

Abhay Singh Surana

Vs

Indian Rayon and Industries Ltd

Special Leave Petition (Civil) No. 4942 of 1988

(Sabyasachi Mukharji, J.)

03.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted. The appeal is disposed of by the judgment herein.
2. On or about August 7, 1963 Jayshree Textiles & Industries Ltd. (hereinafter called 'the Jayshree') was inducted as a tenant in respect of a godown in Calcutta on ground floor at a monthly rent of Rs. 151 per month payable according to the English calendar month w. e. f. August 1, 1963 exclusive of electricity charges. Such induction was by the predecessor-in-title of the present appellant. The said rent of Rs. 151 p. m. was later enhanced from time to time and the last rent was Rs. 225 p. m.
3. On or about July 21, 1976, the High Court at Calcutta, in Company Petition No. 161 of 1976 connected with Company Application No. 70 of 1976 filed by the Jayshree, approved the scheme of amalgamation whereby the Jayshree merged in the respondent company. It is alleged that on or about July 4, 1985, the appellant for the first time came to know that the said go down was in occupation of Indian Rayon Corporation Ltd. and, hence, a notice to quit was issued. On or about July 11, 1985, the respondent by its letter intimated the appellant that Jayshree was amalgamated with the respondent in accordance with the scheme sanctioned by the High Court at Calcutta on July 21, 1976.
4. On August, 29, 1985, a notice under Section 106 of the Transfer of Property Act, read with Section 13 (6) of the W. B. Premises Tenancy Act, 1956 (hereinafter called 'the Act'), to quite, vacate and hand over vacant possession on the last date of the following month, was issued to Jayshree. Thereafter, on December 1, 1985 the appellant filed a suit for eviction in the city civil court at Calcutta against the Jayshree and the respondent herein. On March 25, 1986, the respondent filed a Title Suit No. 545 of 1986 under Order 39 (1) and (2) of the Civil Procedure Code praying for temporary injunction restraining the appellant from disconnecting electricity in the said premises.
5. It is alleged and was also alleged before the High Court that defendant 2 in the suit in the city civil court, took 15 adjournments to file written statement between March 1986 to May 1987. On or about July 6, 1987, the appellant filed an application under Clause 13 of the Letters Patent in the High Court at Calcutta, praying for transfer of the two suits on the ground that the respondent had adopted dilatory tactics and had taken several adjournments and, further, that the original records relating to amalgamation are available in the High Court. Rule nisi was issued by the High Court. On October 10, 1987 the High Court passed the following order :

The Court : By consent of the parties, this application for transfer of the suit under Clause 13 of the Letters Patent is treated as on day's list and is disposal of by the following order:

By consent of the parties the title suit being Title Suit No. 345 of 1986 between Indian Rayon Corporation Ltd. and Abhay Singh Surana pending before the learned Judge's Bench in the city civil court and the ejectment suit being Ejectment Suit No. 1088 of 1985 between Abhay Singh Surana and Jayshree Textiles & Industries Ltd. and another pending in the city civil court are removed and transferred to this Court and to be entertained and tried by this Court in its extraordinary original civil jurisdiction. Let the records be transferred to this Court by September 16, 1987. The Registrar, Original Side, shall communicate this order to the Registrar, City Civil Court. If necessary, at the cost of the petitioner a special messenger is to be deputed for the purpose of transfer of the records from the city civil court to this court. Let the two suits appear in the list for settlement on September 17, 1987.

6. It appears that the suits appeared before the learned Judge upon mentioning on December 15, 1987. It was represented that the suits were transferred to this Court only on the understanding that the suits would be settled. It was further represents that the effort to settle the suits has failed and, hence, the learned Single Judge of the High Court fixed a date for hearing of the two suits.

7. On February 17, 1988, the respondent filed an application before the learned trial Judge in Calcutta for recalling the order of transfer dated October 10, 1987. On March 17, 1987, the court passed the following order :

The Court : It appears that on September 10, 1987, an order was passed directing transfer of the suit to this court so that the parties could settle the matter in this court. It has been stated by Mr. Ranjan Dev, advocate, that there is no possibility of settlement and the suit should be heard. In that view of the matter, let the suit be heard by the appropriate court. The order dated September 10, 1987 is hereby recalled. Let there also be an order in terms of prayer (b) of the petition. Since the suit is being re-transferred to the city civil court, this court cannot pass any order as to the prayer made for deposit of rent. Liberty is given to the parties to make an appropriate application before the appropriate court for such a direction.

8. Aggrieved thereby, the petitioner had filed a special leave petition and leave was granted herein. That is how this appeal is here.

9. In order to appreciate the contentions urged in this case, it is imperative to refer to clause 13 of the Letters Patent of 1865 of the High Court, which reads as follows :

And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to remove, and to try and determine, as a court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any court, whether within or without the Bengal Division of the Presidency of Fort William, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

10. The aforesaid clause has been the subject matter of various adjudications and interpretations by the High Court. It enables the High Court to exercise the extraordinary original civil jurisdiction. The Letters Patent contemplates two contingencies for the High Court to exercise extraordinary jurisdiction, namely, on agreement of the parties to that effect, the suits be transferred and, secondly, for the purpose of justice. It further stipulates that the reasons for so doing to be recorded on the proceedings in the High Court. In this case, apparently the suits were transferred by agreement of the parties. There is, however, great deal of difference as to what the agreement was. On behalf of the appellant, it is contended that there was simply an agreement to have the two suits transferred to the High Court for quick and expeditious disposal. It was, further, asserted that in view of the long delay in filing the written statements, it was, therefore, advisable to have the suits disposed of by the High Court.

11. On the other hand, it is seriously contended that the agreement was that the suits would be settled in the High Court. It appears that some such representations had been made to be learned Judge that the suits would be settled. This, however, the appellant disputes. The suits have been transferred. The order of transfer does not record that the suits are being transferred for settlement. As the agreement to settle the suits has not fructified, the respondent does not want the suits to be tried in the High Court. The appellant states that there was no such agreement that the suits would be settled. There was, undoubtedly, a possibility for the suits being settled and the counsel for the appellant stated that the suits could more easily be settled in the High Court. On the basis that there was some such kind of agreement and it is desirable that the suits should be tried by an appropriate court having jurisdiction, the High Court has remitted the suits back to the city civil court. There is no doubt that the city civil court is the appropriate court and that there existed the agreement which, as recorded in the order of the court, does not indicate that it was on the basis that the suits would be settled. There are factors indicating that the purpose of justice would be met if the suits are tried in the High Court. Undoubtedly, the written statement has been long delayed in the suit in 1985 and the same has not yet been filed.

12. The disposal of the suits by the High Court would serve the purpose of justice. It would shorten litigation in the sense that there would be lesser number of appeals to the higher court and the possibility of settlement is there in the High Court more than anywhere else. Suits are likely to be more expeditiously disposed of under the supervision of the High Court Judge than before the learned city civil court or the court subordinate of High Court. Hence, even though initially the agreement to transfer might have been on the basis that the suits should be settled but the agreement to transfer was not unequivocal. The possibility of settlement might have been the motivation. But the High Court has, undoubtedly, for the purpose of justice rightly power to dispose of the suits and in the facts of this case, in our opinion, having once transferred the suits, it would be just and fair and would also serve the purpose of justice that the suits should continue to be disposed of by the High Court. The purpose of justice must be determined by reference to the circumstances of each case and the balance of convenience having regard to those circumstances, is one of the matters for consideration.

13. Counsel for the respondent contended under Article 136 of the Constitution that it is not an order which should be interfered with. We are unable to agree. It is true that the suits are at a preliminary stage but it is also true that for the purpose of justice the court, if possible, must oversee the administration of justice by the different courts and the orders therein by the High Courts as well as the city civil courts.

14. In that view of the matter we think that the purpose of justice would be served by the directing

expeditious disposal of these suits by the High Court. In the premises the order of the High Court is set aside and let these two suits be heard by the High Court one after the other. The written statement as mentioned hereinbefore, has not been filed. The written statement, if any, by the respondent may be filed within four weeks from today and further directions for expeditious disposal may be obtain from the learned Judge taking these suits. Let these suits appears before the appropriate Bench in the High Court of Calcutta.

15. The appeal is disposed of as aforesaid. No order as to costs.

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