
(1995) 05 CAL CK 0012
In the Calcutta High Court
Case No : F.M.A.T. No. 3436 of 1994

Central Bank of India

APPELLANT

Vs

Usha Aluminium Industries

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151, 94
Specific Relief Act, 1963 — Section 34

Citation : (1995) 2 CALLT 336 : 100 CWN 408 : (1995) 2 ILR (Cal) 46

Hon'ble Judges : Vidya Nand, J; Samir Kumar Mookherjee, J

Bench : Division Bench

Advocate : H.M. Dutta, Saptanshu Basu and S.K. Ash, for the Appellant; Anindya Mitra, S.P. Sarkar, Niloy Sarkar and Amit Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Samir Kumar Mookherjee, J.—The present appeal is directed against an order dated 27th September, 1994, passed by Sri P. C. Barman, learned Assistant District Judge, Raiganj, Uttar Dinajpur, in O.C. suit No. 8 of 1994, whereby an application for mandatory injunction filed by the plaintiff was allowed on terms. The defendant Bank is the appellant before this Court.

2. Facts of the case, relevant for disposal of the present appeal may be summarised as follows :

The appellant Bank instituted a suit being Mortgage suit No. 56 of 1993 in the Court on the learned Assistant District Judge at Raiganj, inter alia, for a decree for realisation of a sum of Rs. 1,49,903.76 for sale of stock in trade, plant and machinery, which were hypothecated and pledged with the Bank by way of security and which included 100 metric tonnes of Aluminium ingots. While the said suit was pending, the Bank caused a public auction for sale of the aforesaid 100 metric tonnes of aluminium ingots and in the auction held on 11th January, 1994, the bids received indicated that the highest rate per metric tonne that could be offered was Rs. 46,300/-. Even though the purchasers were made

parties in the suit for enforcing the sale, none of them turned up to make the final purchase by making payment of the balance amount after deposit of earnest money and ultimately the earnest moneys were returned by the Bank upon cancellation of the sale. The aforesaid factual position, which remain substantially uncontradicted, had been brought to the notice of the Court before which the respondent in the present appeal filed a suit being O.C. suit No. 8 of 1994, inter alia, praying for a decree for specific performance, damages and delivery of balance quantity of 100 metric tonnes of Aluminium, ingots, which were lying at the Godown of the respondent, under lock and key of the appellant, and on behalf of the plaintiff/respondent in the said suit an application was filed, inter alia, with a prayer for mandatory injunction, directing the appellant to deliver to the respondent, the balance quantity of 100 metric tonnes of Aluminium ingots as mentioned above. The said application was objected to on behalf of the appellant and by the impugned order, as stated above, the Trial Court allowed the prayer of the plaintiff/respondent by directing the release of the Aluminium ingots against payment of invoice value of Rs. 51,000/- per metric tonne @ 1 metric tonne per day, on every consecutive working day, with effect from 1st of October, 1994, till all the ingots had been delivered as also allowed the prayer for injunction, restraining the added purchasers from taking delivery and possession of the said ingots or any part thereof.

3. We have heard the appeal and before us a number of contentions had been raised, including the propriety of the order of mandatory injunction and the maintainability of the second suit by the plaintiff/respondent to this appeal. Decisions had also been cited in support of the contention that a relief by way of mandatory injunction ought not to be granted ordinarily and particularly when it results in granting the entire relief in. the suit. On behalf of the appellant it was emphasised that by permitting the respondent to take delivery of 1 metric tonne per day, the learned Judge exceeded his jurisdiction inasmuch as no such prayer even had been made on behalf of the plaintiff/applicant, who is respondent before us. To counter the last submission, as noted above, on behalf of the respondent, reference was made to the terms of the revocable revolving letter of credit issued by the Bank to the supplier of said ingots and further that factually the business of the plaintiff/respondent had almost been lying closed for dearth or non-availability of raw-materials in the form; of such ingots and if the supply of ingots could be obtained then through production of finished goods, it could be possible for the respondent/plaintiff to generate funds for liquidation of the legitimate dues of the appellant/defendant Bank. On behalf of the plaintiff/respondent it was further emphasised that since the Bank wanted to sell out the ingots through public auction, there could be no prejudice caused to the Bank by the impugned direction of releasing the said ingots upon payment at higher rates by the plaintiff/respondent.

4. We have given our anxious consideration to the rival submissions and the materials available on records. We have done so with full aliveness to the fact that the appeal arises out of an order of interlocutory mandatory injunction. The

main thrust of the appellant's argument appears to be three fold, namely, first the Court has no power to grant mandatory order on an interlocutory application; second any interlocutory order granted by Court should not be such as may be said to grant the full relief prayed for in the connected suit; and thirdly mandatory order can be granted at an interlocutory stage only for the purpose of restoring the status quo as on the date of the suit. According to the appellant the Trial Court has failed to conform to the above principles of law in granting the impugned order.

5. In our view, the settled legal position, even on a cursory glance, renders the first two points unsustainable. In the Division Bench decision of this Court in the case of *Indian Cable Company Limited Vs. Smt. Sumitra Chakraborty*, , it had been laid down, in no unequivocal terms, that Court had full power to grant any relief on any interlocutory application, including one which might mean granting substantially the relief claimed in the suit but the Court will be very slow and circumspect in granting any such prayer, which can be granted only in exceptional cases and provided such relief is necessary to uphold the cause of justice by preventing the claimant from such relief being non-suited by an illegal urgent or inequitable action on the part of the other party. In the said decision, the Court analysed the ratio propounded in Indian and English decision, including the one in the case of *Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others*, , on which strong reliance had been placed on behalf of the appellant and concluded that the said decision did not warrant a proposition that once an injury had been caused by wrongful act, if a suit was filed after the wrongful act, relief by mandatory injunction should not be granted with regard to the wrongful act complained of. The Court went on further to lay down that the learned Chief justice in *Nandan Pictures* case did not exclude the state of things which should have in law existed on the date of the suit but for the wrongful act of the defendant of altering such a state of things. The Court in that connection approved another unreported Division Bench judgment in the case of *Lachman Das Daswani v. Phillis Berry D. Crus* (AFCO No. 243 of 1972, OS disposed on May 17, 1974). The ratio of the Division Bench decision of this Court, as noted above, also negated the third contention of the appellant. The question in the instant case is, however, slightly different, namely, as to whether delivery of Aluminium ingots could be directed at an interlocutory stage as has been done by the impugned order as apparently this cannot mean restoration of status quo as on the date of the suit. In our view, even in the matter of grant of mandatory injunction the question of balance of convenience is an important criterion for the Court to consider. Admittedly, on the facts, as noted by us above, the plaintiff's factory would have to be closed in the absence of supply of such Aluminium ingots and the defendant Bank was inclined to put up the said ingots for sale at a price more than which was offered by the plaintiff. To deny the plaintiff the relief asked for would be to non-suit the plaintiff before the final adjudication is made. The Court, therefore, in our view in the context of the aforesaid factual position acted in a just and right manner in granting mandatory order. The plenitudes of

Court's power also echoed in the decision of the Apex Court of the Country in the case of Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, , a decision which does not seem to accept that Nandan Pictures case imposed a restriction in granting restoration of the state which existed at the date when the suit was instituted. The guidelines laid down in that case by the Apex Court, to us appear to have been satisfied in the present Case.

6. We, therefore, affirm the order of the learned Trial Judge with modifications to the extent that the plaintiff/respondent must provide funds for release of 2 metric tonnes per day and default on its part would result in revocation of the order of mandatory injunction and dismissal of the relevant application. The appeal, therefore, stands dismissed.

7. Before parting with the case we keep on record that the preventive injunction also granted by the learned Trial Court has not been challenged by the plaintiff/appellant in the present appeal which renders the mandatory injunction more desirable. We also keep on record that the instant order will be without prejudice to the rights and contentions of the parties in the suits pending before the Trial Court, which we direct be heard analogously.

Vidya Nand, J.

8. I agree.