

# **BOMBAY HIGH COURT**

Champsey Bhimji

Vs.

The Jamna Flour Mills Co., Ltd

O.C.J. Appeal No. 27 of 1914 and Suit No. 572 of 1914

(Dinshaw D. Davar, Kt., Acting C.J. and Heaton, J.)

26.06.1914

## **JUDGMENT**

### **Dinshaw D. Davar, Kt., Acting C.J.**

1. In this appeal we do not think it necessary to trouble the learned Advocate General to reply on behalf of the plaintiffs. The two grounds urged before us in support of the appeal are, firstly that this Court has no power to make an order of a mandatory nature on an interlocutory application, and secondly, on the merits that this order should not have been made.

2. Having regard to the very clear wording of Order xxxix, Rule 2, and to the fact that this Court has always exercised the power of remedying an injury or wrong by a mandatory injunction on an interlocutory application, I have no doubt whatever that this Court has power to make a mandatory order on an interlocutory application. If the Court had no such power it would be in the power of a party to cause insufferable inconvenience and grave injury to another during the whole time that would elapse between the commission of the wrongful act and the hearing of the suit filed to remedy the wrong and redress the injury.

3. Then as to the merits, it is desirable to say as little as possible as the whole matter remains to be investigated before Mr. Justice Macleod on the 6th of July. It would be sufficient for us to say that an order on an application of this kind is purely within the discretion of the learned Judge who hears the application.

4. We have had read to us all the affidavits filed on this application and are not prepared to say that the discretion of the learned Judge was not in this instance exercised soundly and properly, and under the circumstances we see no reason whatever to interfere with the order made by the learned Judge.

5. As to expediting the suit, the learned Counsel for the respondents says that he agreed only on condition that an injunction was not granted. The regulation of the hearing of suits is entirely within the power of the Chamber Judge or the Judge to whom the suit is assigned for interlocutory applications, and the learned Judge in the Court below was entitled to make this order for an early hearing, quite independently of the parties' consent.

**Heaton, J.**

6. I only wish to add that whatever view may be taken of the general question of mandatory injunctions under Order xxxix, Rule 2, I think this injunction must be maintained. It is in form a restraining injunction and though in effect it may require the defendant to undo some part of that which he has already done, I do not think its effect is such as to pass outside the kind of relief which, I believe, is intended to be given by Rule 2 of Order xxxix. I speak having regard to the particular facts of this particular case.

7. Appeal dismissed with costs including costs of the application of the 23rd June 1914.  
Appeal dismissed.