

ALLAHABAD HIGH COURT

Firm Bichchha Ram Babu Ram

Vs.

Firm Baldeo Sahai Suraj Mal

(Verma, J.)

19.12.1939

JUDGMENT

Verma, J.

1. This is an application for revision by the defendant, Firm Bichchha Ram Babu Ram, which carries on business at Shahabad in the district of Karnal in the Punjab. The plaintiff, Firm Baldeo Sahai Surajmal, carries on business as pucca arhatia at Hapur in the district of Meerut in these Provinces. The defendant entered into certain transactions with the plaintiff, which were in the nature of forward contracts in respect of grain. The suit is for the recovery of a sum of money alleged to be payable by the defendant to the plaintiff. It appears that the defendant also has filed a suit in respect of the same transactions in the Court of the Subordinate Judge of Ambala. That suit was filed earlier than the suit filed by the present plaintiff in the Court at Meerut. The defendant applied to the Court below that the suit be stayed under Section 10, Civil Procedure Code. The Court below, for certain reasons which it is not necessary to mention for the purposes of this revision, has held that the suit should not be stayed. It has also at the request of the present plaintiff issued an injunction to the defendant, applicant before us, restraining him from proceeding with the suit filed by him at Ambala. This application for revision is directed against this order of injunction. The main reason for the injunction given by the Court below is that the parties had expressly agreed that any disputes arising between them with regard to these transactions shall be decided by the Court at Meerut. The Court below, holding that the suit filed by the defendant at Ambala was in flagrant violation of this agreement between the parties, has in the exercise of its discretion issued the injunction mentioned above.

2. The contention raised by the learned Counsel appearing for the defendant-applicant is that the Court below had no jurisdiction to grant this injunction because the provisions of Order 39 read with Section 94, Civil Procedure Code, do not embrace an injunction of this character. It is urged on the other hand, by the learned Counsel appearing for the plaintiff-respondent that, even though an injunction like the one in question does not come within the four corners of Order 39, yet the Courts have an inherent jurisdiction to] issue an injunction in a proper case to prevent an abuse of the process of the Court and to further the ends of justice. It is urged that this is such a case and that the Court below was justified in issuing the injunction in question. In our opinion the contention of the learned Counsel for the plaintiff-respondent is correct. It has been held that the Code of Civil

Procedure is not exhaustive: *Durga Dihal Das v. Anoraji*¹ This view has been followed in the other High Courts. It has also been held that where the circumstances require it, the Courts have the power to act ex debito justitia in order to do that real and substantial justice for the administration of which alone they exist. We had occasion recently to deal with this matter in appeal from Order No. 154 of 1938, *Dhaneshwar Nath Tewari v. Ghanasbyam Dhar*, Reported in², The Court below has also relied on the observations made in the case in *Milton & Co. v. Ojha Automobile Engineering Co*³. and *Tilak Ram v. Kodumal Jethanand*⁴

3. We have examined the record and have looked into the order forms to which the Court below refers. There is a clause providing that any dispute between the parties shall be decided either by the panchayat at Hapur or by the Courts at Meerut. The defendant alleged in the Court below that he had not read this clause when he signed the order forms. The Court below has disbelieved this allegation. In our opinion, the finding of the Court below is not only one of fact with which we cannot interfere in revision, but is perfectly correct. The clause mentioned above is prominently printed and is just above the space provided for the signature of the constituent, that is the place where the defendant signed. There are several of these order forms, and it is impossible to believe that the defendant did not read this clause before he signed them. That being so, the view of the Court below that the suit filed by the defendant in the Ambala Court was flagrantly in breach of the contract into which he had entered is perfectly correct. In these circumstances the Court below was, in our opinion, entitled as well as justified in issuing the injunction in question. No grounds for interference with the order of the Court below have been shown. Accordingly we dismiss this application for revision with costs.

¹(1894) 17 All 29 at p. 31

² AIR 1940 All 185 : 1940 AWR (H.C.) 10 74 decided on 7th December 1939

³ AIR (1981) Cal 279

⁴ AIR (1928) Bom 175