**(1961) 08 CAL CK 0028**

**In the Calcutta High Court**

**Case No :** Appeal from Original Order No. 209 of 1959

Daulatram Rawatmull APPELLANT

Vs

Income Tax Officer RESPONDENT

**Date of Decision :** 01-08-1961

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 19(2)
Constitution of India, 1950 — Article 226
Income Tax Act, 1948 — Section 22(4), 23(2), 23(3), 26A, 29

**Citation :** (1962) 2 ILR (Cal) 240

**Hon'ble Judges :** Bose, C.J;D. Mookherjee, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Bose, C.J.—This is an appeal from an order of Sinha, J. dismissing an application under Article 226 of the Constitution.

2. The Appellant is a firm carrying on business at No. 178, Harrison Road, Calcutta, and it has all along been assessed as a registered firm u/s 26A of the Indian Income Tax Act. In respect of the assessment years 1940-41 to 1945-46 the Appellant firm had been regularly assessed u/s 23(3) of the Indian Income, Tax Act and the partners of the said firm had duly paid the sums specified to be payable u/s 29 of the Act for said assessment years. By a notice, dated November 30, 1954, the case of the Petitioner was transferred u/s 5(7A) of the Indian Income Tax Act to the income tax Officer, Central Circle VI, Calcutta, who on March 21, 1956, purported to reopen the assessment of the Appellant firm in respect of the said assessment years 1940-41 to 1945-46 and issued notices u/s 34(1A) of the Indian Income Tax Act on the ground that the said income tax Officer had reasons to believe that income, profits or gains assessable to income tax of the several years mentioned in the said notice had partly/wholly escaped assessment and that the income, profits or gains of the previous years which fell wholly or partly within the period beginning on September 1, 1939, and ending

 

with March 31, 1946, and which had to escaped assessment, amount to or likely to amount to rupees one lakh or more. By the said notices, the partners of the said firm were requested to deliver to the said income tax Officer a return of the total income and the total world income assessable for the respective years mentioned in the said notices. It was further stated in the said notices that the same were being issued after obtaining the necessary satisfaction of the Central Board of Revenue. On July 2, 1956, the Appellant firm made an application under Article 226 of the Constitution for the quashing of the proceedings on the ground inter alia that Sections 5(7A) and 34(1A) of the Income Tax Act were ultra vires the Constitution and particularly Articles 14 and 19 thereof. Although a Rule Nisi was issued on the said application by Sinha, J., the learned Judge at the final hearing dismissed the said application and discharged the Rule in view of the decision of the Supreme Court in PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., . Thereafter on February 25, 1958, the Appellant sent a letter to the income tax Officer, Central Circle VI, asking for

(1) Copy of the order of satisfaction of the Central Board of Revenue,

(2) The materials on which the income tax Officer had reason to believe that income, etc. had escaped assessment,

(3) The basis on which the income tax Officer was of the opinion that the amount of such escaped income was likely to amount to rupees one lakh or more.

3. By the said letter the Appellant also offered to pay the costs of inspection and the costs of obtaining copies of the documents referred to in the letter. On February 28, 1958, the Income-lax Officer, Central Circle VI, wrote a letter to the Appellant firm expressing regret that he was not in a position to furnish the reasons recorded for starting proceeding u/s 34(1A) or to grant inspection of the records as requested, and he asked the Appellant to file the return of the total income without any further delay. On March 12, 1958, the Appellant requested the income tax Officer to reconsider the application for furnishing the information and copies of the documents asked for in their previous letter, but the income tax Officer by his letter, dated March 20, 1958, again expressed his inability to grant copies of the reasons or inspection of the records as asked for by the Appellant. On July 8, 1958, the Appellant moved this Court under Article 236 of the Constitution for the issue of a Writ of Certiorari for quashing of the notices issued u/s 34(1A) and the proceeding started pursuant thereto and for cancellation or withdrawal of the said notices. In the petition which was affirmed in support of the application the Appellant put forward inter alia the ground that the income tax Officer by refusing the Appellant inspection of the records and the materials on which the income tax Officer had reason to believe that certain income had escaped assessment and the amount of the alleged escaped income was rupees one lakh or more, had acted in flagrant violation of the principles of natural justice, and it was incumbent open the income tax Officer to disclose reasons which led to his belief, inasmuch as the proceedings started pursuant to such

 

notices u/s 34 of the Act, were in the nature of Judicial or quasi-judicial proceedings. In the affidavit-in-opposition, which was filed pursuant to certain special directions given by the learned trial Judge and which was affirmed on March 23, 1959, by one Mr. Pradhan who was the income tax Officer, Central Circle VI, Calcutta, at the point of time the notices u/s 34(1A) had been issued, it was stated in para. 5 as follows:

I say that in the reasons recorded by me as required by the first proviso to Section 34(1A) of the Indian Income Tax Act and on which the Central Board of Revenue expressed its satisfaction that the present case was 4 fit case for the issue of a notice u/s 34(1A) of the said Act, facts are enumerated which show that there has been concealment of assets by the Petitioner and non-disclosure of income by, and benami transactions entered into by, the Petitioner. I had, therefore, reasons to believe that the income, profits and gains of the Petitioner firm had escaped assessment for the assessment years 1940-41 to 1945-46.

4. In an earlier affidavit affirmed by the same Officer on January 28, 1959, it Was stated in para. 6 as follows:

I further say that the disclosure of the said reasons to the Assessee at any stage prior to his compliance with the notices u/s 22(4) and/or Section 23(2) of the Indian Income Tax Act would be highly detrimental to the interest of the income tax Department and will completely frustrate the very object underlying the initiation of proceedings under the aforesaid impugned notices.

5. Although this was the attitude taken up by the Income Tax Department in this affidavit affirmed on January 28, 1959, in the subsequent affidavit affirmed on March 23, 1969, pursuant to the direction of the Court, the income tax Officer had disclosed the main headings of the reasons which formed the basis of his belief that certain income of the Assessee had escaped assessment.

6. At the final hearing of the application, the learned trial Judge upon hearing the counsel for the respective parties was of opinion that the apprehension which had been entertained by the income tax Department that if there had been a full disclosure of the reasons or materials which had actuated the income tax Officer to issue notices u/s 34(1A) before the Appellant had filed its return or produced the boots and documents, there was likelihood that the books and documents of the Appellant would be tampered with or would disappear altogether was a reasonable apprehension. Accordingly, the learned Judge called upon the Appellant''s counsel to produce before the Court the books and documents in its possession and although two opportunities had been given to the Appellant to comply with this direction of the learned Judge, the Learned Counsel for the Appellant did not condescend to comply with the direction of the learned Judge. The income tax authorities, however, produced before the Court, for the learned Judge''s inspection, the reasons for the belief of the income tax Officer and the sanction of the Board of Revenue, and the department was also prepared to give the Appellant inspection of those documents, provided the relevant books and

 

document had been deposited in Court as directed by the learned Judge. However, as the Appellant did not comply with the directions of the learned Judge to produce the books and documents before the Court, the learned Judge after carefully reviewing the legal position with regard to the rights of the Appellant to obtain disclosure, and the duty or obligation of the income tax Department to make such disclosure, came to the conclusion that the reasons which had been disclosed in para. 5 of the affidavit of Mr. Pradhan affirmed on March 23, 1959, was a sufficient disclosure for the purpose of the case and no further disclosure should be permitted at that stage, specially as the Appellant had not produced before the court, the books and documents which it was required to produce under the direction of the learned trial Judge. The learned trial Judge found that the notices issued were valid and proper and in that view of the matter dismissed the application under Article 226. It is from this order of dismissal of the learned trial Judge that the present appeal has been preferred.

7. It has been contended by the learned Standing Counsel on behalf of the Appellant that the learned trial Judge having found that the reasons of the income tax Officer for his belief that the income, profits or gains of the Assessee had escaped assessment and the income, profits or gains which had so escaped assessment was likely to amount to rupees one lakh or more was a matter which was justiciable and he also having come to the conclusion that upon a challenge being thrown by the Assessee it was incumbent upon the income tax Officer concerned, to disclose to the Court the particulars of information upon which the income tax Officer based his belief, the only logical conclusion that followed from that, was to call upon the income tax Officer to disclose also to the Assessee and not to the Judge alone, such particulars, in order to afford an opportunity to the Assessee to establish before the Court that there were no materials upon which the income tax Officer could form his belief as to the existence of the circumstances which would justify him in issuing notices u/s 34(1A) of the Indian income tax Act. But as the learned trial Judge did not compel the income tax Officer to disclose the full particulars upon which his belief was based and thereby deprived the Appellant of the opportunity of showing that the conditions precedent to the exercise of jurisdiction u/s 34(1A) of the Indian Income Tax did not exist the judgment of the learned trial Judge cannot be sustained. The attention of the Court was drawn by the learned Standing Counsel to the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , in support of the argument that it is obligatory upon the income tax Officer upon challenge being thrown by the Assessee to make a full disclosure of all the material facts for justifying his belief as to the existence of the conditions precedent for the issue of a notice u/s 34(1A) of the Indian Tax Act. It may be pointed out, however, that in that case before the Supreme Court the Appellant company against whom notices u/s 34 of the Indian Income Tax Act had been issued had furnished returns in compliance with the notices and thereafter applied to the Calcutta High Court under Article 226 of the Constitution for the issue of an appropriate Writ or order directing the income tax

 

Officer not to proceed to assess the company on the basis of these notices and the first ground on which this prayer was based was mentioned in the petition in these terms:

The said pretended notice was issued without the "existence of the necessary conditions precedent which "confers jurisdiction u/s 34 aforementioned, "whether before or after the amendment in 1948.

8. The other ground urged was that the amendment of Section 34 of the Indian Income Tax Act in 1948 was not retrospective and that the assessment for the years in question became barred long before March, 1951. So as there was this direct challenge made, to the existence of the necessary condition precedent which would entitle an income tax Officer to take steps u/s 34 of the Act and this was the whole basis upon which the petition under Article 226 of the Constitution was founded, the Income Tax Department had no other alternative but to disclose all the materials which actuated the income tax Officer to take action under the provisions of Section 34 of the Act in order to establish before the Court which was called upon to investigate into the existence of the necessary conditions precedent, that the action of the income tax Officer concerned was justified. The Supreme Court in construing the scope and implications of Section 34 came to the following conclusion:

The position therefore is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of under assessment'' that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notices u/s 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a disclosure of material facts would not be open for the court''s investigation. In other words, all that is necessary to give this special jurisdiction is that the Income tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts. Clearly it is the duty of the Assessee who wants the Court to hold that jurisdiction was lacking, to establish that the Income tax Officer had no material at all before him for believing that there had been such non-disclosure.

9. Although an argument had been advanced on behalf of the income tax Authorities that the Court ought not to investigate the existence of the conditions precedent inasmuch as the Appellant company would have a sufficient opportunity to raise this question before the income tax Officer himself in the assessment proceedings and if unsuccessful there, before the Appellate Officer or the Appellate Tribunal, or in the High Court u/s 66(2) of the Indian Income Tax Act, the Supreme Court negatived such contention and held that in view of the fact that the Appellant company had come to the Court at the earliest opportunity and contended before it that the conditions precedent for the assumption of jurisdiction u/s 34 were not satisfied, justified the Court in enquiring into the matter and in giving relief to the Assessee if such relief was available to it.

 

10. It is thus abundantly clear that as the question of the existence of the conditions precedent to the exercise of jurisdiction u/s 34 of the Indian Income Tax Act was directly in issue in that case before the Supreme Court, the full disclosure of the materials on which the belief of the income tax Officer had been founded, became necessary, and had to be made, and the Assessee was thus given the fullest opportunity to establish before the Court that the conditions precedent in fact did not exist. In the case before us the whole foundation of the petition rests on the complaint that the Appellant before us had not been furnished with all the materials or reasons for the belief of the income tax Officer as to the existence of the conditions precedent in issuing the notices u/s 34(1A) before the Appellant had submitted its return or produced its books of accounts and documents, in compliance with such notices. The whole question, therefore, is whether the income tax Officer concerned was bound to disclose all the materials which formed the ground of his belief in the existence of the conditions precedent for taking action u/s 34(1A) of the Indian income tax Act. The learned trial Judge has in dealing with this aspect of the matter made the following observations:

If at this stage, the available information had to be disclosed to the Assessee it might be disastrous for the proceedings and would defeat the very object for which the notice was given. It has been constantly held that at this stage the Assessee is not entitled to look at the reasons recorded by the Income Tax Officer or compel the Income Tax Officer to disclose to him the reasons. Re-opening of an assessment u/s 34 is always a very serious affair. Therefore, the Income Tax Act has not left the matter entirely to the discretion of the Income Tax Officer but has provided for certain safeguards. It has laid down that the income tax Officer must record his reasons in writing and get the sanction of the Commissioner or the Board of Revenue, as the case may be. But if at this stage of the proceedings, these reasons have to be disclosed to the Assessee, then he will be put on his guard and in most cases the very object of reassessment will be frustrated. The books will be removed and/or destroyed, and evidence generally, which would enable the income tax Officer establish that the original assessment was not complete, would disappear.

11. In my view the learned trial Judge''s interpretation as to the object underlying Section 34 is absolutely correct. A Division (Bench of this Court in the case of Rungta Engineering and Construction Co. Ltd. Vs. Income Tax Officer, Central Circle XIII, has taken the same view as to the scope and implications with regard to Section 34(1A) of the Indian income tax Act. In this case it was argued before the Division Bench by the Learned Counsel appearing for the Appellant that when an income tax Officer comes to believe that part of the Assessee''s income amounting to over a lakh of rupees has escaped assessment and calls upon the Assessee to make a return, justice demands that the income tax Officer should disclose to the Assessee the materials upon which his belief is based before the Assessee files his return and produces its books, so that in making a fresh return the Assessee may consider his position and may not incur

 

penalties for further non-disclosure. This argument of the Learned Counsel was negatived by the Division Bench and it was held that the income tax Officer is not bound to disclose to the Assessee the source of the information upon which he came to entertain the belief before the Assessee had filed his return and produced his books, for otherwise the working of Section 34(1A) would be wholly impossible. At the enquiry that would be held by the income tax Officer after the return was filed the income tax Officer would be bound to disclose to the Assessee the materials on the basis of which he seeks to found that the Assessee''s income to the extent of rupees one lakh or more had escaped assessment. Natural justice demanded full disclosure of all such materials. It was further held in this case that if all the materials had been disclosed before the Assessee could submit his return and produce his books and documents, a dishonest Assessee might manipulate his books of accounts and other records and thus frustrate all attempts of the income tax Officer to successfully make reassessment in respect of the income which had actually escaped assessment. The appeal Court came to the final conclusion that by reason of the income tax Officer not disclosing the materials to the Assessee before he had submitted his return and filed his books of accounts there had been no violation of the principles of natural justice and so the notice issued or the proceedings initiated u/s 34(14) of the Indian income tax Act could not be quashed at that stage. This case is therefore a direct authority for the proposition with which we are concerned in this case. It may be pointed out, however, that where Assessee seeks investigation by the Court as to the existence of the conditions precedent to the exercise of jurisdiction u/s 34(1A) of the Indian Income Tax Act and comes before the Court with a properly framed petition for that purpose, the Court will in appropriate cases compel the income tax Officer who entertained the belief contemplated in Section 34(1A) to place before the Court and before the Assessee all the materials which prompted the income tax Officer to proceed u/s 34(1A) of the Act and to determine the question whether such conditions precedent do in fact exist or not. But such is not the case before us. In our view, the learned trial Judge''s order refusing relief to the Appellant under Article 226 of the Constitution is right and it must be upheld.

12. In the result, the appeal fails and it is accordingly dismissed with costs.

Certified for two counsel.

The interim order will be continued for three weeks from this date.

Debabrata Mookerjee, J.—I agree and wish to add a few words of my own.

2. At the hearing of the writ application out of which this appeal arises the Appellant firm insisted on production of records disclosing the reasons for the belief of the Officer concerned and the materials upon which that belief had been based that the income, profits and gains of the Appellant firm which were liable to tax, had escaped assessment. On behalf of the Department it appears to have been urged that production of the records and disclosure of the grounds of belief,

 

would, at that stage imperil the whole proceedings and render them infractions. The apprehension entertained by the Department appears to be that if the reasons were then disclosed, effort would be made by the Appellant firm to tamper with the books or destroy them. The learned Judge appears to have been considerably exercised on the question. It seems to have been suggested by the court itself that upon the books and documents of the Appellant firm being produced, the Department should give them inspection of all records and disclose the reasons recorded by the income tax Officer as well as the sanction of the Central Board of Revenue pursuant to which the notices had been issued. It being then represented on behalf of the Appellant firm that the books and documents were lying in the firm''s branches all over the country, it would be physically impossible to produce them in view of their number, size and bulk, the court expressed the view that only such books and documents as were in the firm''s possession and control might be produced, and with respect to the rest an affidavit might be made that they were not in their possession at that time; and upon such statement being affirmed sufficient time would be allowed to the Appellant firm to bring down the rest of the books and documents. The Department agreed to these suggestions but eventually the Appellant firm expressed their unwillingness through counsel to follow the course suggested and pressed for adjudication of their legal right to disclosure by the Department of the reasons and the materials upon which the belief had been based as well as the sanction of the Board of Revenue upon which the notices had been issued and proceedings commenced u/s 34(1A) of the Act.

3. Meanwhile the relevant records containing the income tax Officer''s reasons for the belief that the income, profits and gains of the Appellant firm had escaped assessment as well as the sanction of the Board of Revenue were produced before the learned Judge who satisfied himself that the reasons as well as the sanction existed before action was taken u/s 34(1A). The learned Judge held in effect that the apprehension entertained by the Department that if the reasons were disclosed at that stage to the Appellant firm, the books and documents would disappear and the whole proceedings, u/s 34(1A) initiated by the notices would be rendered infructuous was not groundless. He accordingly declined to make an order directing disclosure of the documents in question at that stage and discharged the Rule.

4. The learned Judge however held that the Appellant firm was entitled to be told the reasons for the belief upon which the income tax Officer had acted in issuing the notices. The expression "reason to believe" was construed as implying that the matter was justiciable and that the department was bound to disclose the reasons. It has been argued on behalf of the Appellant firm that it was not enough that the reasons should have been disclosed to the court; if the reasons were justiciable the Appellant firm was entitled to know what the reasons were and whether a sanction had in fact been accorded by the Central Board of Revenue. As an abstract proposition of law it cannot be gainsaid that once the matter is held justiciable it must necessarily follow that the reasons, where they

 

exist, must he made known to all concerned. Surely the existence or otherwise of reasons for the belief referred to in Section 34(1A) affected the Appellant firm most; if they were withheld from them, it could not properly be said that the reasons had really been disclosed. The argument is attractive that disclosure of reasons must he complete in the sense that they should be made known to every one affected by them and that there can be no such thing as graduated disclosure or disclosure by degrees. This contention requires examination.

5. Reference was made to a decision of this Court in the case of Rungta Engineering and Construction Company, Ltd. v. income tax Officer, Central Circle XIII (supra) in aid of the argument on behalf of the Respondent that the proper stage for disclosure is reached only after the Assessee has filed his return and produced his account books. It is true, the view was expressed in that case that it was not desirable that the Assessee should be informed of the materials in the possession of the department at any prior stage. The obvious ground for such view is that if the Assessee is dishonest, the disclosure of information at an earlier stage is likely to lead to manipulation or even destruction of books and accounts. This decision was rendered on May 19, 1960, but the view taken is bound to stand modified by a later decision of the Supreme Court in the case of Calcutta Discount Company Ltd. v. income tax Officer, Companies District I, Calcuta, and Anr. (supra) to which I shall have occasion to refer in another context. For the present it is necessary only to say that in view of the opinion held by the Supreme Court that a decision on the question of the validity of proceedings initiated on notices issued u/s 34, may well be given on a writ petition and need not be postponed until the assessment proceedings have been completed or they have reached the appellate stage or have been carried to the appellate tribunal. If such is the law it seems difficult to hold that the proper stage in every case for disclosure of materials on which the income tax Officer''s belief is based, is reached only after the returns have been filed.

6. The learned Judge made elaborate references to judicial decisions for the purpose of construing the expression "reason "to believe". The conclusion drawn as a result of this discussion is embodied in the learned Judge''s finding to the effect that the expression "reason to believe" makes the matter justiciable with the consequence that the department is bound to disclose them. It is unnecessary to review these decisions since the matter seems to have been set at rest by the Supreme Court in the case cited above where it has been held that the High Court possesses the power to give relief to an Assessee in a fit case where proceedings have been taken u/s 34 of the Income Tax Act. It was ruled that if there are in fact reasonable grounds for the income tax Officer''s belief that there has been non-disclosure of primary facts having a material bearing on the question of assessment, that would be sufficient to give jurisdiction to the income tax Officer to issue notices u/s 34; but the adequacy of the ground for arriving at the conclusion is not open to the court''s investigation. That was a decision u/s 34; but the expression "reason to believe" occurs also in Sub-Section 1A of that section. It must therefore be held that the reasons for the

belief that the income profits and gains of the Appellant firm had escaped assessment are justiciable and their disclosure is imperative, where there is a challenge to the income tax Officer''s jurisdiction to initiate the proceedings.

7. If such is the true position then there can be no doubt that the Appellant firm is entitled to a disclosure of the reasons if there is an unequivocal challenge to jurisdiction to take action u/s 34(14). The question then arises as to whether the court had power to withhold the reasons in the circumstances of the present case. The learned trial Judge held that when a claim of privilege is made in regard to a document, it becomes the duty of the court to inspect the document for the purpose of deciding the question of the validity of the claim made. Reference was made to Order 11, Rule 19(2) of the CPC in aid of the conclusion that in any event the court cannot be precluded from examining a document in respect of which the claim is preferred. No one disputes the court''s power to examine a document to decide a claim of privilege. The real question is whether the contents of a document to the disclosure of which a party is entitled can be held back from the party. Thus viewed the question that falls to be considered is whether the reasons for the income tax Officer''s belief being held justiciable they could still be kept from the Assessee firm on the ground that they had refused or neglected to produce their books and documents upon production of which the disclosure was made conditional. As I have said there may be substance in the contention in the abstract that once the reasons are held justiciable, they cannot be withheld from the Appellant firm. It is arguable that in order to determine the question as to whether there did or did not exist reasons for the income tax Officer''s belief to justify action u/s 34(1A), the court as well as the parties before it must participate in the process. But if such participation is rendered impossible by reason of the party vitally affected by such non-disclosure being kept from knowledge of the matter, the proceeding loses the character of judicial determination. This is undoubtedly an element in the consideration but by no means the whole of the consideration in the present case in view of the fact that the Appellant firm did not rest their case on the income tax Officer''s want of jurisdiction to take action u/s 34(1A). Where it is alleged and the court is persuaded that the conditions precedent to the exercise of jurisdiction under that section have not been fulfilled, that is to say, no reasons exist for the belief that income liable to tax has escaped assessment, and consequently none recorded, and the sanction of the Central Board of Revenue not obtained, disclosure cannot be resisted. Beyond a vague and omnibus assertion in the writ petition that the Respondent Officer''s action was "wrong," "illegal, unwarranted, arbitrary, mala fide and/or without jurisdiction involving violation of the principles of natural justice there was no unambiguous challenge to jurisdiction to take action u/s 34(1A) of the Act. The emphasis was on the supposed right to disclosure in any circumstance, and the denial of such unqualified right was the complaint in the writ petition. It was even urged before us that no proper returns can be made and the department effectively answered unless there was prior disclosure This contention we cannot uphold. In order to

 

compel disclosure in a writ proceeding, the applicant has to establish to the court''s satisfaction the proceeding initiated by the notices suffered from lack of jurisdiction. That is not the case here.

8. This raises the question of the court''s power to put a party before it on terms. There can be no doubt that the relevant records had been produced by the department; they had been inspected by the court and the court was persuaded that disclosure of the reasons for the income tax Officer''s belief and other cognate matters would at that stage gravely prejudice the assessment proceedings. The department not only produced in court the relevant documents but indicated the nature of the information in their possession upon which their belief was grounded. They made plain to the court their apprehension that if the disclosure of the recorded reasons was made at that stage, where was every likelihood of the firm''s books being destroyed or tampered with. The learned Judge held that he did not consider this apprehension to be unfounded and accordingly put the Appellant firm on terms. Effort was made by the court itself to get the relevant books and documents before it, but the effort failed. In such circumstance, the question arises whether the court has the power to require a party before it to do certain things in the interests of justice and fair play. No rules of procedure can be exhaustive and I think the court possesses the inherent power to regulate its own proceedings. this Court held in the case of Hukum Chand Boid v. Kamala Nand Singh ILR (1905) 33 Cal. 927 that the court possesses such power. The question that fell for decision in that case was whether the provisions of the CPC were exhaustive. It was held that procedural provisions can never be exhaustive and that in any matter with which the Code does not deal, the court will exercise its inherent jurisdiction to do that justice between the parties which is warranted under the circumstances and which the necessities of the case require. In such event the court is guided by the assumption that it possesses an inherent power to act ex debito justitic and to do that real and substantial justice for the administration of which alone it exists. It is well known that the law cannot make express provision for all contingencies; it therefore becomes the duty of the Judge to do that which would advance justice and not defeat it. The learned Judge was clearly of the view that the disclosure of the contents of the documents already produced in court would imperil justice and he accordingly declined to give relief. I am not prepared to say that the learned Judge exceeded his powers in any way in the circumstances of the case. I do not think that the course adopted in the facts of this case amounted to an abridgement of an indefeasible right. The order dismissing the application, so viewed, is in consonance with right and justice and the learned Judge was well entitled to regulate his own proceedings and refuse relief in view of the Appellant''s own conduct when the relief was in the court''s discretion and sought to be availed of by invoking the court''s special jurisdiction on a writ petition.

9. The appeal must therefore be dismissed with costs.

 