

(1986) 01 BOM CK 0038

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Applan. No. 788 of 1985

Dhanraj Sitaramji Ghatbanbe

APPELLANT

Vs

Chunnibhai Chaganlal Mansatha

RESPONDENT

Date of Decision: Jan. 20, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Provincial Small Cause Courts Act, 1887 - Section 15

Hon'ble Judges: H.W. Dhabee, J

Bench: Single Bench

Advocate: C.W. Moharir, for the Appellant; S.W. Ghate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. A short question which is raised for consideration in this revision by the revision applicant is whether the Small Cause Court had jurisdiction to direct him to grant his consent and further to direct the Nagpur Corporation authorities to restore the water Supply of the non applicant/tenant.

2. Briefly the facts are that plaintiff is the landlord of the suit premises. He filed the suit for ejection of certain water charges and for damages against the defendant who occupied the suit premises as his tenant. During the pendency of the suit before the Court of Small Causes the water connection of the defendant was disconnected by the corporation for non-payment of water charges. He filed an application in Exh. 24 in the Court of the Small Causes to direct the plaintiff/landlord to give his consent and to direct the corporation authorities to restore the water supply to the defendant at his cost even though the plaintiff might not have granted his consent. The plaintiff opposed the said application of the defendant/tenant on the ground that the court of Small Causes has no jurisdiction to give any such directions to him. The learned court of Small Causes, however, held that it has power to pass such an order under S. 151 of the Civil P. C. (for short "CPC")

He therefore, directed the plaintiff to give his consent. He further directed that if the plaintiff does not give his consent still without waiting for his consent the Nagpur Corporation authorities should restore the water supply to the defendant/tenant at his costs on the basis of the order. He also directed that the plaintiff/landlord should not obstruct in the process otherwise than by due course of law. Being aggrieved the plaintiff/landlord has preferred the instant revision in the court.

3. The learned counsel for the plaintiff has urged before me that the nature of relief claimed by the defendant/tenant was in the nature of a mandatory injunction as well as a prohibitory order also. According to him a suit to obtain injunction was barred from the jurisdiction of the Court of Small Causes by virtue of item 17 of the Second Schedule of the Provincial Small Cause Courts Act, 1887. His submission therefore, is that if no suit to obtain injunction could lie in the Court of Small Causes the said Court could not exercise any power under S. 151 of the CPC to pass any orders in the nature of an injunction. The learned counsel for the defendant/tenant has however supported the impugned order under the inherent powers of the Court under S. 151 of the CPC for which reliance is placed upon a decision of the Supreme Court in the case of [Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal](#),

4. In my view, the decision of the Supreme Court relied upon by the defendant/tenant is of no assistance to him in the facts of the instant case. In the said case the Supreme Court was concerned with the power of the Regular civil Court under S. 151 of the CPC to issue injunctions in cases not covered by O. XXXIX, c. 1 and 2 of the CPC. It may be seen that the regular Civil Court had power to issue injunctions and, therefore, in cases not covered by XXXIX, Re, 1 and 2 of the CPC it is not to it to exercise its inherent power under 151 of the CPC such is not the case the Court of Small Causes is concerned may be seen that the Court of Small Causes Court of limited jurisdiction S. 15(1) of Provincial Small Cause Courts Act excluded certain suits from the jurisdiction of the Courts of Small Court I, e. suits which are specified in the Second Schedule of the above Act. As already pointed out item 17 of the Second Schedule of the above Act excludes the jurisdiction of the Small Cause Court in regard to a suit to obtain an injunction.

4A. It cannot be disputed that the nature of direction claimed by the defendant/tenant by his application Exh. 24 is a direction in the nature of a mandatory injunction. Further the impugned order of the learned trial Court would show that it has also issued a prohibitory order against the plaintiff to prevent him from obstructing the process otherwise than in due course of law. No suit to claim such reliefs could lie before the Court of Small Causes because of the express exclusion in item 17 of the Second Schedule. If there is not substantive power to the Court of Small Causes to grant injunctions such suits were exempted from its cognizance it was not open to it to exercise the said power by recourse to S. 151 of the CPC. Section 151 of the CPC postulates that the court has power to grant such a relief. If there is

no power to grant such a relief S. 151 cannot assist the Court to create such a power. In other words the powers which are specifically barred by the Second Schedule of the above Act cannot be exercised by the Court of Small Causes under S. 151 of the CPC. The above contention raised on behalf of the plaintiff is therefore, well-founded and has to be accepted.

5. The learned counsel for the defendant has, however, informed me that before the interim order of stay was communicated to the defendant his water supply was restored by the Nagpur Corporation. The learned counsel for the plaintiff has agreed that the water supply of the defendant which is now restored would not be interfered with by him because of the setting aside of the impugned order of the learned trial court.

6. In the result. The instant revision is allowed. The impugned order of the learned trial Court is set aside. However, the plaintiff shall not interfere with the water supply of the defendant already restored to him by reason of the fact that the impugned order of the learned trial Court is set aside. Costs of the revision are saddled upon the defendant.

7. Revision allowed.