
(2003) 11 CAL CK 0020
In the Calcutta High Court
Case No : F.M.A.T. No. 3166 of 2003

Cold Gold Syntex Pvt. Ltd.

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 151

Citation : (2004) 1 CHN 354

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : A.K. Mitra, S.P. Sarkar, S.N. Mitra and A. Chatterjee, for the Appellant; S.P. Roychowdhury, Jahar Lal De, Shyamal Sarkar, Debasish Roy and Binay Kumar Jain, for the Respondent

Judgement

Dilip Kumar Seth, J.—In this appeal Mr. Aninda Mitra, Senior Counsel, appearing with Mr. Sarkar, had raised a simple but interesting question that whether once an order of status quo is granted in the facts and circumstances of this case on 8th September, 2003, could an application made u/s 151 of the CPC (CPC) by the defendant-respondent herein be heard along with the application for injunction and the forcible taking of possession by the defendant through police help could be allowed to be continued in violation of the order of status quo. Relying on the decisions in *Sujit Pal Vs. Prabir Kumar Sun and Others*, ; *Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another*, and *Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another*, , he contended that in case it is found that the order of injunction or status quo is violated, in that event, the Court has inherent power to restore the situation as was existing on the date when the order of status quo was passed without being hindered by any technicality or otherwise despite availability of remedy under the Contempt of Courts Act or under Order 39 Rule 2A of the CPC. Therefore, the learned Court below could not have refused to pass prohibitory order.

2. Mr. Mitra had taken us through the pleadings, as made in the application for

stay filed along with the appeal to point out that the defendant had admitted that this passage belongs to Premises No, 4, Netaji Subhas Road adjacent to Premises No. 2, Netaji Subhas Road and that they have been obstructed from using the said passage in between the said premises for the purpose of parking their cars because of posting of a guard and locking of the gate. Relying on those materials, he pointed out that the defendant-respondent had admitted that they have no right over the said passage and that they have already been prevented from using the said passage for the purpose of parking their cars. In these circumstances, the defendant's obtaining of recovery of possession through police help enabling them to park their cars is clearly in violation of the order of status quo which needs immediate remedy by way of passing prohibitory order of injunction restraining the defendants from using the said passage for the purpose of parking their cars or otherwise during the pendency of the application filed by the appellant seeking mandatory and temporary injunction after the defendants have violated the order of status quo, since the said application contains prayers for temporary injunction. In the circumstances, this appeal should be allowed and appropriate orders should be passed in order to sustain the order of status quo passed earlier by the learned Court below.

3. The principles enunciated by Mr. Mitra are undisputed and are accepted principles of law. In case it appears to the Court that there has been violation of the interim order granted by the Court, in that event, in order to see that its orders are obeyed, the Court has every right to invoke its inherent jurisdiction in spite of alternative remedies available under the Contempt of Courts Act or under Order 39 Rule 2A CPC. Neither one can take advantage of nor can put an order to abuse. At the same time, one can neither violate nor continue to violate the order. Neither one can be allowed to continue to take advantage of his own wrong obtained by violation of the order. In order to apply such principle, the Court must find and come to a clear conclusion that its order has since been violated on the facts and that the order of status quo is proved to the satisfaction of the Court prima facie that there was such a situation prevailing on the date when the order of status quo was passed. The Court has to arrive at a clear cut finding that there was such a violation and that the party complained is continuing to take advantage of such violation, in order to apply the principle. But this is dependant on the facts that are brought before the Court.

4. Admittedly, now the matter is being dealt with on affidavits and there is no material before this Court other than the affidavits filed by the appellant except the pleadings in the plaint and the respective applications made by the respective parties. In fact, if we give a proper meaning to the plaint in C.S. No. 242 of 2003 filed in this Court by the defendant/respondent herein, as pointed out by Mr. Roychowdhury, particularly, to paragraphs 12, 13, 14, 15, 17, 19 and 20, it appears that there was no clear cut admission on the part of the plaintiff in that suit that the plaintiff (defendant/respondent herein), has no right over the passage or that it was precluded from using the passage from 25th July, 2003. This is an assertion made by the appellant. The assertion made by the defendant

in its plaint before this Court is countered by the appellant/ plaintiff in its plaint and the application for injunction before the learned Judge at City Civil Court. Thus, there are statement and counter-statement. At this stage, this Court cannot determine the question on the basis of the pleadings, as are available before this Court, that the respondent/defendant had no right on the passage and that it was prevented from using or was not using the said passage since after 25th July, 2003 till 8th September, 2003 when the order of status quo was passed. Thus, unless a clear position is reflected before the Court and the Court is persuaded to accept the situation, it cannot apply the principle laid down in the decisions cited by Mr. Mitra.

5. On the other hand, it appears that this situation had weighed with the learned Court below while deciding the application u/s 151 CPC in its order dated 28th October, 2003. In order to appreciate the consideration on which the order of status quo passed on the 8th September, 2003 was sustained and directed to be maintained by both the parties can be deciphered from the reason given in the said order, which we would like to quote as under:

"Order No. 7 dt 28-20-2003

Both the parties filed separate haziras.

The application dated 17-9-03 filed by the deft, praying for injunction against the plttf. u/s 151 C.P, C. is taken up for hearing. Heard the ld. Lawyer for both, the sides. It appears from the application that by an order this Court has already directed the parties to maintain status quo in respect of the use and occupation of the private passage containing 11 cottahs. It is alleged by the deft. that in a portion of that passage the deft. and their officers also used to park their cars but taking advantage of the said status quo order the plttfs. are creating obstruction in the parking of the cars by the deft, and their officers. The record shows that the deft. as well as the plttf. both were directed to maintain status quo. In view of the circumstances arising out of the submission it cannot be disbelieved at this stage that the deft. and their officers used to park their cars in a portion of that passage.

Under such circumstances, the plttf. cannot take any advantage of the status quo order. By an order No. 3 dated 8-9-03 both the parties have already been directed to maintain status quo while the deft. has alleged that taking advantage of the said status quo the plttf. is creating obstruction to the deft. and their officers in parking the car by closing the gate of that passage.

Considering the circumstances I have no hesitation to say that the status quo as directed to be maintained by the parties must be status quo as on 8-9-03 and the parties should not-abuse the said order of status quo interfering in the right of O.P.S. Accordingly, in view of the order No. 3 dated 8.9.03 the instant application for temporary injunction filed by the deft. u/s 151 C. P. C. is hereby allowed in terms of that order No. 3. In clarification it is mentioned that both the parties are directed to maintain status quo in respect of the use and occupation

of the private passage as on 8-9-03 before passing of that status quo order. Thus, the said application is disposed of.

The deft. filed a petition praying for time for hearing of the ptn. u/s 10 C.P.C. Heard the ld. lawyers. Considered. The petition is allowed. The record shows that another petition u/s 151 C.P.C. is pending for hearing. Hence, both the petitions one u/s 20 C.P.C. and the other u/s 151 C.P.C. be fixed on 10.12.03 for hearing. As prayed for by the pltff. the order of status quo dated 8-9-03 in terms of the order passed this day be extended till that date as diary is congested. The application for extension stands disposed of".

6. It appears from the said order that the defendant had pointed out to the Court that taking advantage of the order of status quo, the plaintiff had been obstructing the defendant from parking their cars. It also records that it cannot be disbelieved at this stage that the defendant or their officers used to park cars in the portion of that passage. Therefore, under these circumstances, it was observed by the learned Court below that the plaintiff could not take advantage of the order of status quo and that taking advantage of the order dated 8th September, 2003, the plaintiff is alleged to be creating obstruction in the matter of parking cars in the passage by the defendant, by closing the gate on the passage. On the above observation, the Court records that in consideration of the circumstances, the Court had no hesitation to clarify that the status quo was directed to be maintained by the parties was status quo as on 8th September, 2003 and the parties were supposed not to abuse the order of status quo interfering with the rights of the opposite party, namely, the defendant. Therefore, the application filed u/s 151 CPC by the defendant was allowed with the clarification that the parties were directed to use the passage as was being used on 8th September, 2003 before passing of the order of status quo. It may be noted that in the application u/s 151 CPC, the defendant had claimed that they had been using the passage and parking their cars even on 8th September, 2003. On the other hand, taking advantage of this order, the plaintiff was attempting to abuse the order and obstructing the defendant in its right to use the passage and prayed for injunction; and this application was allowed by the learned Trial Court.

7. From the pleadings Mr. Roychowdhury had pointed out that after a little while where the gate is situated, there is a recess of 8ft. 9 inches towards the wall of Premises No. 2, Netaji Subhas Road of which the defendant is a tenant and this recess continues throughout the rest of the passage which is about 20 ft. wide. It is on the side of the recess where the cars are parked by the defendant. He also points out from the various documents relied upon by them that over this passage the tenants of premises No. 2 have also the right of user. He had also produced some documents, which were used in the Trial Court, wherefrom it appears that this passage was repaired by Standard Chartered Bank, the predecessor-in-interest of the plaintiff, 50% cost of which was borne by the defendant.

8. But these are matters, which relates to the merit of the case. We are unable to go into such question since the matters are yet to be decided by the learned Trial Court in terms of the order passed by this Court in the suit filed by the defendant. The applications are pending decision, therefore, we refrain from making any observation with regard to the facts.

9. Mr. Mitra based his submission on the admission made by the defendant in its plaint filed before this Court, the finding in the order dated 28th October, 2003, absence of reply to its letter dated 25th July, 2003, as well as from the material available on the pleadings. But as discussed above, Mr. Roychowdhury had pointed out that there was no such admission on the part of the defendant. We have also not been able to persuade us to conclude that there was any such admission. Neither we have been able to arrive at a conclusive finding on the basis of the materials placed before us that since before 8th September, 2003 the defendant had ceased to use the passage. On the other hand, we find from the order dated 28th October, 2003 that the learned Trial Court had made the position clear as to what intent the order of status quo was passed.

10. Mr. Mitra also pointed out that making of the application under Order. 39 Rule 4 CPC itself is indicative of the fact that the defendant was not using the said passage for which they had asked for vacation of the order of status quo. Inasmuch as, if they were in possession, in that event, there would have been no necessity for asking for vacation of the order of status quo.

11. We, however, are not convinced with the submission so made. Inasmuch as, a party is not supposed even to suffer an order of status quo and may ask for vacating the same even though it might not affect him, in order to protect its own interest which in the present case, is abundantly clear, is being interfered with on the basis of the order of status quo.

12. The discussion made above makes it clear that the position is not so certain as to persuade us to invoke our inherent jurisdiction to undo the alleged advantage obtained by the defendant on the order of status quo passed on 8th September, 2003, as pointed out by Mr. Roychowdhury that there is also an allegation that the plaintiff had been attempting to take advantage of the order of status quo. We, however, refrain from making any observation on either of the situation since the position is not clear and we cannot arrive at a conclusive finding, therefore, we do not think it a fit case where we should exercise our jurisdiction to intervene on the basis of the ratio decided in the decisions cited by Mr. Mitra.

13. We, therefore, are not inclined to interfere with the order appealed against. However, we dispose of this appeal by directing Mr. Roychowdhury's client to file his opposition on the application for mandatory injunction filed by the plaintiff as well on the applications which are to be decided by the learned Trial Court in connection with the injunction matter within a period of two weeks from date and reply, if any, by the plaintiff-appellant be given within a week thereafter. The

appellant-plaintiff shall also be at liberty to file opposition to the application under Order 39 Rule 4 CPC within a period of two weeks and reply thereto be filed within a week thereafter and all these applications in connection with the injunction be decided by the learned Trial Court in accordance with law according to his own wisdom and discretion without being influenced by any observation made by us, being tentative in nature, as early as possible, preferably on the date already fixed i.e., 10th December, 2003.

The appeal, thus, stands disposed of.

There will, however, be no order as to costs.

Urgent xerox certified copy, if applied for, be supplied to the learned Counsel for the parties on priority basis.

Rajendra Nath Sinha, J.

14. I agree.