
(2004) 01 BOM CK 0002

In the Bombay High Court

Case No : L.P.A. no. 27 of 2003 Arising out of W.P. No. 1282 of 2000

Bata India Ltd.

APPELLANT

Vs

Sunilkumar Chaudhari

RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 ALLMR 426 : (2004) 6 BomCR 957 : (2004) 3 MhLj 702

Hon'ble Judges : K.J. Rohee, J;D.D. Sinha, J

Bench : Division Bench

Advocate : Uday Dastane, for the Appellant; Bhangde, for the Respondent

Final Decision : Allowed

Judgement

D.D. Sinha, J.—Admit. Heard finally by consent of the parties.

2. Letters Patent Appeal is directed against the impugned order, dated 17-10-2002, passed by learned Single Judge, whereby Writ Petition bearing No. 1282 of 2000 filed by the appellant came to be dismissed.

3. Mr. Dastane, learned counsel for the appellant, states that the appellant is original tenant and the Rent Controller, vide Order dated 31-10-1998, fixed the fair rent on the application of respondent-landlord. It is submitted that the said order was challenged by appellant-tenant before Additional Collector, Nagpur, by filing an appeal bearing No. 112/A-71 (2)/98-99, and Additional Collector, vide Order, dated 27-2-2000, dismissed the appeal filed by appellant. Being aggrieved by the said order, the appellant filed a Writ Petition bearing No. 1282 of 2000, wherein the order, dated 27-2-2000, passed by Additional Collector, as well as order, dated 31-10-1998, passed by Rent Controller were impugned. Along with the said Writ Petition, a Civil Application bearing No. 1650 of 2002 was also filed by appellant for grant of stay to the orders impugned in the Writ Petition.

4. Mr. Dastane, learned counsel for appellant, states that learned Single Judge on 11-3-2002 granted interim relief as prayed by appellant in Writ Petition No. 1282

of 2000 on the basis of the Undertaking given by learned counsel for appellant that the entire amount, which became due and payable as per the orders of Rent Controller and Small Causes Court, Nagpur, passed in Civil Suit No. 383 of 1998, including the arrears would be deposited in this Court within a period of 12 weeks from 11-3-2002. Mr. Dastane, learned counsel, further states that the appellant on 10-6-2002 deposited Rs. 3,94,700-00 in this Court. It is submitted that the present respondent moved Civil Application No. 4231 of 2002 in the above referred Writ Petition for vacating interim order passed by learned Single Judge on 11-3-2002, on the ground that the deposit made by the appellant was less than the full amount, which was due and payable as per the undertaking given by the appellant. It is contended that as per the say of the respondent, the deposit, which was made by the appellant, was less by Rs. 78,388-00. Mr. Dastane, learned counsel, states that Civil Application No. 4231 of 2002 moved by the respondent for vacating stay was listed for orders on 17-10-2002 before learned Single Judge and learned Single Judge passed the impugned order and dismissed the entire Writ Petition only on the ground that the appellant has failed to comply with the Undertaking given to the Court in respect of deposit of the entire amount due and payable within the stipulated period.

5. Mr. Dastane, learned counsel, submitted that the order impugned is bad on two counts, namely (1) that the learned Single Judge was considering the application for vacating stay moved by respondent and, therefore, if the learned Single Judge was of the view that the amount deposited by appellant was less by some amount as undertaken by the appellant in the Undertaking, then the learned Single Judge ought to have vacated the interim order, dated 11-3-2002 and ought not to have dismissed the Writ Petition, and (2) that, at the relevant time, the appellant had disputed that the deposit was less by Rs. 78,388-00 and, therefore, the learned Single Judge ought to have adjudicated upon this aspect of the matter and it is only thereafter the learned Single Judge could have vacated interim stay, but in any case could not have dismissed the Writ Petition itself.

6. Mr. Bhangde, learned counsel for the respondent, supported the impugned order and contended that the appellant by filing the above referred Writ Petition invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution, which is discretionary in nature and can be refused in case parties do not come with clean hands. It is contended that in the instant case, the appellant had specifically undertaken to deposit entire amount which was due and payable and since the appellant failed to deposit the said amount, the appellant by its conduct breached its own Undertaking and in such a situation, the learned Single Judge was justified in dismissing the entire Writ Petition.

7. We have considered the contentions canvassed by respective counsel.

8. So far as the basic facts are concerned, they are not seriously disputed. It is not in dispute that on 17-10-2002 Civil Application No. 4231 of 2002 moved by respondent for vacating interim order passed by learned Single Judge in the

above Writ Petition was listed for orders. It is, no doubt, true that on 11-3-2002, learned counsel for appellant gave an Undertaking that appellant would deposit within twelve weeks entire amount which was due and payable as per the orders of Rent Controller as well as Civil Court and, therefore, it was, no doubt, incumbent on the appellant to deposit the said amount within the stipulated period. We cannot lose sight of the fact that learned Single Judge granted interim relief on the basis of the said undertaking vide Order dated 11-3-2002 and, therefore, in the normal course, if there is a breach of undertaking by appellant, then learned Single Judge would have been justified in vacating interim order because undertaking was, more or less, limited to the aspect of interim relief alone and had nothing to do with the basic cause of action in the petition. However, the learned Single Judge dismissed the entire petition without even adjudicating upon the fact as to whether there was any shortfall in the deposit of the amount by appellant, since as per the appellant the amount, which it deposited within the stipulated period, was only due and payable.

9. It is, no doubt, true that so far as exercise of extraordinary power/jurisdiction under Article 226 of the Constitution of India by the High Court is concerned, the same is discretionary and needs to be exercised only if parties to the litigation come with clean hands. It is also true that if an Undertaking is given to this Court by a party, it is incumbent on such party to comply the same in toto and if any breach of such Undertaking is committed, the High Court, for adequate reason, can refuse to exercise extraordinary jurisdiction under Article 226 of the Constitution, and would be justified in dismissing the proceedings. However, in the instant case, we cannot turn the Nelson's eye to the fact that only interim order, dated 11-3-2002, passed by learned Single Judge was made subject to above referred Undertaking given by appellant and, therefore, the issue of Undertaking revolves only around the interim relief and if there is a breach of such Undertaking by the appellant, in the normal set of situation, the learned Single Judge would have been justified in vacating interim order, since the same was made subject to compliance of the Undertaking. However, by the order impugned, learned Single Judge dismissed the Writ Petition itself, which, in our considered view, has resulted in miscarriage of justice. We concur with the view expressed by the Allahabad High Court in *Shyam Murari Lal Saxena Vs. The District Magistrate and Others*, . The relevant observations in Paragraph 5 of the said Judgment based on the observations of Lord Denning in *Hadkinson v. Hadkinson* read thus :

"5. Learned counsel for the appellant has challenged the correctness of the view that if the petitioner disobeys an interim order, he is not entitled to be heard on merits for grant of relief, if he makes out a case for it. The law on the subject has been succinctly stated by Lord Denning in *Hadkinson v. Hadkinson*, 1952 (2) All ER 567. He observed :--

"It is a strong thing for a Court to refuse to hear a party to a cause and it is only to be justified by grave considerations of public policy. It is a step which a Court

will only take when the contempt itself impedes the course of justice and there is no other effective means of securing his compliance."

Similarly in Halsbury's laws of England, Simond's Edition, page 42, paragraph 73, Volume 8 it has been stated that "even the plaintiff in contempt has been allowed to prosecute his action when the defendant had not applied to stay the proceedings." In the present case there was no application to stay the proceedings. At the most the proceedings could have been stayed but the writ petition could not be dismissed on the ground that the petitioner had violated the interim order of the Court, specially in the absence of a finding that by the alleged contempt the course of justice had been impeded and there was no other effective way of enforcing his obedience. We are unable to share the view taken by the learned single Judge and we call upon the parties to state the case on the merits."

10. On the backdrop of the above referred facts and circumstances as well as the law on the subject, we are of the view that the impugned order dated 17-10-2002, is not sustainable in law. The same is hereby quashed and set aside. Letters Patent Appeal is allowed. Writ Petition No. 1282 of 2000 is restored on the file of this Court.

So far as interim relief is concerned, learned Single Judge would be entitled to reconsider the whole issue again.

Letters Patent Appeal is allowed in above terms. No order as to costs.