

(1994) 08 CAL CK 0033

In the Calcutta High Court

Case No : Appeal No. 227 of 1994 and Suit No. 363 of 1990

Boeing Company

APPELLANT

Vs

R.M. Investment and Trading Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 09-08-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, Order 39 Rule 1, 151
Foreign Awards (Recognition and Enforcement) Act, 1961 — Section 3
Limitation Act, 1963 — Section 12

Citation : (1994) 2 CALLT 300 : 99 CWN 1

Hon'ble Judges : Krishna Chandra Agarwal, C.J.;Mukul Gopal Mukherji, J

Bench : Division Bench

Advocate : Subrata Roychowdhury, Tapas Banerjee, Arijit Banerjee and S.N. Pyne, for the Appellant;Abhrajit Mitra and Padam Khaitan, R.N. Majumdar and S. Mondal, for the Respondent

Final Decision : Allowed

Judgement

Krishna Chandra Agarwal, C.J.—R.M. Investment & Trading Company Private Limited (briefly stated as "R.M.I.") the plaintiff-respondent was the Company incorporated under the Companies Act, 1956. In and around 1986, R.M.I. entered into an agreement with Boeing Company (for short "Boeing"), a company incorporated under the laws of the State of Delaware, United States of America. R.M.I. agreed to provide consultant services for promotion of sale of Boeing Aircraft in India. The said agreement was initially agreed to be operative till December 31, 1986 but subsequently the agreement was extended till April 30, 1987. In August 1987, definitive purchase agreement to purchase two Aircrafts was executed between Boeing and Air India, a body corporate under the Air Corporation Act, 1953, R.M.I. claimed! commission from Boeing on the said transaction but Boeing refused to pay the same. In April 1970, R.M.I, filed suit No. 363 of 1970 on the Original Side of the Calcutta High Court against Boeing for! recovery of U.S. \$ 17.5 Million by way of compensation and remuneration on the basis of the terms of Consultant Services Agreement along with other

incidental reliefs.

2. The Consultant Services Agreement provided, that subject to the limitation of paragraph 3, the Consultant shall use Consultant's best efforts to promote the Sale (as defined in paragraph 2.2) of Aircraft to Customers.

3. Clause 10.2 of the agreement provided :-

"10.2. Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, which the parties have not been able with due diligence to settle amicably, shall be settled by arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any such arbitration proceedings shall be conducted in the English language in Seattle, Washington, USA by three arbitrators. Any award of the arbitrators shall be final, binding upon both parties, and enforceable in any court having competent jurisdiction".

4. R.M.I. filed an application in the aforesaid suit for attachment under Order 38 Rule 5 of the CPC and for injunction under Order 39 Rule 1 (b).

5. The Learned Judge passed the interim order which is reproduced below:-

"The Court: Without prejudice to the rights and contentions of the parties, let the affidavit-in-opposition be filed by 2.9.92, affidavit-in-reply by 15.9.92 and the matter be adjourned till 17.9.92.

In the meantime, if any payment is made by the Air India to the respondent, the respondent shall retain a sum of 17.5 million US Dollars with Air India. Liberty is given to the respondent to make an application for vacating this interim order.

The matter is heard in part and will appear in the list on 17.9.92.

All parties concerned to act on a signed copy of the minutes of this order on the usual undertaking".

6. On 12th August 1992, Boeing filed an application for stay of the suit and all proceedings therein [save and except the pending interlocutory application before A. K. Sengupta J. u/s 3 of the Foreign Awards (Recognition and Enforcement) Act 1961].

7. The interim application was specifically excluded as Boeing wanted to get the order of A. K. Sengupta, J. dated 17.07.92 vacated,

8. On an application u/s 3 for stay of the suit, S. K. Hazari, J. passed an interim order for stay of the suit and all proceedings therein excepting pending interlocutory application. The said order was extended on time to time until the disposal of application u/s 3 on 5.4.1993.

9. On 22.12.1992 A. K. Sengupta, J. passed the order in the nature of attachment before judgment which is to the following effect :

"The Boeing Company will furnish a letter of credit from one of its bankers in the USA, e.g., National West Minister Plc, Credit Lyonnais and ABN AMRO BANK NV, for a sum of US \$ 11.5 Millions in favour of R.M. Investment & Trading Company Pvt. Ltd. for the payment of the amount, if any (upto a maximum sum of US \$ 11.5 Million) as may be awarded and ultimately found payable to R.M. Investment and Trading Company Pvt. Ltd. in the Arbitration proceedings to be held in the USA. The letter of credit shall be initially for a period of six months, but shall be renewed from time to time until the final disposal of the Arbitration proceedings. The letter of credit shall be for the amount and the period specified above and shall cover the contingency mentioned above and shall be substantially in the form submitted to the Court by the Boeing Company and kept on record".

10. In pursuance of the convention on the Recognition and of Foreign Arbitration Awards done at New York on the 10th day of June 1958 to which India was also a party, Foreign Awards! (Recognition & Enforcement) Act, 1961 (hereinafter referred to as the Act No. 45 of 1961) was passed by the Parliament. It contained a provision about the arbitration proceedings. Section 3 of the said Act deals with stay of proceedings in respect of matters to be referred to arbitration. It lays down that the legal proceedings for the enforcement of the right which is subject matter of arbitration would be stayed and that all disputes connected with the agreement would be settled and decided in arbitration. Section 3 of the Act reads as under :-

"3. Stay of proceedings in respect of matters to be referred to arbitration- Notwithstanding anything contained in the Arbitration Act, 1940, or in the Code of Civil Procedure, 1908, if any party to an agreement to which Article II of the Convention set forth in the Schedule applies, or any person claiming through of under him commences any legal proceedings, in any court against any other party to the agreement or any person claiming through or under him in respect of any matter agreed to be referred to arbitration in such agreement, any party to such legal proceedings may,, at any time after appearance and before filing a written statement or taking any other step in the proceedings and the Court, unless satisfied that the agreement is null and void, inoperative or incapable of being performed or that there is not, in fact, any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings".

11. In Renusagar Power Co. Ltd. Vs. General Electric Company and Another, the conditions to be request to be fulfilled for the application of Section 3 are:-

(i) there must be an agreement to which Article II of the Convention set forth in the Schedule applies ;

(ii) a party to that agreement must commence legal proceedings against another party thereto ;

(iii) the legal proceedings must be "in respect of any matter agreed to be

referred to arbitration" in such agreement;

(iv) the application for stay must be made before filing the written statement or taking any other step in the legal proceedings ;

(v) the Court has to be satisfied that the agreement is valid, operative and capable of being performed;

(vi) the Court has to be satisfied that there are disputes between the parties with regard to the agreed to be referred;

12. As against the judgment of Mr. Justice Hazari rejecting the application, an appeal was filed before the Division Bench of Mr. Justice A. M. Bhattacharjee & Mr. Justice Batabyal.

13. The Division Bench allowed the Appeal on 10th September 1993 by setting aside the order of the Single Judge by which the application made for stay u/s 3 of the Act No. 45 of 1961 had been rejected. The operating portion of the order is noted below:-

"We, accordingly, allow the appeal, set aside the judgment of the learned Trial Judge rejecting the application of the appellant for stay u/s 3 of the Foreign Awards Act, allow the application and direct that the suit filed by RMI, giving rise to this appeal, shall stand stayed".

14. Against the judgment of the Division Bench, an Appeal was filed in the Supreme Court. The Supreme Court dismissed the same. It observed :

"If the suit against Boeing has to be stayed u/s 3 of the Act, it is difficult to appreciate how it could proceed against Air India alone".

15. Section 3 is in fact mandatory and does not confer any discretion on the authority to reject the application for the stay although the conditions for the stay have been made out. The question, however, is as to whether applications for injunctions and attachments before judgment could be filed in a suit stayed u/s 3 of the aforesaid Act.

16. Despite the pendency of the application made for stay of the suit, an application for injunction and attachment was made by the plaintiff respondent. Lot has been argued by the defendant's counsel that the application was vindictiva and was deliberately moved for putting pressure on the defendant and for causing harassment to the defendant appellant. The plaintiff respondent had intention of procuring and getting injunction and attachment before judgment without preferring arbitration in accordance with clause 10.2 of the Agreement. This was to defame Boeing Company in the business world. Grounds for attachment/injunction were given in paragraphs 30 & 31 of the said application.

17. We may consider as to what an "Attachment" is because it will throw light on the points argued.

Attachment

The word "attachment" in statute authorizing an attachment of property omitted from assessment meant a specific attachment, *Commercial Credit Co. v. Martin* 122 S.W. 2d. 135 136 275 Ky. 548.

The purpose of "attachment", generally, is to take defendant's property into legal custody, so that it may be applied when defendant's debt to plaintiff was established. *John Deere Flow Co. of St. Louis v. L.D. Jennings, Inc.* 27 S.E. 2d 571 572 203 S.C. 426.

"Attachment" is in nature of a preliminary execution against property to afford satisfaction of plaintiff's claim, and attachment laws are legal modes of acquiring title to property by operation of law, *Chinnis v. Cobb* 185 SE 638 642 210 N.C. 104.

18. In fact, Injunction is different from Attachment. The CPC has provided two different provisions for the same. An attachment is a proceeding to collect and enforce a lien. It is a remedy for the collection of an ordinary debt. Whereas Injunction restrains the disposition of property, it is not an attachment of property. Injunction does not constitute a lien on the property. It could be granted only when equity, justice and goods conscience of the party needs it.

19. An objection was filed by the Boeing Company to the application for injunction/attachment before judgment moved by R.M.I. The Learned Single Judge observed as under :-

"Order 38 in terms requires that the court must be satisfied that with intent to defeat or delay the execution of a, decree that may be passed against the defendant, the defendant is about to dispose of or remove from the legal limits of the jurisdiction of the Court, the whole or any part of his property".

20. In nutshell, the defendant appellant submitted that there was specific provision of law, no order could be made in exercise of inherent power. He further urged that inherent power takes within its purview equity and justice and therefore if any attempt is made to bypass these principles the court would not be justified in making any order in exercise of the inherent power. It was also contended that the existence, of the specific provision of law in any field, excludes the operation of Section 151 of the Code of Civil Procedure. In support of the submissions, several authorities were cited. It is not necessary to mention them excepting emphasizing that when claim made in the plaint is contested, generally the court has no jurisdiction to grant claim until and unless prima facie case is found on merits. It should not be ex parts or without hearing the party against whom the order is sought.

21. In *Nain Singh Vs. Koonwarjee and Others*, , was laid down that a court cannot make use of the special provisions u/s 151 of the Code where a party has his remedy provided elsewhere in the Code and could avail himself of the same.

22. Controverting the plaintiff respondent urged that the court has ample jurisdiction for doing justice to pass an order in exercise of its inherent

jurisdiction irrespective of specific provision in the Code for the purpose. For the submissions) made, the Learned Counsel relied on the decision of G. K. Mitter, J. in Suit No. 1614 of 1960 (Lal Chand Dugar v. Kadar Nath Baijnath) ; Snow White Food Products Co. Ltd. v. Punjab Vanaspati Supply Co. 49 CWN 172; Kamal Brothers and Others Vs. Hansraj Kapur, and National Company Ltd. Vs. Biseswarilal and Co., ; Chhedilal Hariniwas Vs. Brit-over Limited ; Zalinof v. Hammond: (1896) 2 Ch. 92 and Wilesford v. Watson (1873) 8 Ch. 473. According to him, there was no fetter on this jurisdiction because of the decision of the Supreme Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, He urged that the Supreme Court judgement supported his submission and was not against.

23. Reliance was placed by the plaintiff on the decision of Fort William Co. Ltd. Vs. Messrs. Chainrup and Co., for the view that the Court has jurisdiction u/s 41 of the Arbitration Act along with the schedule to make an order for interim injunction or the appointment of a Receiver. For the view taken, Justice Ray relied on the case of Kamal Brothers and Others Vs. Hansraj Kapur, In that case the parties to a suit in the Court referred the dispute to arbitration. While the arbitration was pending one of the parties instituted the suit in a Civil Court. Maffick, J. granted an injunction for limited time as. it was apparent that the arbitration would be brought to termination within the period.

24. In our view, the decision relied on by the Learned Counsel does not help us in deciding the controversy involved before us. Every decision has to be read in the context of what it decides. "The power of the Court to grant an injunction in a Suit is not a dispute in the instant case. Therefore, the decision cited by the Learned Counsel has no application to us.

25. We are of the opinion that inherent powers preserved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing the essential powers to regulate its practice and procedure.

26. The application, made by the plaintiff respondent, was for attachment before judgment and for injunction. For both the orders provision is made under Order 38 Rule 5 and Order 39 Rule 1(b) of the Code. In both cases, intention to defraud a creditor is essential, Padam Sen and Another Vs. The State of Uttar Pradesh,

27. To substantiate his objection/submission that the attachment was void, counsel for the appellant referred to amendment, made in Order 38 Sub-rule (4) of Rule 5 which was inserted by the Civil Laws Amending Act 1976. Also, the order of attachment could be passed after notice to the defendant. The notice must be sent in Form 5 in Appendix D. In our view, after new Sub-rule (4),

inserted by the Amending Act of 1976, an order of attachment made, without complying with the provisions of Sub-rule, is void. After the Amending Act of 1976, it has been held in the cases noted below that an order of attachment without compliance with the provisions of Rule 5(1) will be void.

"V. Vijayalashmamma v. S. Lakshmaiah & Sons AIR 1980 AP 176 G. Kuppathi Mudaliar Vs. V. Murugesan, .

28. Compliance of this provision has not since been made, it was urged that the attachment order was void.

29. It appears that the Trial Judge did not consider the conditions necessary for granting injunction/attachment as was required by law. Vague allegations are insufficient, the power to attach is not to be exercised lightly and without clear proof of the mischief aimed at. The Learned Judge has not even examined whether the plaintiff had a just claim or whether its apprehension was real or justified. The judgment indicates that he considered only the grievance of the respondent and did not look into the arguments made on behalf of the defendant appellant.

30. Salient features, amongst others, relevant for taking into account while granting injunction in a matter like the present one are :-

(i) The plaintiff must show a good and arguable cause on the merits of the claim.

(ii) There must be grounds for believing that the defendant has assets within the jurisdiction and that there is the risk of the assets being removed before the judgement is satisfied.

(iii) Where there are grounds for believing that if the defendant is given advance warning, the assets will be removed.

31. What was required was for the respondent to apply for reference by Arbitrators. The Agreement was entered into in 1990. The parties knew about the Agreement which requires them to prefer a claim before Arbitration of 3 persons in the event of a dispute arising. R.M.I. should have taken the matter to arbitration in the very beginning but lingered on it and wasted about 3 years time but not preferred the same. Presumably because going in arbitration would have involved expenditure and since R.M.I, by obtaining injunction/attachment from the Court which had no jurisdiction, was enjoying the benefits of the Injunction. Under the injunction granted, the appellant is restrained from withdrawing money so long as arbitration was pending and the dispute has not been resolved. There could be no more unjust injunction than this.

32. Court injunctions as is known are those issued during the pendency of the litigation for a short term purpose for preventing injury to the plaintiff for a period of time when the Court would be in a position to either grant or deny permanent reliefs on merits. In accordance with this; principle, Court injunctions are limited in duration to some specific length of time. Here, the Learned Judge

did not specify the duration of that injunction. He did not appear to have applied his mind to this aspect of the matter altogether.

"The Court, no doubt, has the discretion to grant an Injunction but this discretion.....Judicial discretion must be exercised with vigilance and circumspection and according to justice, common sense and sound judgement. The discretion is to know through, law what is just .. Keighley's case (1609) 10 Co R139 a: 77 ER 1136.

33. The person entrusted with the discretion must direct himself properly in law. He must call his own attention to the matters which he is about to consider. He must exclude from his consideration matters which are irrelevant. If Justices fail to take them into account, according to Lord Denning, which should have been taken into account, or vice versa they step outside their jurisdiction.

34. It would be evident from the unamended plaint that the only claim of R.M.I, was the money claimed under the contract which contained the arbitration clause. The allegations for injunction that the Boeing Company have no place of business or any asset in India save and except the amount receivable from Air India and if the said amount is remitted outside India, it would be very difficult for the plaintiff to realise its dues in the event a decree was passed in its favour. Further, there was no justification for the plaintiff respondent to think that its claim was bound to succeed. Paragraphs 30 & 31 mentioned above are the interlocutory applications for attachment and injunction made, no grounds for the granting of the same. Further, R.M.I, knew when it entered into the contract that Boeing was a foreign Company had no place of business in India. The court is required to be careful in passing an order in exercise of inherent power u/s 151. In the instant case, it took it as a routine and made the order. At the first instance, injunction/attachment was granted without providing an opportunity to the respondent to file an objection. It made the impugned order on the basis of allegations of fraud, collusion, conspiracy etc., which had been subsequently expunged by the Division Bench in the appeal preferred against the order allowing the amendment. The Division Bench observed:--

"The Judge's Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallengable control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of Counsel, parties or witnesses".... We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the cases to animadvert on their conduct. See (i) R.K. Lakshmanan Vs. A.K. Srinivasan and Another, : (ii) Niranjana Patnaik Vs. Sashibhusan Kar and Another, ".

35. Trial Court made the impugned order when Section 3 application of Boeing was dismissed by Hazari J. which order of dismissal has since been set aside and Section 3 application has been allowed by the Division Bench in the case reported in (1993) 2 Cal LT 423 and since both the orders by which the allegations of fraud, collusion, conspiracy etc. were expunged and the amendment was disallowed as well as application for stay u/s 3 had been allowed by the Division Bench were upheld by the Supreme Court in the case reported in R.M. Investment and trading Co. Pvt. Ltd. Vs. Boeing Co. and another, . This established that the order of the Trial Court granting injunction/ attachment before judgement had to be considered on the basis of the original unamended plaint and petition and the Court must hold no cause whatsoever for granting the relief in the application has been made out.

36. The balance of convenience was also a relevant consideration-which had not been taken into account by the Court below. The agreement was entered into in 1986 and that contained an arbitration clause. About 3 years have passed when the injunction was granted by the Trial Judge without considering the motive of delay in moving it in the court. The obvious intention was to put pressure on the Boeing Company by obtaining attachment and injunction. There was no balance of convenience in favour of R.M.I. in the suit which was stayed and no irreparable injury was likely to be caused. There is neither any allegation or finding of R.M.I. gets an Award, Boeing would not pay or was not in a position to pay the Award and satisfy the decree.

37. On behalf of the plaintiff respondent, Shri Mitra relied on" the case of Mareva v. International Bulkcarriers reported in (1980) 1 All ER 213 and submitted that the injunction granted in this case is fully justified by the aforesaid decision.

38. Dealing with this decision, Lord Denning said in his book "The Due Process of Law" page 136--

"The relevant facts of the Mareva case were that on 23rd June 1975 Ship owners laid their vessel Mareva to Time Charterers on terms which require hire to be paid half monthly in advance. The Charterers defaulted on the 3rd instalment but there was money in London Bank in their name. It had been paid by the Govt. of India as freight for voyage and was money which the Time Charterer could use to pay the hire. They had not paid it. In the background of these facts, injunction was granted in the aforesaid case by the Learned Judges."

"If it appears that the debt is due and owing-and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment-the court has jurisdiction in a proper case to grant an interlocutory injunction so as to prevent him disposing of those assets. It seems to me that this is a proper case for the exercise of this jurisdiction".

39. Subsequently, this decision was not followed. It is however not necessary to enter into a detailed discussion of Mareva decision. It would suffice to point out that Lord Denning in his Book "The Closing Chapter at page 232 has dealt with

this controversy. He remarked :

"Two months later, in May 1977 there came a case, *The Siskina* (1977) 2 Lloyd's R 230 where the *Marvera* principle was applied. But this was reversed by the House of Lords."

I have unlimited power to grant an injunction in any case where it would be right or just to do so : Subject however, to this qualification: I would not say the power was "unlimited". I think that the applicant for an injunction must have a sufficient interest in a matter to warrant him asking for an injunction. Whereas previously it was said that he had to have a legal or equitable right" in himself, now he has to have a locus standi to apply. He must have a sufficient interest. This is a good and sensible test. It is the selfsame test of locus standi as the legislature itself authorised in Section 31(3) of the Supreme Court Act 1981. Next, it must be just and convenient that the injunction should be granted at his instance as, for example, so as to preserve the assets or property which might otherwise be lost or dissipated. On this principle, I think that the *Siskina* case (1979) AC 210 would be decided differently today. The cargo-owners; had plainly a sufficient interest : it would have been most just and convenient to have granted an injunction, as I pointed out in the Court of Appeal in the *Siskina* case (1979) AC 210, 228E. It was most unjust for the House of Lords to refuse it."

40. It would be seen, that *Marera* case is no longer a good law. While dealing with the question as to how far English decisions are precedents for deciding a case in India, the Supreme Court stated:-

". . . . because decisions of the English Courts are not binding in the Courts of India but the observations or the reasoning are of persuasive value" *M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margaret T. Desor and others*,

41. We are, therefore, not to be guided solely and exclusively by the English cases when law laid down by the Supreme Court and our Court throws light on the point.

42. What we have stated above, we find that the Learned Single Judge was erroneous, wrong and incorrect in granting injunction/attachment before judgment in the instant case.

43. Counsel for the respondent contended that the attachment challenged by means of this appeal was arrived at by way of amicable settlement under which the appellant was also a beneficiary. Hence the appellant was bound by the same and could not get the impugned order vacated. The conduct of the appellant has deprived it to get the remedy through this appeal.

44. *Sihri Subrato Roy Chowdhury* the Senior Counsel for the appellant admitted the fact taking such a stand but explained to our satisfaction that the offer was made by that defendant appellant on the condition of the respondent going in for arbitration early, but deliberately, he contended, that the plaintiff respondent avoided taking the dispute to arbitration. The defendant appellant could not be

forced to fulfil his promise when the plaintiff respondent was sitting merrily. This understanding was reciprocal. Even upto now arbitration has not been preferred. That shows the conduct of the plaintiff respondent although it was at fault, it wanted to take advantage of its own conduct and mistake. We do not accept the plaintiff respondent's arguments.

45. On account of delay in commencing arbitration proceeding, Boeing contended that it might be a totally unrealistic exercise to attempt to decide with any precision what was the dispute in between the parties and consequently there is a grave risk that justice might not be done. The delay has been inordinate and inexcusable.

46. We are of the view that the plaintiff respondent could not on the one hand delay taking the matter to arbitration and on the other to rely on the understanding/undertaking for submitting that the injunction/attachment before judgment are not liable to be vacated.

47. This stand of the plaintiff respondent is inconsistent and does not harmonize with the facts of the case. Understanding was that the defendant respondent could give the Letter of Credit provided that the arbitration had started and brought to an end as early as possible. Obtaining of Letter of Credit involved lakhs of rupees.

48. Counsel for the respondent urged, to grant an injunction or not to do so is discretionary with the Court and that the discretion having been exercised in favour of the respondent, the Appellate Court have no power to interfere.

49. In the instant case, we are not prepared to accept that the discretion had been exercised properly and lawfully. The Court below did not take into account the relevant considerations.

50. We are of the opinion that the Learned Judge did not properly appreciate the facts and committed grave error in applying the principles of law as a result whereof injustice has been done to the appellant. Law is an attempt to realise justice and if it is misapplied by giving it a wrong interpretation, it is bound to bring about an unjust result.

51. Lastly, the respondent urged that the appeal filed by the Appellant was barred by time and as such the Memorandum is liable to be rejected on that ground. We are of the opinion, as the appellant had applied for a certified copy of the judgment of the Single Judge, the appeal could not be rejected on that ground. The appellant is entitled to the benefit of Section 12 of the Limitation Act. As the application for certified copy is still pending, the appeal is not barred by time. We do not consider it necessary to cite the decisions and the provisions of law relied on by the defendant appellant in support of his argument. The appeal is within time.

For the reasons stated above, the appeal succeeds and is allowed. The judgment and order of the "Trial Court granting injunction/attachment is set aside and the

application made for that purpose is rejected. Interim orders passed by this Court from time to time stand vacated in the light of our judgment. The appellant is entitled to costs which is assessed at Rs. 20,000/-.

Mukul Gopal Mukherji, J.

52. I agree.