

(1986) 12 CAL CK 0020

Calcutta High Court

Case No: None

In Re : Royal Calcutta Turf Club
and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 9, 1986

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Specific Relief Act, 1963 - Section 14, 41(1)

Citation: 91 CWN 1064

Hon'ble Judges: Mitra, J

Bench: Single Bench

Advocate: Mukul Prokash Banerjee and S.K. Seal, for the Appellant; Bidyut Kumar Banerjee and Sudipa Ray, for the Respondent

Final Decision: Dismissed

Judgement

Mitra, J.

The opposite party as plaintiff filed Title Suit No. 446 of 1986 before the 2nd Court of the learned Music at Sealdah against the petitioners, inter alias, for declaration that the alleged notice dated 16th September, 1986 refusing to renew the agency at off course centers was illegal, invalid and inoperative and also for permanent injunction restraining the petitioners from giving effect and /or further effect to the said notice, also restraining them from withholding supply of jack pot and Treble Totes Tickets to the opposite party at the rate of Rs. 5/- and Rs. 2.50 p. Respectively and also restraining them from withholding publication for his name as an agent of the petitioner No. 1. The opposite party also filed an application for temporary injunction in the suit, inter alias, praying for restraining the petitioners from giving effect to the said notice and also restraining them from discontinuing the supply of Tack pot and Treble Totes Tickets at the rate of Rs. 5/- and Rs. 2.50/ respectively to him and obtained an expert interim order on 11th November 1986. Against the said

expert ad-interim injunction the petitioners have moved this court in revision under Article 227 of the Constitution of India. The case as made out by the petitioners in their revisional application inter alias is that the petitioner No. 1 having an unregistered and/or unincorporated club and a private organization not being registered under the Society Registration Act and also not being a Company registered under the partnership Act, no suit lies against the petitioner No. 1 and as such the trial court was wrong in granting an ad-interim injunction against the petitioner No. 1. The petitioners have further stated that for the purpose of enlarging of course centers according to the sanction and/or approval of the State Government the petitioner No. 1 engaged several agents for selling jack-pot and Treble Totes Tickets at the rate of Rs. 5/- and Rs. 2.50 p. at different of course centers and the opposite party was engaged as such an agent for selling such tickets unto 18th September, 1986. The monsoon seasons of Calcutta horse racing expired on 18th September 1986 and the engagement of the opposite party as an agent of the petitioner No. 1 automatically stood terminated on that date on the expiry of the said monsoon season. After the said expiry, the petitioner No. 1 decided not to continue the said off course centers and the sale of Jack pot and Treble Toted Tickets at the rate of Rs. 5/- and Rs. 2.50 p. only any more and it published a notification to that effect in the daily newspapers in the month of October 1986. Against the said decision of the petitioner No. 1, the opposite party herein and other erstwhile off course agents of the said petitioner moved a writ petition in the original side of this Hon"ble Court during the last Puja Holidays before this Courts on 18th October, 1986 and obtained an interim order restraining the petitioner No. 1 from giving effect and /or further effect to the aforesaid publication in the newspapers and also a mandatory order direction the said petitioner to supply usual tickets no jack pots and Treble Totes at the original rates i.e., at the rate of Rs. 5/- and Rs. 2.50 p, respectively. Subsequently on the application for vacating the said interim order made by the petitioner No. 1 herein, this Court on 23rd October, 1986 recalled the said interim order and passed an order to the effect that the petitioner No. 1 shall supply Jack pot and Treble Totes Tickets to the writ petitioners including the opposite party herein, at the rate of Rs. 10/- and Rs. 5/- respectively till 28th October, 1986 and the nature was fixed for hearing on 27th October, 1986. On 27th October, 1986 this Court was pleased to adjourn the mater on the prayers make by both parties till one week after the re-opening of the Hon"ble High Court after the Puja Holidays and the said interim order dated 22nd October, 1986 was continued till 11th of November, 1986. The said writ application is still pending for final disposal but the said interim order, however, was not extended beyond November 11, 1986 and inspire of the pendency of the said writ application, the opposite party had filed the aforesaid suit thereby proceeding simultaneously in two forum in respect of the same matter and hence the trial court was wrong in granting the aforesaid ad-interim injunction.

2. Mr. B. K. Banerjee, learned advocate appearing on behalf of the opposite party however, has raised a preliminary objection as to the maintainability of the present provisional apposition under Article 227 of the Constitution of India on the ground that since the order granting ad-interim injunction passed in a Civil suit is clearly an appealable order under Order 43 Rule 1(r) of the CPC no revision lies against such order and this Court should also not exercise the Superintending powers under Article 227 of the Constitution of India in the matter and in support of his said contention reported to the decision of the Hon'ble Supreme Court in [Mohd. Yunus Vs. Mohd. Mustaqim and Others](#).

3. Mr. Mukul Prokash Banerjee, learned Advocate appearing on behalf of the petitioners in reply to the said preliminary objection however, has submitted that the existence of an alternative statutory remedy is no bar for moving an application under Article 227 of the Constitution of India in the Hon'ble High Court and referred to the decisions in [Ram and Shyam Company Vs. State of Haryana and Others](#), and also Abanindra Kumar Maity v. A. K. Biswas, reported in AIR 1976 SC 2447 and an unreported judgment of this Court in the case of Hindustan Corporation Ltd. v. Hukumachand Rajkumar Singh Pvt. Ltd. (C. R. No. 2454 of 1982) in support of his said contention.

4. After giving my anxious consideration to the respective submissions of the learned Advocates and going through the facts and circumstances of the case I am, however, of the view that since the order granting ad-interim injunction although interim, by the trial court, is an appealable order under Order 43 Rule 1(r) of the Code of Civil Procedure, by passing such statutory remedy, the petitioners should not be permitted to invoke the revisional jurisdiction of this Court even if it be one under Article 227 of the Constitution of India. The learned Judge granted ex-parte ad-interim injunction and therefore, at the stage he had no occasion to consider the merits of the suit. The ex-parte ad-interim injunction was passed presumably considering the balance and convenience of the parties. The learned Munsif had no occasion to deal with the question of maintainability of the suit at that stage and also to decide whether the suit is hit by Section 14 of the Specific Relief Act and also u/s 41(1) thereof. The decisions cited by Mr. M. P. Banerjee, are also distinguishable on the facts and circumstances of the present case. The Hon'ble Supreme Court in Ram & Shyam Co's case (supra) has said inter alia, that ordinarily it is true that the Court has imposed a restraint in its wisdom on its exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires an exhaustion of alternative remedies is the rule of convenience and discretion rather than Rule of law. At any rate it does not oust the jurisdiction of the Court where an order complained against as alleged to be illegal or invalid is being contrary to law. A petition at the instance of persons adversely affected by it, would lie to the High Court under Article 226 and such a petition cannot be rejected on the ground that an appeal lies to the Higher Official of the state Government. Applying

the same analogy in the case of exercising jurisdiction under Article 227 of the Constitution of India it may be said that when the order complained of is illegal or invalid as being contrary to law, the High Court can interfere under Article 227 of the Constitution of India. High Court's power of superintendence under article 227 of Constitution of India as has been considered is similar to powers enjoyed by king's Bench in England to issue prerogative writs like Mandamus, Certiorari and prohibition as has been observed by Rankin C.J. in the case of *Manmath Nath Biswas v. Emperor*, reported in 37 CWN 201. Rankin, C.J. in the above case has observed "High Courts power of superintendence is power to keep the subordinate courts within the bounds of their authority to see that they do what their duties require and that they do it in a legal manner". The Special Bench of this Court in the case of [Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee](#), had reproduced the above observation of Rankin, C.J. While indicating the scope of High Court powers of superintendence under article 227 of the Constitution of India. S. R. Das, J. (as His Lordship was then) in the well known case [Waryam Singh and Another Vs. Amarnath and Another](#), had also referred with approval to the observations made by the Special Bench in the case of *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* (supra). Reference may also be made to the observation made by Mitter, J. (as His Lordship was then) in the case of [Shaik Mohammed Umar Saheb Vs. Kaleskar Hasham Karimsab and Others](#), that High Court under Article 227 is to see that the Court below had not transgressed the limits imposed upon it by any Act.

5. In my view, however, the order complained of does not suffer from any error of jurisdiction on the part of the learned Munsif and simply because existence of an alternative remedy is no bar in the exercise of jurisdiction under article 227 of the Constitution of India. I am not inclined to interfere under the said Article as in my view the order complained of does not appear to be illegal or invalid as being contrary to any law. Certainly the learned Munsif at the time of granting ex-parte injunction had not the opportunity to examine the merits of the suit. Moreover, it cannot be said by any stretch of imagination that an appeal which is provided under the Order 43 Rule 1(r) of the Code of Civil Procedure against the order granting temporary or ad-interim injunction be that ex-parte or contested, is not an effective and speedy remedy. Further more the CPC itself has provided another alternative provision for setting aside the interim order temporary order of injunction under Order 39 rule 4 of the Code and I am told that the petitioner has already filed an application under the said provision in the Trial Court against which the opposite party has also filed a written objection. The decision in *Abanindranath Maity's* case (supra) is also distinguishable on the facts of the present case. The other judgment of the Supreme Court in the case of *Miss Maneck Custadgi Surjarji's* case (supra), in my view is also of no help to Mr. M. P. Banerjee as it has been clearly held in that case that High Court may interfere under article 227 of the Constitution of India only in extra ordinary and rare case and the present case is not such a case which merits such an interference. Lastly, comes the decision of the Hon'ble Supreme Court in

the in the case of Md. Yunus" case (Supra) where the scope of extent of the exercise of the High Courts powers under articles 227 of the Constitution of India has been clearly stated. The Hon"ble Supreme Court in the said case has stated, inter alias that the jurisdiction under Article 227 of the Constitution of India is an extraordinary jurisdiction which is to be exercised sparingly High Court under article 227 of the constitution of India is limited to seeing the Appellate Court or Tribunal functioned within the limited to seeing that Appellate Court or Tribunal functioned within the limits of its authority and not to correct the error apparent on the face of the record much less an error of law. In exercising the superintending power under article 227, the High Court does not act as an Appellate Court or Tribunal. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under article 227. In the present case, in my view there has been no error of law much less an error apparent on the face of the record. There has been no error on the part of the learned Munsif to exercise jurisdiction in the matter nor has he adapted a procedure inconsistent with the procedure established by law in passing the impugned order. The unreported judgment of this Court in the case of Hindustan Petroleum Corporation Ltd. (supra) is also quite distinguishable on the facts and circumstances of the present case as in that case this court had interfered under Article 227 of the Constitution as Their Lordships were of the view that the order complained of was neither appeasable nor there was any statutory remedy left to the aggrieved party. The decision of this court in the case of State of West Bengal & Ors. (supra) is also of no help to the petitioners as the ratio of the decision in the said case cannot be applied to the present facts and circumstances of the present case.

6. In such a view of the matter the revisional application is rejected without any order as to costs. I however, directed the learned Munsif to hear out the application under Order 39 Rule 4 filed by the petitioners positively within 2 weeks from date and to see that no unnecessary adjournment is granted to any of the parties. This order be communicated both to the learned Munsif and also to the learned Chief Judge, City Civil Court, Calcutta forthwith and the Deputy Registrar, Appellate Side is give a report by Friday week about such communication. The learned Advocates for the parties are also permitted to take the gist of this order and communicate the same to the courts below and the courts below are to act on such communication no matter whether the official communication reaches them in the meantime or not.

7. This order will also govern the other revisional application (Royal Calcutta Turf Club & Ors. v. Goutam Paul). So far as that case is concerned, I only add that the petitioner in publishing the notification in the Newspapers as per the direction of the Trial Court need not describe the plaintiff therein i.e. Shri Goutam Paul as their agent. If it is not possible for the learned judge to hear out the said application under Order 39 Rule 4 within the aforesaid time within the learned Chief Judge, City Civil Court, Calcutta should transfer the case forthwith to some other learned Judge to see that the said application is disposed of within the time as specifically

mentioned hereinbefore.

Application rejected.