

(1936) 11 CAL CK 0019

Calcutta High Court

Case No: Suit No. 450 of 1935

Sm. Khantobala Debi

APPELLANT

Vs

H.H. Maharani Mandalessa
Kumari Debi

RESPONDENT

Date of Decision: Nov. 10, 1936

Judgement

Panckridge, J.

This is an application on behalf of the Plaintiff to commit one Swami Krishnanda to prison for a contempt of Court. Swami Krishnanda is not a party to this suit, and the way in which he is concerned in the proceedings is this:-The Defendant is sued on certain promissory notes which I understand she alleges to be forgeries. The Defendant owns a business in glass-ware and electric bulbs. The business has a factory situated at Bally, and Swami Krishnanda is in charge of the business and is also said to be attending to the Defendant's interests in this litigation. The suit was filed on March 8th, 1935, the sum claimed being Rs. 10,470-5. On March 11th the Plaintiff obtained an ex parte injunction restraining the Defendant, her servants and agents, from alienating, charging, or in any way dealing with the stock-in-trade belonging to her and lying at 14/2, Old China Bazar Street and at the factory at Bally outside the jurisdiction of this Court, consisting of glass-wares, machineries, tools, etc., motor car No. 34543 and motor lorry No. 1510 described in paragraph 11 of the petition which was the ground of the application for injunction. The method in which the order has been drawn up is very slovenly. I do not refer to the fact that the word "machinery" in correct English has no plural, but to the fact that the language of the order appears to treat the motor car as a part of the stock-in-trade belonging to the Defendant. It is true, it is conceded, that the motor car was in fact used for the purposes of the business, but I do not think that the Plaintiff or her advisors considered it a part of the stock-in-trade, a term which I think should be confined to the manufactured products of the factory and possibly to the materials in stock for the purpose of producing the manufactured articles.

2. On March 14th, 1935, the substantive application came on for disposal and the consent order was made confirming the injunction of the 11th March subject to the following modifications, namely that the Defendant should be at liberty to carry on her business mentioned in the petition in the usual course and that she should keep a separate account relating to the business.

3. It is not seriously alleged that Swami Krishnanda was not aware of the course of proceedings throughout, nor is it alleged that he is not a servant and agent of the Defendant within the meaning of the injunction of the 11th March.

4. In the list of movable property annexed to the petition the motor car was valued at Rs. 800. The contempt of Court of which it is said Swami Krishnanda was guilty was committed on August 18th, 1936, on which date he disposed of the motor car to the French Motor Car Co. The nature of the transaction between the French Motor Car Company and Swami Krishnanda was that the Company took over the motor car in part payment of the price of another car which Swami Krishnanda received under a hire purchase agreement. Swami Krishnanda received credit to the extent of Rs. 800 on account of the car and also paid a substantial sum in cash by way of instalment under the hire purchase agreement. One does not need to possess an exhaustive knowledge of the motor car trade to be aware that, in a transaction of this character, a person who in the phraseology of the trade, trades in an old car against a new one, is credited with a sum considerably in excess of what he is likely to obtain in cash if he sells the car in the open market. Assuming that the value of the car to have been Rs. 800 in April, 1935, I do not think it was worth anything like that amount 15 months later, and I agree with Mr. Ghosh that the car of which Swami Krishnanda is at present in possession is very much more valuable than the one which he made over to the French Motor Car Co. At the same time although the hire purchase agreement has not been exhibited it is clear that if he made a default in paying the instalments, the French Motor Car Co. will be entitled to resume possession of the car, and the properly mentioned in the petition will have been diminished by the value of the old motor car at the time when the Plaintiff seeks to execute her decree, assuming that she obtains it.

5. Various technical points are raised by Swami Krishnanda. His Counsel has referred me to the case of *Marshall v. G. V. Ratnam* I. L. R, 42 Cal, 1169 (1915) in which it was sought to commit an employee for contempt for breach of an injunction restraining his employers. It was pointed out that the application should strictly have been to commit him not for contempt of Court but for assisting a contempt on the part of the employers. However the matter was disposed of on the merits and I do not think that that case is an authority for the proposition that the form of the prayer to the petition in this case is fatal to the Plaintiff's success.

6. A point which is although technical and is of some importance is that the Plaintiff has at no time served either the Defendant or Swami Krishnanda with a copy of the injunction. There again whatever may be the case with regard to a mandatory

injunction it appears to me clear that in the case of a consent prohibitory order where the party whom it is sought to commit has knowledge of the order the failure to serve that party with the injunction is not necessarily fatal, even although there has been ample time to have the order drawn up and a copy served. See *The United Telephone Co. v. Dale L. R.* 25 Ch, Dir. 778 (1884). In that case there had been an interval of six months between the issue of the injunction and the act which it was said constituted a breach of the injunction. In the case before me the interval has been considerably longer. On the merits learned Counsel for Swami Krishnanda submits that what his client has done does not constitute a breach of the injunction, having regard to the modification affected by the order of March 14th, 1935. [His Lordship then proceeded to consider the merits and continued.] Without coming to the conclusion that Swami Krishnanda has been positively dishonest, in the sense that his motive has been to reduce the assets at the disposal of the Plaintiff should she obtain a decree, I cannot believe that he was of opinion that his conduct in entering into the transaction with the French Motor Car Co. was beyond criticism having regard to the injunction. In my opinion, he must have had doubts on the subject, and having such doubts he should have insisted on the Defendant obtaining the sanction of the Court before entering into the transaction. I do not however propose to penalise him, having regard to the fact that I am not satisfied that his conduct was positively dishonest and having regard to the fact that, in my opinion, the old motor car, looked at from the point of view as an asset available for execution, was worth very little. In my opinion, he has been guilty of that technical contempt of Court and I think that the best way to dispose of this application is to order Swami Krishnanda to pay the costs of these proceedings, which the Plaintiff will have liberty to execute at once.