
(1917) 07 BOM CK 0019
In the Bombay High Court

Dorabji Jamshedji Tata, Kt.

APPELLANT

Vs

Edward F. Lance and Others

RESPONDENT

Date of Decision : 03-07-1917

Acts Referred:

Contract Act, 1872 — Section 30

Citation : 41 Ind. Cas. 869

Hon'ble Judges : Marten, J

Bench : Single Bench

Judgement

Marten, J.—This is a notice of motion for an injunction and order in terms of prayers (c) and (e) of the plaint. Those prayers are: (c) that the first and second defendants (who represent the Western India Turf Club) may be restrained by an order and injunction of this Court from withdrawing ticket No. 15315 from the lottery, and (e) that pending the decision of this suit the first and second defendants may be restrained" by an order and injunction of this Court from paying the amount of any price drawn by the ticket No. 15315 or any ticket substituted in place thereof to the third defendant.

2. Pat shortly the facts are these: The plaintiff purchased through the admitted agents of the defendant Club a ticket bearing the number 15315. Those agents were Messrs. Thomas Cook & Son of Bombay. They had the disposal of this ticket and they gave a receipt to the plaintiff for the Rs. 10 paid in respect of that particular ticket bearing that particular number. But it appears that at that moment the, book containing the ticket had not been sold down to that number and so Messrs. Thomas Cook & Son agreed actually to hand over the ticket itself when they got to the particular number in the book. Messrs. Thomas Cook & Son are not before me, but they seem by some mistake to have sent the ticket in question to another part of India where it was eventually issued and delivered by another branch of theirs to the third, defendant.

3. Correspondence took place between the plaintiff and Messrs. Thomas Cook & Son, and it appears from that correspondence or from other parts of the

evidence that some offer was made by or on behalf of the plaintiff to the third defendant for this ticket. There was a counteroffer made by the third defendant which was refused: so there would appear to be some value attached to this particular ticket by the plaintiff and the third defendant over and above its face value. Then the plaintiff, being unable to obtain the ticket he thought he had bought, applied to the Turf Club and the decision the Turf Club came to was this. They decided to withdraw this ticket 15315 altogether, to return the plaintiff's money paid in respect of that ticket and to issue a new ticket 15315A to the third defendant. They wrote to the third defendant at the same time asking for his approval which I understand was subsequently given and telling him that if ticket No. 15315A was successful in the lottery the amount thereof would be paid to the third defendant. Thereupon the plaintiff brought this action.

2. I should say that the letter of the Club announcing what it had done was written on the 21st June and that this action was not brought till the 29th. But the explanation of that delay which might possibly have been serious is this that the plaintiff was in Kashmir at the time and that accounts for the delay of a week in taking action. Formal evidence as to this is to be put in by the plaintiff.

3. As regards the action itself, one can understand the plaintiff feeling that the Club had acted arbitrarily in deciding the dispute substantially in favour of one of the parties without giving either of them an opportunity of being heard and also in doing an act which the lottery conditions did not empower them to do, viz., to cancel a particular ticket, and that consequently, he had been rather harshly treated in the matter. Apart from this factor, I find it strange that parties should attach so much value to a particular ticket so as to come here with a law suit of this nature.

4. But the point which I have to deal with is really in the nature of a preliminary objection to the whole action on the ground, stated shortly, that the contract on which the plaintiff professes to sue is in the nature of a gaming and wagering contract, and, therefore, no action will lie on it in this Court. It is really unnecessary for me to refer to any Act or authorities for the proposition that apart from some special sanction given by the Government or the Legislature recently, no such action would lie. The Courts of this country do not exist for the purpose of helping gaming and wagering transactions and they resolutely set their faces against any attempts of that sort. But in the present case the lottery prospectus issued by the Turf Club is headed: Sanctioned) by the Government of India" and it was not until this morning that I saw what this sanction really consists of. Nobody suggests there is any further sanction than what is contained in this document now before me, viz., a letter written by the Secretary of the Bombay Government, Judicial Department, No. 1943, dated the 26th March 1917, and addressed to the Chairman, Bombay Citizens Executive Committee, Indian War Loan. It is to the following effect---

"Sir, 5. "With reference to your letter, dated the 15th March 1917, I am directed to inform you that the Government of India have approved of the organization by

the Western India Turf Club of the proposed War Loan Bond sweepstake. With the approval of the Government of India, I am accordingly to convey the sanction of the Government of Bombay to this lottery as a special case."

6. This letter is not in the defendants' evidence and I have accordingly directed it to be exhibited to a further affidavit. Now this letter, it is quite clear, would stop the lottery being a Criminal offence under the Indian Penal Code. A lottery, unless authorized by Government, renders parties liable to certain punishment by the Criminal Law. That letter is an authority by Government and it would clearly at any rate have this effect that no prosecution under the Criminal Law would lie. But the question of the Civil Law is something entirely different. There one has to see what is prohibited or made void by the Civil Law, and unless you have some qualifying words of the like nature as those found in the Indian Penal Code, viz., "not authorized by Government," the Government has no power to overrule the Imperial Act or the Acts of the Indian Legislature by correspondence. Indeed it is not attempted to argue in this case that they have any such power. So really, therefore, one has to consider whether this action is covered either by Section 30 of the Indian Contract Act or by Section 1 of the Bombay Act III of 1865.

7. As regards Section 30 of the Indian Contract Act, that provides that "agreements by way of wager are void": and it goes on to provide that no suit shall be brought for recovering anything alleged to be won on any wager," etc. In my view these two portions of the Section are independent. In other words, I am entitled to take the first part alone, viz., agreements by way of wager are void", and I have no hesitation in saying that the contract entered into in this case was an agreement by way of wager and that consequently it is void.

8. In that view it is really immaterial to consider whether this present suit also falls within the latter part of the section, viz., "no suit shall be brought for recovering anything alleged to be won on any wager." It is, however, said this is not a suit brought for recovering anything alleged to be won, because it is only to recover something in the contingent event of the draw resulting in the plaintiff's favour. Now I have got to remember the foundation of this suit. It is not, in my opinion, the practice to grant specific performance of a contract for merely a piece of paper. In substance the object of this action is to recover the prize, if any, which this particular number, if inserted in the lottery, shall win, and even if the suit at the present moment does not come precisely within the latter portion of Section 30, it undoubtedly falls within the spirit of it and I should not grant specific performance in a suit of that nature.

9. Then as regards the Bombay Act III of 1865 it is said boldly by Mr. Setalvad that this Act was ultra vires of the Bombay Legislature and is not binding on parties so far as it purports to affect the High Court. But he admits very frankly that the ultra vires portion of the argument applies only to what is stated in Section 1 with respect to not allowing certain suits in any Court of Justice for recovering any sum of money paid or payable in respect of a wagering contract.

But if Section I is split up into two portions in a similar way to that in which I have split up, Section 30 of the Indian Contract Act, then this particular contract would fall within the first portion of Section 1 of the Bombay Act and the ultra vires argument would not affect it.

10. Now, I do not propose to decide, particularly on a motion, whether this Apt is or is not ultra vires of the Local Legislature as regards the latter portion of Section 1. I have heard no argument on that point and so I will say nothing further about it. But I am quite satisfied that the fair way of reading Section I is to say that all contracts of a certain character therein mentioned are null and void. I have equally no doubt that the contract sued on in the present case is one of the character mentioned in the first portion of Section 1.

11. Now, what is the result of that? . It is this, that I find and hold that under two Acts, one the Indian Contract Act, and the other the Bombay Act III of 1865, the agreement in this case is a void agreement. Under these circumstances, I think, it follows that I cannot grant an injunction which, if granted, depends on the validity of the contract. Obviously I cannot grant an injunction in support of a void contract. That being so, this motion must be dismissed and the interim injunction granted yesterday must be dissolved.

12. As regards the costs, I have to bear in mind that this technical point was not mentioned in the evidence and was not raised till the last minute and I think the plaintiff has some ground for thinking that he has been treated rather harshly by either the Club or its agents; Under these circumstances, I think the fair order will be to dismiss the motion without costs.