

(2000) 11 KAR CK 0029

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4315 of 2000

Bata Employees Association and Others

APPELLANT

Vs

Sri. R. Jaya Prakash and Others

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39

Citation : (2001) 1 KCCR 274

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : K.S. Subramanya and N.J. Baliga, for the Appellant; C. Gowrishankar, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—This appeal is filed by M/s. Bata Employees Association and seven other employees of Bata India Limited, Bangalore, (Defendants before the trial Court) aggrieved by the order passed on I.A.I in Original Suit 4476 of 2000 on the file of the City Civil Court, Bangalore City. I will be referring to the parties as per the ranking of the parties before the trial Court.

2. One Sri R. Jaya Prakash, Manager (Production), Sri Sreekumar, Assistant Manager (Maintenance) and Sri S. Gangadhariah, Manager (Personnel), (Plaintiffs) filed a suit in Original Suit No. 4476 of 2000 seeking for the following reliefs:

Wherefore the Plaintiffs respectfully pray that this Hon'ble Court be pleased to pass a judgment and decree of permanent injunction in favour of the Plaintiffs and against the Defendants.

a. restraining the Defendants, their agents, friends and henchmen or anyone claiming through them from threatening, intimidation and harassing the Plaintiffs and other officers and supervisors and willing workmen of the company and gathering the main entrance of the Plaintiff's factory anywhere within the radius

of 100 meters therefrom;

b. restraining the Defendants and their henchmen and agents from causing any damages to the Plaintiffs and/or to the property of the company.

c. restraining the Defendants, their henchmen and agents or any one claiming through them from interfering with and obstruction the ingress and egress of the Plaintiffs, other officers, willing workmen and the customers of the Plaintiffs and their vehicles and the vehicles of the Plaintiffs and the movement of raw materials, finished products in and out of the factory in the interest of justice and equity.

3. In the plaint filed before the Court Plaintiffs say that the Company Bata India Limited, has set up a factory at Peenya Industrial Estate, Bangalore, employing 250 workers of different categories. There are settlements between Bata India Limited, and its employees. According to the plaint averment Bata India Limited, declared a lock out on 8.3.2000 due to industrial unrest on account of certain acts on the part of the workers and their supporters contrary to the terms of the settlement. There was go-slow-tactics from 1.2.2000. The efforts of the management to settle the matter did not yield any fruits. The Company suffered losses on account of these various unsustainable acts of the employees. Finally Company declared lockout on 8.3.2000. Even after declaration of lock out the present Appellants staged Dharana, erected Shamiana so as to create industrial unrest and damages to the Company's property. There were obstructions by these Appellants. In the absence of any action on the part of the police authorities the Company had filed a suit in OS No. 1815 of 2000 and the same is pending on the date of the suit. The Plaintiff apprehending that the present Appellants may cause damage to the safety of the office and establishment have filed the present suit seeking for various reliefs as stated above during the pendency of the suit in O.S. No. 1815 of 2000 filed by the Management. They also enclose the plaint in OS No. 1815 of 2000.

4. Notice was issued by the trial Court alongwith the plaint and the Respondents are represented by their learned Counsel.

5. On 19.10.2000 the matter was listed for orders before the trial Court. The Respondents filed a memo stating that they do not press the suit against the Defendant 8. Appellants remained absent and no objection was filed. The trial Court on 19.10.2000 heard the Plaintiff and has passed an order allowing IA and thereby granting injunction in favour of the Plaintiff. This order of the Judge granting injunction against the Appellants is challenged before this Court in this appeal.

6. Respondents had entered caveat.

7. In view of the urgency involved in the matter I have heard the Counsel on either side on merits and perused the impugned order.

8. Sri Subramaniam, learned Counsel appearing for the Appellants contended

that on 4.8.2000 the Appellants entered appearance and the case was adjourned to 4.9.2000. On 4.9.2000 Defendant 5 sought time to engage an Advocate and to file objection. Case was set down on 19.10.2000 for appearance. On 19.10.2000 time was not granted and an adverse order was passed on I.A. He further argues that the impugned order suffers from errors apparent on the face of record. According to him the injunction could not have been granted by the learned Judge on the facts and circumstances of this case. He also invited my attention that an injunction has been granted at the instance of the three officers of the company during the pendency of the suit filed by the Management. According to him these three officers even could not maintain the suit, leave alone getting an interim order from the Court.

9. Per contra Sri Gowrishankar, learned Counsel invited my attention to the various illegalities committed by the workers forcing the Respondent-officers to approach the Court for reliefs. He supports the order.

10. Admittedly in the case on hand this suit in OS No. 4476 of 2000 is filed by 3 officers viz., Manager (Production), Assistant Manager (Maintenance) and Manager (Personnel) seeking for permanent injunction restraining the Defendants, their agents, friends and henchmen or any one claiming through them from threatening, intimidation and harassing the Respondents and their officers and Supervisors and willing workmen of the company and gathering near the main entrance of the Plaintiffs/Respondents factory anywhere within the radius of 100 meters. A further injunction is sought for restraining the Appellants, their henchmen and agents from causing any damages to the Plaintiffs and/or to the property of the company; and restraining the Defendants, their henchmen and agents or anyone claiming through them from interfering with and obstruction the ingress and egress of the Plaintiffs, other officers, willing workmen and customers of the Plaintiffs and their vehicles and the vehicles of the Plaintiffs and the movement of raw materials, finished products in and out of the factory. The present Appellants/Defendants had not filed any written statement. On the otherhand, their request for time was rejected and an adverse order has been passed. On going through the impugned order I find that the learned Judge noticing the allegations of go-slow, intimidation, picketing etc., by the Appellants according to learned Judge, is in contravention of the terms of conditions of the settlement. Learned Judge notices that the allegations of violence and picketing etc., and rules that the Appellants should have come forward to a negotiation that the Respondents could have raised an industrial dispute and get the matter adjudicated instead of preventing manufacturing activities of the Respondents herein. According to him, the Company would suffer if no injunction is granted. It is in these circumstances the trial Judge has granted injunction relief against the Appellants at the instance of the officers.

11. At the outset I am at a loss to understand as to how the 3 officers can even maintain a suit against the employees. The aggrieved party if at all, assuming that the Appellants have committed any detrimental act, is the Company. The

Company has admittedly filed another suit in OS No. 1812 of 2000 and the Respondents are the same in that suit also. Allegations in both the suits are also almost the same or similar. Even the prayer is same except with regard to the distance in these two complaints. The cause of action even according to the present complaint as well as the complaint filed by the Company is 8.3.2000. When the Company has chosen to file a suit complaining against these very workmen on the very same allegations and when that suit is pending I am not able to understand as to how these 3 officers with the same allegation could file and maintain a second suit against the Appellants with the same allegations and with the same prayers. Admittedly there is no interim order in the suit filed by the Company. Probably it is for this reason that this second suit has been filed by these officers making the very same allegations before the trial Court. The Respondents have enclosed the complaint filed by the Company in OS No. 1815 of 2000. Unfortunately, the learned Judge has proceeded to pass the order as if the Company is before him in this suit. Reading of the order gives me an impression that the order has been passed as if the Company is Plaintiff in the present suit.

12. Even on merits after going through the material facts placed before me I am fully satisfied that the learned Judge has failed to consider the material facts properly. Admittedly the Company has not approached the Court in OS No. 4476 of 2000 (present suit). There is no allegation in the complaint as to how the present Respondents have prevented/prohibited others (their officers) as has been highlighted by the Judge in the impugned order. There is absolutely no pleading forthcoming in the complaint with regard to the overt act on the part of the present Appellants. The learned Judge without looking into the complaint averments has granted an injunction as if there is a prevention by the Appellants or causing any inconvenience to these officers by the workmen. There is absolutely no material placed in the complaint with regard to any of their sufferings through the Appellants. There are no details forthcoming as to how and when these Appellants have obstructed the vehicles or have caused any situation coming in the way of present Respondents in exercising their right to enter the factory premises. The averment to say the least are bald in character. With these pleadings I am at a loss to understand as to how the learned Judge could grant an injunction when there is no details regarding violence, picketing etc. in the pleadings in the impugned order. There is also no averment with regard to any paralysing act of the Company in the complaint averment. Learned Judge notices the prevention of willing employees, suffering of the company etc., for the purpose of granting an injunction without there being any details/documents before him. In my opinion learned Judge has failed to apply his mind even to the admitted material facts that too in the absence of written statement while granting injunction against the Appellants.

13. It is well recognised that grant of injunction is a serious matter and it requires consideration of all facts by a Judge. It is equally well settled that before granting an injunction the Court has to be satisfied with regard to prima facie case, irreparable injury, balance of convenience and greater hardship. Prima facie

case would include locus of the person, the pleadings and the prayer. The officers as I mentioned earlier on the very same pleadings of an earlier case filed by the Management have chosen to file a second suit probably on account of no order in the earlier suit. The learned Judge has failed to take into consideration the locus of the parties while granting injunction in the case on hand. While granting injunction the learned Judge must be satisfied that the injunction is sought at the instance of a right person. The right person on the facts of this case who can seek an injunction is the Company. Company was not before the Court in the suit. That being the position on facts learned Judge has committed a serious error in failing to take notice of the same and he has granted injunction without taking into consideration the absence of any factual details whatsoever in the plaint. In the impugned order the learned Judge has ruled that the present Appellants should raise an industrial dispute and get the matter adjudicated. What the learned Judge has forgotten is that an Industrial dispute can be raised only against the Management and not against the officers.

14. The Supreme Court has reiterated time and again the well-known principles for test in the matter of granting an interim injunction. In the famous case of Gujarat Bottling Co. Limited v. Coca Cola Co. JT 1995 (6) SC 3. 46 the Court notices the test as under:

46. The grant of an interlocutory injunction during the pendency of the legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests-(i) whether the Plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the Plaintiff; and (iii) whether the Plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies (See *Wander Ltd. and Another Vs. Antox India P. Ltd.*, . In order to protect the Defendant while granting an interlocutory injunction in his favour the Court can require the Plaintiff to furnish an undertaking so that the Defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

The object of an interim injunction as held by the Supreme Court is to protect the Plaintiff against an injury by violation of his right for which he could not be adequately be compensated in damages for violation of legal right of a litigant.

15. As mentioned earlier, there is no specific allegation of violation of any of the legal rights of the Plaintiff. On the other hand, the Plaintiffs are only echoing the interest of their employer viz., company and the company as mentioned earlier, has already approached the Court for an interim order on account of alleged violation of its right to carry on its business by the workmen. The Supreme Court in the same judgment has again emphasised in para 50 and has ruled as under:

Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest.

16. In the case on hand, the conduct of the Plaintiffs in approaching the Court on the same or similar allegations against the very Defendants that is the present Appellants after failure of the employer in getting the interim order reflect their conduct in approaching the Court. This has not been noticed by the Judge in spite of the Respondent enclosing the plaint filed by the employer in the case on hand.

17. The learned Judge in my opinion could not have granted an injunction against the present Appellants in a second suit on the same allegations at the instance of three officers particularly in the absence of any fresh material in the present plaint. Looking from any angle the impugned order in my opinion is wholly unsustainable both in law and on facts and do require my interference and I do so in the case on hand. In the circumstances, I set aside the impugned order in the case on hand.

18. However, I clarify that any findings given by me in this case should not be understood as any finding on merits in the proceeding pending between the Company and the present Appellants. The finding given in this case is based on the pleading in this case only.

19. Before concluding I do hope that notwithstanding these litigations the Appellants and the Company would bury their differences and settle their grievances amicably in the larger interest of the economy of the industry as well as the workmen.

20. On the peculiar facts and circumstances of this case I am of the view that the

Appellants are to be compensated by way of costs quantified at Rs. 5,000/-.

21. In the result, Miscellaneous First Appeal is allowed. The impugned order is set aside with costs of Rs. 5,000/- payable by the Respondents in equal share to the Appellants within a month from today.