

# CALCUTTA HIGH COURT

Chinese Tannery Owners' Association

Vs.

Makhan Lal

A.F.O.O. No. 104 of 1950

(Das Gupta and Lahiri, JJ.)

11.12.1951

## JUDGMENT

### **Das Gupta, J.**

1. The appellants before us are three of 252 defendants in a suit brought by one Makhan Lal Ganguly, a building contractor. The suit was brought on a claim of a little less than two lacs of rupees said to be due on account of the costs of construction of a building and costs of materials supplied, after giving full credit for three lacs seventy four thousand and sixty three rupees said to have been received from the Chinese Tannery Owners' Association, appellant No. 1 before us and] defendant No. 2 in the suit. Defendant No. 3 is the President, of the Chinese Tannery Owners' Association while defendant No. 4 is the Chairman of the building Committee. The plaintiff pRayed for a temporary injunction restraining all the defendants from drawing on their account with deft. 1, Bank of China.

An 'ad interim' injunction was at first granted against defendants Nos. 1 to 10. Finally, after hearing objections raised by these defendants the learned Subordinate Judge confirmed the injunction as against defendants Nos. 2, 3 and 4 and directed that they were not to withdraw money in their accounts with defendant No. 1 to a limit of two lacs and fifteen thousand rupees only. The ad interim injunction which had been earlier granted against defendants Nos. 5 to 10 was discharged. The pRayer for injunction was purported to have been made under Order 39, Rule 1, Civil Procedure Code as well as under Section 151 of the Code. One of the objections raised by the defendants was that the provisions of Order 39, Civil Procedure Code could not be attracted to the facts of the present case.

The learned Subordinate Judge did not clearly record his decision on this question, but from what he has said in his judgment it is clear that he has passed the order mentioned above in the exercise of inherent jurisdiction of the Court, and it seems reasonable to hold that the order was not passed under Order 39, Rule 1, Civil Procedure Code. Consequently, an appeal would not lie. The Court having passed this order in the exercise of its inherent jurisdiction, it is still open to us to see whether we should interfere with the order, he has passed in the exercise of our jurisdiction under Section 115, Civil Procedure Code.

2. It is necessary to consider first the point taken by Mr. Sen on behalf of the appellants that it is

not open to the Court to pass any order of injunction in the exercise of its inherent jurisdiction under Section 151, Civil Procedure Code. His argument is that where the Code has clearly and fully dealt with a matter, there is no scope for any action under inherent jurisdiction. He further argues in this connection that a reading of Section 94 of the Code makes it clear that the provisions of Order 39, Civil Procedure Code were intended to be exhaustive as regards this matter of temporary injunction. For this proposition he has relied upon the decisions in the case of *'Hemendralal Roy V. Indo Swiss Trading'*<sup>1</sup> and in the case reported in *'Nagabhushan Reddy V. Narasamma'*<sup>2</sup>. Quite clearly an opposite view was taken in the Allahabad case of *'Dhaneshwar Nath V. Ghanshyam Dhar'*<sup>3</sup>, Notice must also be taken of an observation by Mookerjee, J., in the case of *'Nirode Barani Debi V. Chamatkarini Devya'*<sup>4</sup>, 'While it is true that the Court was not, in this case, directly dealing with the point whether an injunction could be granted and the observation therein might be considered obiter, there can be no doubt as to what the learned Judges thought in the matter. Their view clearly was that in a suitable case the Court could give an order of injunction in the exercise of its jurisdiction under Section 151, Civil Procedure Code even though the provisions of Order 39, Civil Procedure Code might not give it any authority to do so.

3. The principles that underlie a decision of the question whether on a certain matter there are certain provisions in the Code that bar the exercise of powers under Section 151, Civil Procedure Code were considered by this Court in the Full Bench case of *'Abdud Karim Abu Ahmad Khan Ghauznavi V. Allahabad Bank Ltd'*<sup>5</sup>, 'Dealing with the argument similar to what has been addressed to us here Woodroffe, J., observed :

".....Doubtless this exercise of inherent jurisdiction must be exercised with care subject to the general legal principles and to the condition that the matter is not one with which the Legislature has so specifically dealt as to preclude the exercise of inherent power. But it is argued here that the Court has dealt with the subject of remand and has therefore indicated that it is not to be ordered except in the one specific instance mentioned in Order 41, Rule 23. I am not prepared to hold this, the more so that Section 564 of the previous Code has not been reenacted. The mere fact that Section 107 deals with remand does not exclude the Court's inherent jurisdiction to make orders of remand in cases other than those covered by Order 41, Rule 23. I am of opinion, therefore, that the powers of the appellate Court as regards remand are not limited to the specific case mentioned in Order 41, Rule 23 and that the Court, under its inherent jurisdiction, may order a remand to do what is right and necessary in cases other than those covered by that order if justice so requires it. Whether justice does require a Court to invoke its inherent jurisdiction, must be determined by that Court with reference to the particular facts of the case and the rule of law that a Court cannot invoke an inherent jurisdiction where there is a provision in the Code, whether by way of remand or otherwise : which, if applied, will meet the justice of the case."

4. I respectfully agree with the principle as laid down in these words. Applying this principle to the case before us, we are clearly of opinion that the mere fact that there are certain provisions as regards the issue of injunction in Order 39, Civil Procedure Code does not debar the Court from

passing orders of temporary injunction for doing justice in

<sup>1</sup> 24 Pat 496

<sup>3</sup> Ilr (1940) All 201

<sup>5</sup> 44 Cal 929

<sup>2</sup> (1950) 2 Mad Lj 482

<sup>4</sup> 19 Cal Wn 205

the exercise of its powers under Section 151, Civil Procedure Code. It cannot in our opinion reasonably be argued that the provisions of Order 39, Civil Procedure Code were intended by the Legislature to be exhaustive.

5. This brings us to the next question whether in the circumstances of the present case the learned Subordinate Judge acted illegally or irregularly in the exercise of jurisdiction in making the order of injunction. The main contention on which the injunction was sought was that the political situation in China had recently undergone great changes and that the old Consulate of China in Calcutta with which defendant No. 2 was registered at the date of the contract under which the building was commenced was no longer recognized by the Government of India, that in this fluid state of things if defendant No. 3 to defendant No. 252 were to leave India the plaintiff would have no means to realize the dues even in the event of his obtaining a decree in the suit. In reply to this defendant No. 2, The Chinese Tannery Owners' Association, contended that there was no question of there being any difficulty in realizing the dues in the event of there being a decree against the defendants, as there was at least the land and the building belonging to the Association which had a market value more than sufficient to meet any possible decree. It appears to have been argued on behalf of the plaintiff that the land and the building were not likely to be of much value because they were situated in the midst of a Chinese colony and secondly because the land on which the building stands stood not in the name of the Association but in the name of defendant No. 58. The learned Subordinate Judge does not appear to have applied his mind to the question whether the land and the building would be sufficient to meet any possible decree that the plaintiff might obtain, though he posed to himself the question, "If the plaintiff get a decree against defendant No. 2 for which there is a reasonable probability, how would that money be realized?"

6. It is fair to point out that the Subordinate Judge had not before him the affidavit which we have here on behalf of defendant No. 58 in which he swears that the land and the building really belong to the Chinese Tannery Owners' Association, defendant No. 2. He had before him only the affidavit of defendant No. 2. The learned Advocate for the appellants had also filed in this Court the deed of sale by which the land on which the building was erected was purchased on behalf of the Chinese Tannery Owner's Association. On a consideration of the affidavits and the deed of sale it seems clear 'prima facie' that the land as also the building really belong to defendant No. 2 and would therefore be available to the plaintiff if and when he obtains a decree. After making proper allowance for the fact that it is situated in the midst of a Chinese Colony and a cluster of tanning factories, we are of opinion that the value of the land and the building is very likely to be more than sufficient to meet any possible decree that the plaintiff may obtain.

7. In these circumstances, I do not think that there is any justification at this stage to restrain defendant No. 2 or defendants Nos. 3 and 4 from drawing on their accounts with defendant No. 1, Bank of China.

8. While therefore, I would dismiss the appeal without costs, as incompetent, I would allow the application under Section 115, Civil Procedure Code and set aside the order of injunction under our revisional jurisdiction. The parties will bear their own costs in the application.

9. Let the sale deed which has been filed be marked on admission as Ex, A, the learned Advocate who filed the said deed will be allowed to take it back on filing a certified copy thereof.

**Lahiri, J.**

10. I agree.

Revision allowed.