

**(1945) 01 CAL CK 0002**  
**In the Calcutta High Court**  
**Case No : Suit No. 1528 of 1944**

Bharat Starch and Chemicals, Ltd.

APPELLANT

Vs

The Mill Stores (Ahmedabad) Ltd.

RESPONDENT

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**Date of Decision :** 22-01-1945

**Acts Referred:**

**Citation :** (1945) 01 CAL CK 0002

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## Judgement

McNair, J.—This is an application by the plaintiff company, Bharat Starch and Chemicals Ltd., for an order that the defendant company, the Mill Stores (Ahmedabad) Ltd., their servants and agents be restrained from proceeding with a suit filed by the defendant company in the Court of the Second Subordinate Judge at Ahmedabad till the disposal of the plaintiff's suit in this Court. The suit in the Ahmedabad Court was filed on 8th January 1944. The present suit was brought on 17th November 1944. The disputes arise out of a contract made in Calcutta on or about 4th October 1943 for the sale by the petitioner to the defendant company of 400 tons of maize starch. The main dispute between the parties is with regard to delivery. The sale was ratified by the Starch Controller, and priority certificates were obtained for the despatch of the goods within 30 days from 21st October 1943. On 22nd October, one consignment of goods was despatched and the defendant company took delivery. In the meantime the defendant company informed the petitioner that goods should not be despatched between 23rd and 26th of October because of the Dewali festival holidays in Western India. On 27th October the defendant company purported to repudiate the contract by a letter dated 27th October in which they state "that the quantity remaining undelivered at the end of October is to be treated as cancelled, the reason for our cancellation" they write, "is that another firm are supplying starch at a cheaper rate."

2. The petitioner early in November sent further goods by rail to the defendant company, but they having repudiated the contract, refused to take delivery, and eventually after notice to the defendant company the goods were re-sold, and the plaintiff claims damages amounting to over Rs. 1,68,000.

3. In October 1943 the defendant company complained that they had been wrongly charged certain railway freight amounting to Rs. 1642 and also commission amounting to Rs. 810 in respect of the consignment which they had accepted.

4. The petitioner on 2nd November 1943 replied admitting that this was a mistake and informing the defendant company that they would be credited with these amounts. At present, however, the petitioner contends that owing to the repudiation of the contract the defendant company are not entitled to these amounts.

5. The petitioner on 24th December 1943 claimed a sum of Rs. 1,75,000 as damages from the defendant company and gave them notice that this amount was to be paid within one week.

6. The defendant company on 8th January filed their suit in the Court of the second Subordinate Judge at Ahmedabad claiming the sums of Rs. 1642 and Rs. 810 to which I have already referred. The dates are not mentioned in the petition, but it appears that the plaintiff in the Ahmedabad Court obtained an ex parte decree which was later set aside, and the petitioner was given leave to defend. Shortly afterwards, sometime in May 1944, the questions in dispute between the parties were referred to arbitration; the arbitrator was to make his award within three months from the date of the agreement, which would be some date in August. Neither party did anything until 3rd July 1944 when the petitioner wrote to the arbitrator asking him to give his decision within the time specified for making the award; the arbitrator pointed out that he had not yet received the statement of claim from the petitioner. That statement of claim was thereupon sent to him on 14th July. The defendant company did not, apparently, send in the statement of their case, the arbitrator went abroad and the arbitration became infructuous. The petitioner then filed a written statement in the Ahmedabad suit which was fixed for hearing on 24th November 1944. Two days before the hearing of the suit the petitioner took out the present notice of motion. No order was made on the application for an interim injunction, but the defendant company consented to the stay of the suit pending the hearing of this application. The petitioner seeks stay of the Ahmedabad suit on the ground that the suit in this Court is more comprehensive and will give adequate relief to both parties. To that the defendant company reply that it will not give them adequate relief because there is no provision for a counter claim in this Court, and in the event of the petitioner's suit being dismissed, they would be without remedy unless they pursue their suit in the Ahmedabad Court, and they also submit that this order now prayed for should not be made because of the delay for which the plaintiff company is responsible.

7. I have no doubt that the order prayed for can be made. There has been some slight difference of opinion amongst the Courts as to whether such an order can be made by the Court in its inherent jurisdiction, and if so, on what grounds. This question has been dealt with by Das J. in the recent case of Snowwhite Food

Products Co. Ltd. v. Messrs. The Punjab Vanaspati Supply Co., reported in 49 C.W.N. 172. Das J. has held on a consideration of the authorities that this Court has inherent power to grant temporary injunctions apart from the provisions of the Civil Procedure Code, and that the exercise of such power need not be limited to persons residing within the jurisdiction of this Court. With that conclusion, I respectfully agree. In my opinion, S. 10, Civil P.C., does not apply in this instance, so that the other question with which Das J. has dealt, namely, that if S. 10 applied no injunction can be issued to restrain a previously instituted suit is not relevant to the issue before me. Das J. in the course of his judgment refers to the case of Cohen v. Rothfield, (1919) 1 K.B. 410 : 88 L.J.K.B. 468) amongst others and says:

These cases seem to me to be in point, and they clearly establish that balance of convenience is not the only or even the main consideration to induce this Court to issue a temporary injunction restraining the defendant in the suit in this Court from proceeding with his suit in another Court. this Court must be satisfied that the other suit is vexatious and an oppressive multiplication of actions.

8. Mr. I.P. Mukerji on behalf of the defendant company strongly relies on these remarks of the learned Judge. Those remarks appear to be based largely on the decision of the Court of Appeal in Cohen v. Rothfield, (1919) 1 K.B. 410 : (88 L.J.K.B. 468). In that case Cohen carried on a business as a money-lender in the north of England and in Scotland. Rothfield was his manager on the terms of getting one-fourth of the profits and paying one-fourth of the losses. Rothfield demanded accounts; Cohen alleged that Rothfield had received secret commissions. Rothfield threatened an action in Scotland in respect of the Scottish business if accounts were not rendered within a week. Cohen promptly issued a writ in England for damages against Rothfield for misconduct as his agent. Rothfield then sued for an account of the Scottish business. Cohen then applied to restrain Rothfield from proceeding with his action in Scotland, and before the trial Judge obtained an injunction. That order was set aside and the injunction dissolved by the Court of Appeal, In the course of his judgment Scrutton L.J. said:

Where it is proposed to stay an action on the ground that another is pending, and the action to be stayed is not in the Court asked to make the order, the same result is obtained by restraining the person who is bringing the second action from proceeding with it. But as the effect is to interfere with proceedings in another jurisdiction, this power should be exercised with great caution to avoid even the appearance of undue interference with another Court.

Where an English Court is asked to stay an action commenced in a foreign jurisdiction-the burden is on the person asking for relief from the English Court to satisfy it that the plaintiff in the foreign Court cannot obtain any advantage from the foreign procedure that he would not obtain in the English Court.

9. With regard to an action which is sought to be stayed which has been brought

not abroad but in another Court in the King's Dominions Scrutton L.J. said:

It appears to me that unless the applicant satisfies the Court that no advantage can be gained by the defendant by proceeding with the action in which he is plaintiff in another part of the king's dominions, the Court should not stop him from proceeding with the only proceeding which he, as plaintiff, can control.

10. Eve J. in delivering judgment in the same matter on p. 417 of the report says:

The Court will exercise the jurisdiction where the circumstances are such as to satisfy it that continued prosecution of both actions would be oppressive or vexatious.

In order to arrive at a conclusion it is obviously essential that the facts of each case should be considered separately by the Court, and in considering those facts the Court must be guided by the principles which have been set out by the learned Judges from whose judgments I have quoted.

11. Can it be said in the present instance that the continued prosecution of both these actions would be oppressive or vexatious? And can it be said, secondly, that the respondent to this application would not, if the application were successful, be able to obtain in this Court the benefit of his action in Ahmedabad? A further matter which it seems to me must always be relevant when a temporary injunction is asked for is whether the party who seeks that injunction has come to the Court at the earliest opportunity to seek his remedy.

12. Dealing first with the question of delay, it appears to me that the plaintiff has not been as diligent as the Court might reasonably expect. The arbitration could not proceed after August 1944. The exact date has not been disclosed. In the mean time the petitioner filed a written statement in the Ahmedabad suit, and that suit was actually ready for trial on 24th November. Only two days before the trial was to take place this notice of motion was taken out. There is no explanation why the petitioner did not apply to this Court immediately he found that the arbitration proceedings were infructuous. It is true that the long vacation intervened, but an application might have been made to the vacation Judge. Again, after the agreement to submit the disputes to arbitration, it was not until nearly two months had elapsed that the petitioner put in his statement of claim with the arbitrator, and apparently, it was within the knowledge of both parties that the arbitrator was going abroad and it would not be possible to extend the time within which the award might be given. Can it be said then that the Ahmedabad suit is vexatious or oppressive? It appears to me that the claim in the Ahmedabad suit is to all intents and purposes one item in the disputes between the parties; it is an item which has to some extent been admitted by the petitioner when he wrote and stated that the charges had been made by mistake and that a credit note would be issued in favour of the defendant company. From that position, however, he later resiled and stated that since the defendant company had repudiated the contract they were not entitled to the

money which they claimed for railway freight and commission. Obviously, therefore, that is a matter which has to be tried between the parties. The defendant company, as plaintiff in the Ahmedabad suit, sought, as they had the right to do, to have the matter decided at Ahmedabad at an early date and it was only at a considerably later date that the present suit has been filed by the present petitioner. In the circumstances it does not seem to me that the suit in the Ahmedabad Court is vexatious or oppressive.

13. Finally, as has been pointed out by Mr. I.P. Mukerji, in the event of the plaintiff's claim in this suit being dismissed, the defendant company would not be able in this suit to get a decree for the amount which they are claiming in the Ahmedabad Court.

14. For these reasons, I am of opinion that this application must be dismissed. Costs, costs in the cause. The interim order is vacated.