

PUNJAB-HARYANA HIGH COURT

Shivcharan Lal

Vs

Phool Chand

(Kapur, J.)

09.08.1951

ORDER

Kapur, J.

1. This was a rule directed against an order dated the 30th November, 1950, passed by Mr. Ram Lal, Subordinate Judge, 1st Class, Delhi.

2. The facts of the case are that Firm Phool Chand Milap Chand filed a suit for the recovery of Rs. 27,517/11/9 against Firm Lachhman Das Mul Chand through Shiv Charan Lal and Shiv Charan Lal (sic) on the 2nd February, 1950. On the 30th October, 1950, Shiv Charan Lal filed a suit for accounts in the Agra Court making Firm Phool Chand Milap Chand a defendant in the suit. On the 7th November, 1950, the learned Judge at Agra issued an injunction against the plaintiff restraining him from proceeding with the suit. The order and the grounds for the order have not been placed before this Court. On the 30th November, 1950, the parties appeared before the Court in Delhi and the learned Judge ordered that the order of the Agra Court did not bind him and decided to proceed with the suit. Against this order a revision was brought to this Court and rule was issued on the 24th April, 1951, by me.

3. Mr. Daya Krishan Mahajan has submitted that it was a proper order which his client had obtained from the Agra Court and therefore it was not open to the Court at Delhi to proceed with the trial and thus be a party to the breach of the order of injunction passed by the Agra Court. In support of his submission that a proper order was passed by the Judge in Agra, he has relied, firstly, on 'Lakhmiram Kevalbam v. Poonamchand Pitambar', 45 Bom. 550. There Lakhmiram Kevalram had applied for insolvency in the Bombay High Court and Poonamchand Pitamber was one of the opposing creditors. After the discharge of Lakhmiram Kevalram, Poonamchand Pitamber brought a suit against Lakhmiram Kevalram in the Court of Sirohi for his debt and obtained a decree for Rs. 2,834/4/-. Lakhmiram Kevalram then obtained a rule from the Insolvency Court at Bombay calling upon the respondent to show cause why he should not be restrained from proceeding with the suit filed in the Sirohi Court and from executing the decree.

Poonamchand Pitamber contended that Lakhmiram Kevalram had property in Sirohi State which the State refused to hand over to the Official Assignee in Bombay and therefore the Bombay Court had no jurisdiction to restrain the respondent from taking proceedings in the State to recover his debt. It was held by the Appeal Court of the Bombay High Court that if Lakhmiram. Keyalram had assets in Sirohi state which the Official Assignee was unable to get hold of Poonam-chand. Pitamber should not be restrained from taking proceedings in that State to recover his debt. In considering the question of injunction the Chief Justice, Sir Norman Macleod, said:

"Generally speaking, it would certainly be contrary to all ideas of equity that party trading and incurring debts in Bombay, and having property in foreign territory, which the Official Assignee could not get hold of, should be able to completely get rid of all his liabilities as regards his creditors inside British India and then proceed to enjoy his property outside British India, free from all those liabilities."

He also referred to '*Carron Iron Co. v. MacLaeen*', where at p. 436 it is said:

"The Court acts in personam, and will not suffer any one within its reach to do what is contrary to its notions of equity, namely because the act to be done may be, in point of locality, beyond its Jurisdiction."

But the learned Chief Justice refused to grant the injunction as Poonamchand Pitamber was outside the jurisdiction of the Court. I cannot see how this judgment holds this submission of counsel.

4. He next refers to '*Bhagat Singh Bugga v. Dewan Jagbir Sawhney*'². That is a judgment of Lord-Williams, J., wherein an injunction was granted on the ground that to allow proceedings to go on at the instance of Sawhney was a gross abuse of the process of the Court. Bhagat Singh Bugga had brought a suit in the Calcutta High Court on the 26th June, 1937, but that suit was withdrawn by consent with liberty to bring a fresh suit. In March 1940 Sawhney brought a suit in Gujranwala in the Punjab and Bhagat Singh Bugga brought a suit on the 1st April, 1940, in the Calcutta High Court. The learned Judge found that Sawhney lived at Rain-kola near Lucknow and Bugga was living and carrying on business in Calcutta. Both places were hundreds of miles away from Gujranwala. All the transactions between the parties were effected in Calcutta and no part of the cause of action had arisen in Gujranwala or elsewhere than in Calcutta. All the necessary witnesses excepting Sawhney also lived in Calcutta as also the documentary evidence. The Government records were also in Calcutta. He also found that Sawhney had no connection with Gujranwala District. As a matter of fact, the learned Judge found that Sawhney filed his suit at Gujranwala maliciously with the sole object of harassing Bhagat Singh Bugga, causing him the maximum amount of in-convenience and expense and preventing him altogether from defending the suit. In these circumstances, so observed Lord-Williams, J.:

"this Court, as has been frequently decided, is not powerless to prevent such abuses of its process. There can be no doubt that an injunction may be granted restraining Sawhney from proceeding with the suit at Gujranwala on grounds of convenience alone and in spite of the provision of Section 10 of the Code of Civil Procedure."

5. Counsel next referred to 'Milton & Co v. Ojha Automobile Engineering Co., 57 Cal 1280. That was again a case decided by Lort-Williams J. In this case a previous suit had been brought in the Subordinate Judge's Court at Agra. One of the terms of the contract was that the Calcutta Courts alone will have jurisdiction to decide any litigation which arose out of the agreement. It was, indeed, on these facts that Lort-Williams, J., gave an injunction against the respondents and also held that the Court could give an injunction against a person who is outside the jurisdiction. He also held that the Calcutta High Court had inherent jurisdiction to protect suitors resorting to it to prevent interference with suits instituted in it. Counsel then relied on '*Parbhu Dayal v. Laldas Maganlal*'³, There a suit was brought in Agra by the mortgagor against, the mortgagee. The mortgagee brought another suit for the enforcement of his mortgage in Bombay, and the question arose whether the Court at Agra could grant an injunction restraining the mortgagee from proceeding with the suit-- in Bom-bay. It was held that this could not be done under the Civil P. C., but the High Court had inherent jurisdiction to restrain a party from proceeding with a suit in another Court. But the only justification for the exercise of this equity jurisdiction by the Court would be that a party within reach of its jurisdiction was doing something which was against its notions of equity. The Court refused to issue such an injunction against the plaintiff who had brought his suit in Bombay. The learned Judge relied on '*Carron Iron Co. v. Maclaren*'⁴, This case is not therefore an authority for the proposition which was submitted by Mr. Mahajan.

6. Mr. Bishan Narain on the other hand submits that the Agra Court had no jurisdiction to issue an injunction against him because the suit which he instituted was prior in time than that of Shiv Charan Das, the petitioner, and that the injunction issued against him was contrary to all principles of equity in so far as he was being prevented from prosecuting a properly instituted suit in a Court which had jurisdiction particularly when his client was not within the jurisdiction of the Agra Court. In support he relied on '*Vulcan iron works co. Ltd. v. Bishumbhar Persad*', 33 Cal 233, where it was held that a Court of Equity can only restrain a person from proceeding with a suit in a foreign Court, if the person sought to be restrained is within the jurisdiction of the Court. The learned Judge also held that the jurisdiction of the High Court to restrain proceedings in Courts outside its jurisdiction is governed by the same principles as those that govern Courts of Equity in England, namely, that the party, whom it is sought to restrain, must be within the limits of the jurisdiction of the High Court.

7. In '*Jumna Das v. Harcharan Dass*', 38 Cal 405, it was similarly held that the High Court can restrain proceedings in a Court outside its jurisdiction only if the party sought to be restrained is within its jurisdiction.

8. Gentle, J., in *Binjraj Maheswaria v. Ramniwasdas Jalan*⁵, laid down the same rule and he disagreed with the view taken by Lort-Williams, J., in the cases that I have cited above.

9. The reason given by Lort-Williams, J., for issuing the injunction was one of convenience and abuse of the process of the Court. In this particular case neither of these two facts have been shown to exist; at least none has been pointed out to me which would come under either of these two.

10. On the facts as have been proved it does appear rather extraordinary that a previously instituted suit should be sought to be stayed by adopting this rather extraordinary procedure. With the exception of Mr. Justice Lort-Williams, and that also when he was sitting on the original side of the Calcutta High Court, there is no other case where such a suit has been sought to be delayed in the manner in which the petitioner has tried to do in the present case. The Court at Delhi as well as the Court at Agra are Courts of co-ordinate Jurisdiction. The two places are so near to each other that no question of convenience can arise unless 'it is specially proved, and from the arguments of counsel it appears that the sole object of getting an injunction against the opposite party in the present case was to delay the suit which had been instituted in Delhi. In cases of this kind, the Civil P. C., has provided a remedy which is contained in Section 10, but that is a remedy which is open to a litigant who had brought the prior suit. In my opinion, the step taken by the petitioner was a gross abuse of the process of the Court and the learned Judge of Delhi has rightly proceeded with the trial of the suit.

11. I therefore dismiss this petition and discharge the rule. The opposite party will have its costs in this Court and in the Court below. Counsel fee Rs. 100/-.

Cases Referred.

- 1(1855) 5 HLC 416
- 2ILR (1941) 1 Cal 490
- 3ILR (1939) All 825
- 4(1855) a HLC 416
- 5AIR 1943 Cal Sit