Head Office of the Bank the opposite party No. 2 the Bank's Agent of the Alipore Branch, informed the petitioner of his transfer, made by the Head Office to its Rajpur Branch. He was not allowed to work as cashier at Alipore Branch from 20.4.72. He got the order of transfer on 22.4.72. He filed the suit against the Bank, opposite party No. 1, and its Alipore Agent, opposite party No. 2, and prayed for a temporary injunction to restrain them from giving effect to the order of transfer. The learned trial Judge has by his order, after contested hearing of both the parties, refused the said prayer. Petitioner filed F.M.A.T. No. 1941 of 1972 on 25.2.72, and thereafter filed a petition, giving rise to this Civil Rule, for an order of stay of operation of the order of transfer of the Bank, challenged in the suit as malafide on the allegation that the opposite party No. 2, the Agent has all along connived at the designs of the Alipore Union of the State Bank of India Staff Association to issue the order. He has got an interim order of stay on 18.8.72. The opposite party No. 1 in opposing the Rule submitted that the petitioner is not entitled to the order, asked

for, as the order of transfer has been given effect to and there can be no stay of operation when the petitioner himself has acted in terms of it. It is further submitted that if the order asked for is given, it will, amount to allowing the appeal and creating a situation having the effect of a mandatory order upon the Bank to retransfer the petition from Rajpur Branch to Alipore Branch again before the suit is heard on merits.

2. The petitioner however contended that the opposite parties should not be permitted to oppose his prayer inasmuch as the opposite party No. 2 had been made a contemner in Civil Rule No. 2848 of 1972 at his instance for not having permitted him to join and work at Alipore Branch in the same post after the interim stay, granted by this Court on 18.8.72.

3. I will take up for consideration this objection first. The opposite party No. 1, the Bank, is not a contemner in Civil Rule No. 2848 of 3972. The Bank cannot therefore be barred in opposing the Rule on that ground. It is to be noticed that the opposite parties in the Rule have not approached the Court with any prayer of their own. They have appeared only to oppose the prayer of the petitioner. One being in contempt and without purging himself of contempt is not permitted to initiate proceedings.

4. It would be a most unjust extension of the rule against parties in contempt to take away his defence in protecting himself though he is not, being in contempt, to take the advantage of the proceedings in the cause.

5. A person in contempt cannot be heard unless he has purged himself of it is not in any way an absolute proposition of law, but only a qualified one, being subject to various exceptions. I may in this connection refer to the case of Sudhir Chandra Das v. Raseswari Chaudhurani, reported in ILR 55 Cal. 1110. In that case it has been decided that a party, though continuing to be in contempt, is to be heard in defence of his rights. I am, therefore unable to give effect to this contention of the petitioner.

6. On merits the petitioner has no case for getting the stay asked for. It is seen from the two petitions dated 29.5.72 and 14.6.72, Annexure A of the affidavit-in-opposition of the opposite party, that the petitioner applied to the Agent, Rajpur Branch for leave, which he could only do as an employee of that Branch and on ceasing to be an employee of Alipore Branch. It indicates that the order of transfer has been complied with and acted upon by the petitioner himself. Petitioner submitted that his suit would be infructuous if his prayer is not granted. This contention equally cuts at the root of his own stand. If refusal makes his suit infructuous, grant gives him the decree before trial. The position is worse now. Matter has been considered once by the trial Judge and refused by him; whether or not refusal by him is proper is awaiting decision in the pending F.M.A.T. No. 1941 of 1972. To obtain the order, which has been so refused before hearing of the appeal, will mean allowing the appeal. The petitioner cannot get the stay asked for which

was granted in interim way on 18.8.72. In considering a prayer for injunction, which is really the intention of the petitioner in asking for stay, one is to see on which side, in the event of success, will lie the balance of inconvenience if the order does not issue. If the transfer order is ultimately held as hit by mala fide, is contended by petitioner, it will be recalled and the petitioner having accepted transferable job will stand to lose nothing. He will then be retransferred to his post in the Alipore Branch. But if the suit fails with this order standing in his favour, the opposite party will be compelled against its will to keep the petitioner at his post for this period even though he is not considered a person dependable to be there in the interest of the Branch of the Bank. Considered from this standpoint also the petitioner is not entitled to be granted the prayer asked for.

For all these reasons, I discharge the Rule and the interim order made on 18.8.72 is withdrawn.

There will be no order for costs in this Rule.

Stay of operation of this order, as prayed for, is rejected.