

(1983) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 200 of 1983

Bipin Chandra and Another

APPELLANT

Vs

Purushottam Bhai Dhoribhai and Co. and Others

RESPONDENT

Date of Decision : 04-07-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, Order 43 Rule 1, Order 47 Rule 1

Citation : AIR 1984 MP 110 : (1984) ILR (MP) 222 : (1984) JLJ 292

Hon'ble Judges : B.C. Varma, J

Bench : Single Bench

Advocate : M.M. Sapre, for the Appellant; K.P. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.—Respondent No. 1 (plaintiff No. 11 is a registered partnership firm of which the appellants and other respondents are partners. The firm deals in manufacture and sale of bidi and has extensive property. It has accounts in different banks. It appears that the two appellants on one side and the respondents 2 to 7 on the other have now formed two separate groups and their interests are adverse to each other. The respondents feel that the recent activities of appellants are adverse to the interest of the partnership and therefore, in order to prevent them from continuing such activities, they brought a suit claiming declaration that they to the exclusion of the appellants are entitled to conduct the business of the partnership only in consultation with the appellants, the appellants cannot oust the plaintiffs from controlling the management of the affairs of the partnership firm, and that the appellant be enjoined either personally or through their agents from entering the business premises of the firm and from interfering with the management of the firm in any manner whatsoever. An injunction is also claimed restraining the appellants from interfering with day-to-day and routine matter connected with the control and management of the affairs of the firm. Injunction is also claimed restraining the appellants from starting or carrying on any independent business in the name

and style of "M/s. Purshottam Bhai Dhoribhai and Company (H.U.F.) or under any other name identical to or deceptively similar to the name of the plaintiff firm. Certain other reliefs have also been claimed. In paragraphs 11 to 23 of the plaint, various averments have been made showing the adverse activities of the appellants, the sum total of which is that they have started a competitive business in a name identical with the name of the plaintiff firm (M/s. Purshottam Bhai Dhoribhai and Company), that they have withdrawn a sum of Rs. 50.000 for themselves out of the partnership funds, that they have issued directions to the banks freezing accounts of the firm with those banks, and that one Atul Patel was manhandled of which a report was loaded to the Police Station, Kanker. It is also alleged that due to the aforesaid activities of the appellants, about 2500 employees of the firm have become panicky and the business of the firm cannot be carried on smoothly. An application for grant of temporary injunction was made simultaneously with the suit along with an affidavit and certain documents. The plaintiffs could succeed in persuading the trial Court to pass an ex parte temporary injunction restraining the appellants from interfering in any manner whatsoever with the routine and day-to-day administration of the business of the plaintiff No. 1. The present appeal is directed against this order.

2. The grant of temporary injunction is governed by Order 30. Rules 1 and 2 of the Code of Civil Procedure. Since this provision permits indulgence to a suitor even without adjudication of his claim on merits. Rule 3 of Order 39 requires the Court to issue a notice of the application for grant of temporary injunction to the opposite party before passing any order in terms of that order. The provisions are, however, aimed at preventing any immediate waste, damage or alienation of the property in dispute in a suit or from its being wrongfully sold in execution of a decree. The purpose of this provision is also to prevent a defendant to remove or dispose of his property with a view to defraud this creditor and to restrain him from committing a breach of a contract or any other injury of the kind. Occasions are not few when a party needs immediate intervention of the Court for a direction to the opposite party in terms of Order 39. At such occasions, the issuance of notice to the opposite party of an application for grant of temporary injunction pending disposal of the suit and awaiting the reply of that party may defeat the object of the application itself and it may be that by the time the notice is served and the opposite party is heard, the mischief sought to be prevented may already be done and the application may become infructuous. It has, therefore, been provided under Rule 3 of Order 39 that the Court may depart from the general rule of issuing notice of the application for grant of temporary injunction to the opposite party and may pass an ad interim injunction in case where "it appears that the object of granting the injunction would be defeated by the de-lay". The terms of Rule 3 are as follows:

""The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party."

By the CPC (Amendment) Act No. 104 of 1976, the following proviso has been added to this Rule:

"Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay and require the applicant-

(a) to deliver to the opposite party or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with-

(i) a copy of the affidavit filed in support of the application:

(ii) a copy of the plaint: and (iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent." Thus, while Rule 3 permits the Court to grant an ex parte temporary injunction, the proviso enacts a safeguard to the exercise of that jurisdiction. It makes incumbent upon a Court to record its reason for the opinion that withholding of ex parte injunction would defeat the very object of granting injunction. What seems to be intended by adding the proviso is that there should appear to be compelling reasons for the Court to proceed to pass an ex parte temporary injunction without notice to the opposite party and that such reasons must be recorded before the power is exercised. Those reasons must be sufficient to draw an inference that the object of granting the injunction would be defeated if the Court were to await for noticing and hearing the opposite party. The proviso thus is intended to prevent the abuse of the exercise of power granted by Rule 3 to issue ex parte temporary injunction without notice to the opposite party.

3. In view of the object underlying Rule 3 and its proviso. I am of the opinion that the scope of an appeal/revision filed against the grant of ex parte temporary injunction without notice to the opposite party is very limited. The merits of the claim for grant of temporary injunction have not to be examined. Since the ex parte temporary injunction only aims at maintaining status quo for the time being or the forbearance from doing an act imminently prejudicial to the plaintiff who obtains the order and does not seriously affect the right of the parties: what may be seen for the review of that order is whether the Court had good reasons before it to proceed to grant an ex parte temporary injunction.

If the reviewing authority finds that the party seeking the injunction places good and compelling reasons before the Court for maintaining the status quo or for a direction preventing performance of any prejudicial act, and that the trial Court has applied its mind to those facts and has recorded the reasons to grant an ex parte injunction the reviewing authority may not interfere. This is particularly so

because Clause (a) of the proviso to Rule 3 itself requires that the Court shall direct the party seeking ex parte temporary injunction to deliver to the opposite party or to sent to him by registered post a copy of the application for injunction along with affidavit filed in its support and a copy of plaint and conies of documents on which reliance is placed: and also because Rule 4 of Order 39 enables the person affected by such grant of ex parte temporary injunction to appear before the Court itself and show cause against the application and net the order discharged or validated or set aside. When he so appears the Court shall hear him at length and then may decide the application on merits.

4. For the reasons stated in the plaint and the application, which I have referred to earlier, the respondents/plaintiffs requested the trial Court for an ex parte direction to prevent the appellants from interfering with the day-to-day management of the partnership business. The trial Court has in the impugned order mentioned those reasons. It has applied its mind to them and formed an opinion that the appellants should be prevented from interfering with the day-to-day management of the partnership business by the respondents. While it is true that being partners the appellants' right to participate in the business of the partnership and to have access to the place of business and the account books cannot be denied, it is equally true that they cannot be permitted to carry hostile activities which may adversely affect the partnership business itself and may bring it to a standstill. The allegations made in the plaint and the application, in my opinion, rightly prompted the trial Court to step in to prevent the appellants from interfering with the day-to-day management and working of the partnership. It, therefore, cannot be said that the formation of opinion by the trial Court to proceed in terms of Rule 3 and its proviso to pass an ex parte temporary injunction violates any of those provisions and calls for any interference. Learned counsel for the appellants placed before me certain facts which, according to him, would disentitle the respondents to an order of temporary injunction in their favour. It is not for me in this appeal to consider the merits and demerits of the application in the light of the facts alleged by the appellants. The appellants may well place all those facts and the supporting material before the trial Court and pray for discharge of the rule in terms of Rule 4 of Order 39. In my opinion, the impugned order cannot in any way be said to be contravening the terms of Rule 3 of Order 39 and, therefore, cannot be interfered with.

5. Shri K. P. Munshi, learned counsel for the respondents, raised an objection that the appeal is not maintainable. No doubt there are authorities to say that an appeal against the order granting ex parte temporary injunction is not maintainable under Order 43. Rule 1 (r) (see: *Parijatha and Another Vs. Kamalaksha Nayak and Others*, and *Abdul Shakoor v. Umachander* AIR 1976 Mad 350 . Shri M. M. Sapre, learned counsel for the appellants, however, placed certain authorities taking a contrary view. (See ; *Zila Parishad, Budaun and Others Vs. Brahma Rishi Sharma*, . *Chhaganlal v. Niwasdas* AIR 1963 Madh Pra 208, *SK. Jusa Vs. Ganpat Dagdu Gire and Others*, and *Rai Kumari v. Prem Lal*

AIR 1972 MP 671. Shri Munshi however, expressed that this appeal be decided on merits and not on this technical ground and, therefore, I refrain from expressing any opinion if an appeal against an order passed granting an ex parte temporary injunction is maintainable under Order 43. Rule 1 (r) of the Code of Civil Procedure.

6. The appeal fails and is dismissed. There shall be no order as to costs.