

(1932) 01 BOM CK 0024

Bombay High Court

Case No: O.C.J. Suit No. 2085 of 1930

Rustomji Ardeshir Cooper

APPELLANT

Vs

Byramji Bomanji Talati

RESPONDENT

Date of Decision: Jan. 22, 1932

Acts Referred:

- Bankers Books Evidence Act, 1891 - Section 6

Citation: AIR 1932 Bom 428

Hon'ble Judges: Kania, J

Bench: Single Bench

Judgement

Kania, J.

In this matter the plaintiff obtained an order on January 4, 1932, asking certain banks mentioned in the order to deliver to the plaintiff certified copies of the accounts of the defendant with those banks for the years mentioned in the order. It was alleged that those accounts were relevant to the enquiry. At that time it was contended that u/s 6 of the Bankers' Books Evidence Act no notice was necessary to be given to the defendant and that it was not the practice of our High Court to give any notice when an application of this kind was made.

2. Thereafter, certain banks prepared and gave to the plaintiff certified copies of the accounts of the defendant with them for certain years and the defendant having come to know of that fact made an application on January 8, 1932, to absolve the banks from giving copies of the accounts under the order of January 4, 1932, pending the taking out by the defendant of the present summons to vacate the order of January 4, 1932. At that time the defendant relied on the decision of *Tricumlal v. Lakhmidas* (1903) 5 Bom. L.R. 865 The summons has now come before me for argument and it is contended on behalf of the plaintiff that after the aforesaid decision four learned Judges of this Court have passed orders against the parties to a suit without notice to them. In those cases, however, it is not clear whether the Courts' attention was drawn to the judgment of Russell J. mentioned

above or that the Courts passed those orders because of certain special circumstances. On the other hand, it is pointed out on behalf of the defendant that Rangnekar, J. in 1929 has in fact vacated an order like the one passed herein on January 4, 1932, on the ground that notice was not given to the other side according to the decision of Russell J.

3. The words of Section 6 of the Bankers' Books Evidence Act do not expressly provide for the giving of notice, but I think it is clear that when a party is likely to be adversely affected by an order of this kind notice should be given to him. I do not find anything in that section to justify a contrary conclusion. When an application of this kind is made against a person who is not a party to the suit u/s 6, the bank has the right to come forward and show that the order should not be made. The bank would take that step because when a person whose account is sought to be copied is not a party to the suit the bank on receiving a copy of the order would ordinarily communicate with their constituent, and if their constituent protests, either the bank or the constituent would come forward and ask the Court to reconsider the order. On the other hand, when an order u/s 6 is sought against a party to the suit and such an order is made the bank would ordinarily never think of protesting against the order because it would presume that the parties to the suit would take care of their own interests, and if the Court has made the order the Court must have heard the other side or must have considered that the circumstances were such as to justify the making of the order without hearing the other side. I, therefore, think that on a proper construction of Section 6, and having regard to the decision of Russell J. mentioned above, ordinarily no party to a suit is entitled to obtain an order u/s 6 as against the other party without notice being given to him. If such an application is made without notice being given to the other side, special circumstances should be set forth in the affidavit to justify the case for making an order without notice to the other side. Unless this is done, in my opinion, it is not right for the party to ask for an order of this kind ex parte. In the present case, on that ground alone, I feel I should be justified in vacating the order.

4. Having regard to the pleadings and the stage to which this litigation has advanced as also the contentions of both the parties, I feel that in the present case the order as obtained on January 4, 1932, was premature and wider in terms than justified.

5. I, therefore, make the summons as to prayer (a) absolute. As regards prayer (b), I think that the Court has inherent jurisdiction to order restitution in respect of things obtained by one party to the prejudice of the other under an order made by the Court and which the Court ultimately vacates. I, therefore, order the plaintiff to return to the bank or banks from whom he has obtained certified copies of the defendant's accounts under the order of January 4, 1932, the respective certified copies obtained from them and other copies made therefrom whether the same be in his possession, power or control, or in the possession, power or control of his

attorneys or agents. The plaintiff must pay the costs of this summons: costs to include costs of the application and order of January 8, 1932. Counsel certified.