
(1955) 05 AHC CK 0011

In the Allahabad High Court

Case No : Supreme Court Appeal No. 149 of 1955

Girja Prasad Sunder Lal

APPELLANT

Vs

Divisional Forest Officer, Dudhi and Others

RESPONDENT

Date of Decision : 23-05-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 1, Order 45 Rule 13, Order 45 Rule 13(2)

Citation : AIR 1955 All 589 : (1955) 25 AWR 503

Hon'ble Judges : Upadhya, J; Chowdhry, J

Bench : Division Bench

Advocate : Ambika Prasad and Man Singh, for the Appellant; Jagdish Narain Agarwala and N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

Chowdhry, J.—This is an application under Order 45, Rule 13, C. P. C., by firm Girja Prasad Sunder Lal, whose writ petition under Article 226 of the Constitution was dismissed on 3-2-1955 and a special appeal against that order was summarily dismissed on 11-4-1955. The petitioner firm then applied for a certificate for appeal to the Supreme Court and preferred at the same the present application.

2. The petitioner obtained on 8-4-1953 for a period of seven years a theka from the Raja of Singrauli for collection of tendu leaves for manufacture of bins from a forest in Mirzapur district. The provisions of the U. P. Zamindari Abolition and land Reforms Act, 1951, which came into force on 26-1-1951, were extended to the area in question on 1-7-1953, and, as the right, title and interest of the Raja vested in the State u/s 6 of that Act, and as the theka had been effected after 8-8-1946, the Divisional Forest Officer concerned issued on 29-11-1953 a notification u/s 8 nullifying such thekas and calling upon the thekadars to enter into fresh contracts with him.

Negotiations in this regard between the petitioner firm and the Forest Officer

having failed, the right to collect leaves was auctioned and purchased by Behari Lal on 9-4-1953 at Rs. 2,000/- per annum. It is a matter of controversy whether the purchase by Behari Lal was only for that year or for a period of four years.

3. On 20-4-1954 the firm filed a writ petition under Article 226 of the Constitution against the Divisional Forest Officer and the State of Uttar Pradesh for a writ or direction to restrain them from interfering with the petitioner's right. An interim order to that effect was issued the same day which was to remain in force till the end of June, 1954, on condition of the petitioner depositing Rs. 2,500/- with the Divisional Forest Officer. The season of collection of the leaves is in May and June every year.

On 27-7-1954 Behari Lal made an application to be impleaded as a respondent, which application was allowed the same day that the writ petition was dismissed, i.e., on 3-2-1955. Before that the interim order had been vacated on 17-1-1955 as having exhausted itself. The writ petition was dismissed because the contentions of the petitioner that Section 6 did not apply to the forest or the theka in Question were found untenable.

The petitioner sought to raise another plea at the time of arguments, namely, that the area in question did not constitute an "estate" as defined in Section 3(8), but he was not permitted to do so. The same pleas were unsuccessfully raised by the petitioner in a special appeal which, as adverted to above, was summarily dismissed on 11-4-1955.

4. An application for leave to appeal to the Supreme Court, accompanied by the stay application which is the subject-matter of the present order, was filed by the petitioner on 29-3-1955. Notices have been issued on that application, but it has not yet been disposed of. By the common consent of Sri Man Singh, learned counsel for the petitioner, and Sri N. D. Pant, learned Junior Standing Counsel, an interim order in the same terms as the one dated 20-4-1954 was passed on 6-5-1955 against the Divisional Forest Officer and the State of U. P.

This order was to remain in force till 30-6-1955. Behari Lal, behind whose back that order was passed, put in an application on 12-5-1955 that the order be set aside, and that is how the petitioner's aforesaid application under Order 45, Rule 13, C. P. C., is again before us for disposal.

5. It was contended in limine by the learned counsel for the petitioner firm that the writ petition having been directed against certain actions of the State and its employee, the Divisional Forest Officer, and the stay order dated 6-5-1955 having been passed with the consent of the learned Junior Standing Counsel, that order is final and Behari Lal has no locus standi to challenge it. Now, there is no doubt that the parties primarily at issue are, on the one hand, the Divisional Forest Officer, who issued the notification u/s 8, and the State of U. P., at whose instance the notification was issued, and on the other the petitioner, who is being deprived of his rights under the notification.

Once having been impleaded, however, Behari Lal's right to be heard respecting any order concerned with the subject-matter of the case has been recognised, how feeble so ever be the voice with which he may speak as compared to that of the State through whom he derives his title. He had therefore the locus standi to be heard in the matter of the petitioner firm's application under Order 45, Rule 13, C. P. C., respecting the right of collection of tendu leaves pending disposal of the petitioner's application for leave to appeal to the Supreme Court.

The order dated 6-5-1955 was however passed without any notice to him. That order had therefore not the sanctity of even an ex parte order so far as he was concerned. So far as he was concerned, it was on the contrary, an order passed against principles of natural justice. The aforesaid objection liased by the learned counsel for the petitioner is therefore untenable.

6. Before coming to the merits of the case, there is for disposal a short point of order raised by the learned Junior Standing Counsel, Sri N. D. Pant. He objected to the following sentences appearing in para 9 of Behari Lal's counter-affidavit: "That in order to achieve his ulterior object the applicant has filed the petition of leave to appeal to the Supreme Court along with a stay application. He somehow obtained the consent of Shri N. D, Pant Junior Standing Counsel for the State at the time of the ex parte interim stay order dated 6-5-1955. It appears that the learned Junior Standing Counsel was altogether ignorant of the fact that the deponent had purchased the forest in dispute on 9-4-1954 and was actually in possession of the forest and that the deponents servants had actually started works in the forest from 1-5-1955, in pursuance of the auction purchase by the deponent."

Now, unless justified, the insinuation contained in the opening words of the second sentence is certainly objectionable, specially when the insinuation is against an honourable member of the Bar of this Court. It appears that the consent to the passing of the order dated 6-5-1955 was given by Sri N. D. Pant on foot, of a telegram which he had received from the Legal Remembrancer, Even if no such telegram had been forthcoming it could not be doubted that the only thing that could have actuated Sri Pant in giving his consent should have been the best interests of his clients.

The point need not, however, be pursued any further since, far from pleading any justification, the learned counsel appearing for Behari Lal gave the assurance that nobody ever really meant to make the insinuation which the words were unhappily capable of conveying. In the hope that care and circumspection never cease to be bestowed on the drafting of pleadings and petitions, and in the trust that the said assurance fully vindicates the honour of a learned member of the Bar of this Court, the matter is dropped at that.

7. Coming to the merits of the petitioner's application, there arc two questions that arise for determination on the arguments advanced: (1) Whether this court is empowered under Order 45, Rule 13, C. P. C., or otherwise, to restrain the

defendants from interfering with the petitioner's rights pending disposal "of its application for leave to appeal to the Supreme Court, and (2) If it is so empowered, whether any, if so what, interim injunction should be passed, regard being had to the facts and circumstances of this case?

8. Rule 13 of Order 45, C. P. C., is to the following effect:

"13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the court.--

(a) impound any movable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which the Supreme Court may make on the appeal, or

(c) Stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any decree or order which the Supreme Court may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise."

Now, Sub-rule (1) of this Rule, while recognising the basic principle of a successful party being entitled unconditionally to execute his decree despite the grant of a certificate for the admission of an appeal to the Supreme Court, empowers the court, by which of course is meant the High Court, to direct otherwise, i.e. to stay execution of the decree.

Sub-rule (2) provides, so to say, an exception to the said unconditional right of the successful party to execute his decree, and lays down the various powers the court may exercise in derogation of the said right of the successful party, if it thinks fit to do so, either on special cause shown by the party interested or even otherwise. Clauses (b) and (c) deal with these powers relating to the execution of the decree appealed from, the former allowing execution conditionally and the latter staying execution on terms.

Clauses (a) and (d) grant powers which have nothing to do with the execution of the decree since the former provides for the impounding of disputed moveable property and the latter for the placing of any party seeking the assistance of the court under such conditions or the giving of such other directions respecting the subject-matter of the appeal as the court may think fit, appointment of a receiver being cited as only one of the ways in which such directions respecting the subject-matter of the appeal may be given.

9. It is not necessary to consider in the present case whether the powers under Rule 13 can be exercised by the Court even when no application for leave to appeal has been preferred either before it or before the Supreme Court. But there appears to be no doubt that in a case like the present, where an application for such leave has been filed before the court, it would have the jurisdiction, in a proper case, to exercise any of the powers conferred by that Rule since there is nothing in Order 45 in general or in Rule 13 in particular restricting the exercise of those powers to only where the certificate for leave to appeal has been granted.

There is no doubt that Sub-rule (1) of Rule 13 speaks of "notwithstanding the grant of a certificate", but, in the first place, these words are limited in their application to that sub-rule and do not govern the provisions of Sub-rule (2), and, in the next place, even in Sub-rule (1) these words seem to have been used only to emphasize the aforesaid basic principle of a successful party being entitled unconditionally to execute his decree. Whatever may be the position otherwise, the filing of an application for leave to appeal to the Supreme Court would seem to invest the Court with the jurisdiction to pass such orders as it may become necessary to pass in connection with such an application, including orders in exercise of powers pending appeal provided by Rule 13.

10. Before dealing with the relevant provisions of" Rule 13, it should be stated that there seems to be no warrant for the view that it does not apply to cases where the appeal, during the pendency of which the court is asked to exercise powers under that Rule, is an appeal from a decision under Article 226 of the Constitution. The various provisions of the Rule speak of a party, suit and decree appealed from.

Since powers under that Rule come in for application after a decree has been passed from which an appeal to the Supreme Court is contemplated, the prerequisite to the application of the provisions of that Rule would seem to be the passing of such a decree.

But a decree for purposes of Order 45 has been given in Rule 1 a special and a wider meaning than given to it in its definition u/s 2(2) of the Code, since the expression shall include a final order. The test of what a final order connotes was laid down by Sir George Lowndes in -- AIR 1933 58 (Privy Council) in these words:

"The finality must be a finality in relation to the suit. If after the order the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it u/s 109 (a)".

Now, after the decision of this Court dated 11-4-1955 the special appeal was no longer a live appeal in which the rights of the parties had still to be determined. That decision was therefore a final order and therefore a decree within the special definition of that term in Rule 1 of Order 45. That being so, the provisions of that Order would be applicable where the appeal contemplated is one from a

decision under Article 226 of the Constitution.

11. The provisions of Rule 13 being thus applicable in the present case, the question is whether the said relief could be granted to the petitioner firm under any of its provisions. The relevant provision would of course be the one or the other of Sub-rule (2), and not that of Sub-rule (1), since the court is being required to direct otherwise, i.e. to put a restriction on the right of the successful parties, the respondents, to reap unconditionally the fruits of the final order in their favour.

Clauses (a) to (c) have obviously no application since no question of impounding disputed moveables or of conditional execution or stay of execution of decree arises. The residuary Clause (d) however, confers wide powers and would seem to give the necessary powers to grant the aforesaid relief to the petitioner firm. An analysis of the provisions of Sub-rule (2) (d) would show that

"Provided the Court thinks fit, on a special case shown by any party interested in the writ petition or otherwise appearing to the court, it may (1) place any party seeking the assistance of the court under such conditions, or (2) give such, other direction respecting the subject-matter of the appeal as it thinks fit, by appointment of a receiver or otherwise."

Now, whether a special cause has been shown by the petitioner firm, which is no doubt a party "interested, and whether this is a fit case in which to grant relief, are matters of detail which will be considered when dealing with the second of the two questions enumerated above. So far as the applicability of the clause is concerned, the case does seem to belong to the second category since the petitioner prays for an injunction to restrain the respondents from interfering with its rights of collecting tendu leaves, which is the same thing as, seeking a direction respecting the subject matter of the appeal.

This inference is confirmed by the fact that the particular portion of Clause (d) mentions appointment of a receiver as one of the directions which a Court may give respecting the subject-matter of the appeal. Generally speaking, a receiver is appointed to preserve the subject-matter of the litigation pending determination of the rights of the parties in that litigation in order that the status quo ante may be maintained. Any order or direction that may be necessary for the preservation of the subject-matter of the litigation may therefore be passed or given under the second part of Clause (d).

Preservation of course means keeping the subject-matter of the litigation safe from harm to the rights of either and not only one, of the parties of the litigation, for at the time that the order of direction of court is prayed for it is not possible to foresee which party would eventually succeed.

One way of doing it can be to allow a party which has been in enjoyment of the right in question under a semblance of title, even though disputed title, to continue to exercise that right pending final determination of the rights of the

parties but at the same time to take such security from that party as would compensate the opposite party in the event of the latter eventually succeeding.

12. The answer to the first question should therefore be in the affirmative, and it should be held that this Court is empowered under Order 45, Rule 13 (2) (d), C. P. C., to restrain the respondents from interfering with the petitioner's right pending disposal of its application for leave to appeal to, the Supreme Court, provided that interests of the respondents are at the same time sufficiently safeguarded. The question of this Court exercising that power otherwise than under that Rule does not arise.

13. The above view finds support from the decisions in -- Sarat Kumar Roy Vs. Official Assignee of Calcutta and Others, Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, ; and Ramendra Narayan Roy and Another Vs. Smt. Bibhabati Debi and Others, In the first mentioned case a mortgage-decree having been passed, one of the defendants filed a suit for setting aside the decree on the ground that it had been obtained by fraud. This second suit was dismissed by the trial court, but on appeal the High Court reversed the judgment and decree of the trial court and directed that the decree in the mortgage suit should stand set aside and that the suit should be reheard.

The mortgagee obtained leave to appeal to the Privy Council against the High Court's decision and applied under Order 45, Rule 13, C. P. Code, for stay of further proceedings in the first mortgage suit. This application was allowed both under the provision just cited and u/s 151, C.P. C. The contention that the aforesaid relief could not be granted under Order 45, Rule 13, was repelled and it was observed as follows:

"As regards the first contention, namely, that an order such as, has been prayed for cannot be made under the provisions of Order 45, Rule 13, C. P. C., all that I need say is that, it seems to me that the words are wide enough to cover a case like the present. It has been Ruled in several cases that an order such as may be necessary in the circumstances of a particular case pending the hearing of an appeal to His Majesty in Council may be made under the provisions of this section. Each case must depend on its own facts and it is not possible to set out exhaustively the cases that may be brought within the ambit of this section from time to time.

14. In Ramanathan Chettiar Vs. M.A.R.R.M. Viswanathan Chettiar, cited above a final decree having been passed during the pendency of an appeal to the Privy Council from a preliminary decree in a mortgage suit, the High Court allowed an application of the appellant under Order 45, Rule 13 (d), and stayed execution of the final decree and safeguarded the interests of the respondent by requiring the appellant petitioner to furnish security.

It will be observed that the decree whose execution was stayed was not the decree appealed from, so that the High Court acted under Clause (d) of Sub-rule (2) of the Rule with reference" to the subject matter of the appeal. In repelling

the contention that such stay could be granted only in respect of the decree appealed from it was observed as follows:

"It is noticeable, under this clause the Court has power to give whatever direction it thinks necessary respecting the subject-matter of the appeal as if thinks fit by the appointment of a receiver or otherwise, whereas Sub-clauses (b) & (c) contemplate action by the Court with reference to the decree appealed from. Under Sub-clause (d) action may be taken by the Court and directions may be issued with reference to the subject-matter of the appeal. The subject-matter of the appeal in the present case is the property involved in the suit. It is not stated that the direction is with reference to the decree that is appealed from but it is with reference to the subject-matter of the appeal. If the Court has power to pass orders which it thinks should be passed in a particular case with respect to the subject matter or the appeal, then we think that this Court has power to pass orders with respect to the property involved in the suit, if we think on the merits such order should be passed."

15. In Ramendra Narayan Roy and Another Vs. Smt. Bibhabati Debi and Others, cited above, it was held, relying upon the above 1939 Mad case (C), that pending appeal to the Privy Council the Court had ample power under Order 45, Rule 13(2)(d) to make such order as it considered necessary with respect to the monies lying in Court as income of the decretal property as such monies constituted the subject-matter of the appeal.

16. The learned counsel for Behari Lal cited a number of rulings in support of his contention that the relief prayed for by the petitioner firm in the present case could not be granted under Order 45, Rule 13. The first case cited, by him was -- Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Madras, . It would appear that the Electric Supply Corporation's writ petition impugning a certain order of the State by which it was directed that the Corporation shall vest in the State was dismissed, and thereupon it applied both for leave to appeal to the Supreme Court and for stay of operation of the State's vesting order.

The High Court gave leave to appeal but rejected the application for stay on two grounds: (1) the relief asked for had nothing whatsoever to do with the execution of the final order of the Court, and (2) Clause (d) did not empower the Court to place the party other than the party seeking the assistance of the court under any conditions or to give any direction to such a party preventing him from enjoying the fruits of the order against which the appeal is pending.

Now, the first ground may have reference to Clauses (b) and (c) but it has nothing to do with Clause (d) which does not speak either of execution or of the decree appealed from. As regards the second ground, Clause (d) consists of two parts under both of which the court might pass such orders as it thinks fit respecting the subject-matter of the appeal, but while the first speaks of placing the party seeking the assistance of the court under such conditions as the court thinks fit, the other part, which is quite independent of the first, does not speak

of any such party but only generally of "the court giving such other direction as it thinks fit.

In other words, under the second portion it is open to court, at the instance of any party, to give such direction respecting the subject-matter of the appeal as it thinks fit. That being so, it is open to the court under this part of the clause to give the requisite direction at the instance of the appellant against the successful respondent, and such direction may even be to prevent the latter from reaping the fruits of the decree in his favour pending the disposal of the appeal, his interests being or course otherwise safeguarded.

There is nothing in the second part of the clause to restrict the powers of the Court in the manner suggested in the ruling. With great respect, it is not possible to subscribe to the view expressed in this ruling.

17. The next ruling cited by the learned counsel for Behari Lal was -- Jitendra Narayan Deb and Others Vs. State of Assam, A writ petition under Article 226 of the Constitution impugning the Assam Management of Estates Act 1949, having been dismissed, and the petitioner's application for leave to appeal to the Supreme Court having been granted, his application under Order 45, Rule 13(2) (d) to restrain the State from taking possession of the estates was rejected on the ground that the said provision of the Code was not applicable.

It was further held that stay of further proceedings could not also be granted under inherent powers. For the view that Order 45, Rule 13, was not applicable reliance was placed on -- Lala Atma Ram Vs. Beni Prasad and Others and -- "Lalitessur Singh v. Bhabessur Singh 13 CWN 690 (H).

In the former case an application under Order 45, Rule 13 (2) (d), for stay of suit in the trial court pending disposal of an appeal to the Privy Council from an order of the High Court directing that a certain party be brought on record as plaintiff was dismissed on the ground that Sub-rule (2) (d) did not apply since it referred to cases where a party is to be put to certain terms or some order has to be made regarding the custody or disposal of the subject-matter of the appeal.

Neither in Jitendra Narayan Deb and Others Vs. State of Assam, referred to above, nor in the present, was there any question of stay of proceedings. On the contrary, an order was solicited regarding "disposal of the subject-matter of the appeal." That being so, the Lala Atma Ram Vs. Beni Prasad and Others really supported the granting, rather than refusing, the prayer under Order 45 Rule 13(2)(d). For the same reason the ruling in 13 CWN 690 (H) has no application. It would appear therefore that the decisions on the basis of which relief in Jitendra Narayan Deb and Others Vs. State of Assam, was disallowed had no application to the facts of that case.

18. The next case cited was -- Purna Chand Sahu Vs. Chamra Bariha and Others, In that case stay of execution of decree was not allowed because it was held that the court had no jurisdiction to grant such a prayer after it had rejected the

application for leave to appeal to the Supreme Court. No such considerations arise in the present case since, the application for leave to appeal to the Supreme Court has not yet been disposed of.

19. Finally, the learned counsel for Behari Lal cited -- Sajjan Singh Vs. State of Rajasthan, In this case an application under Article 226 of the Constitution challenging the validity of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, having been dismissed, the applicant applied u/s 151 and Order 45, Rule 13, C. P. C., during the pendency of his application for leave to appeal to the Supreme Court, that the State be restrained from interfering in any manner with the applicant's possession over his Jagir. The application was dismissed.

The ruling dealt at length with the question whether it had the power u/s 151 of the Code to pass the order which the applicant desired, and it was eventually held that the court had no such power. So far as the provisions of Order 45, Rule 13, are concerned, the matter was disposed of by simply remarking that the language of that Rule made it quite clear that it was not applicable in terms to the case since it only gives certain powers to the court, including the stay of the execution of a decree.

It appears that the applicant in that case" relied mainly upon Section 151 of the Code. This decision is therefore no clear authority for the view that Order 45 Rule 13, is inapplicable. Towards the end of the decision there appear the following remarks which might possibly have been meant to apply both to Section 151 and Order 45, Rule 13 of the Code:

"So long as the writ petition was pending, we could grant an interim relief to the applicant staying the application of the Act till we decided its validity; but once we have decided that the Act is valid, and have dismissed the petition, there is, in our opinion, no scope for grant of any interim relief by us on the ground that an application for leave to appeal to the Supreme Court has been filed. It is only the Supreme Court which can now grant any relief to the applicant."

As stated above, the stay application had in that case been filed and disposed of during the pendency of the application for leave to appeal to the Supreme Court. As regards the above quoted view that an interim relief could only be granted during the pendency of the writ petition, and not after it had been dismissed, it would appear to be against the specific provisions of Order 45, Rule 13, since the provisions of this Rule would come in for application only after the writ petition has been dismissed and an application for leave to appeal to the Supreme Court has been filed.

The interim relief referred to in the Rajasthan ruling as granted to a party during the pendency of a writ petition would not be a relief granted under Order 45 of the Code. It would appear therefore that Order 45, Rule 13, was not the basis of the decision in the Rajasthan case. On the whole, therefore, this decision is not helpful. In the result, therefore, there seems to be no reason to depart from the view expressed above namely, that this Court is empowered under Order 45,

Rule 13(2)(d) to grant the relief prayed for by the petitioner firm.

20. It only remains now to see whether this is a fit case in which such a relief should be granted. It is a matter of controversy whether Behari Lal has purchased the rights in question in the auction sale dated 9-4-1954 for only one year or for four years. That is however immaterial. Admittedly, the petitioner firm had been in enjoyment of the right in question since before that, i.e. since 8-4-1953.

It is only by virtue of a subsequent notification u/s 8, U. P. Zamindari Abolition and Land Reforms Act, 1951, that the petitioner is being; sought to be deprived of his rights. The validity of the notification is being seriously challenged by the petitioner. The learned Junior Standing Counsel has drawn our attention to a telegram which is said to have been received from the Legal Remembrancer at Lucknow on 17-5-1955. This telegram requires that the Court be informed of the correct facts as intimated by the Divisional Forest Officer in an earlier telegram dated 7-5-1955. All that was stated in the latter telegram was that the Divisional Forest Officer was not willing as the right in question had already been sold for four years and any such contract will be against the terms of contract between him and Behari Lal.

It is, however, not contended by the Divisional Forest Officer or the State that possession had been given to Behari Lal. It is also noteworthy that the stay order dated 6-5-1955 which has already been passed was passed with the consent of the State of U. P. through whom Behari Lal derives his title. In view of these facts and circumstances, Behari Lal's application for setting aside that order deserves to be dismissed and the stay order dated 6-5-1955 should be maintained.

As regards the terms and conditions on which that order should be maintained the petitioner firm has under that order been directed to deposit a sum Rs. 2500/- with the Divisional Forest Officer and to hand over to him a document in writing agreeing to the amount being paid to the Government in case the application for leave to appeal to the Supreme Court fails, or, if leave is granted, the appeal to the Supreme Court itself fails.

We are told that the said sum of Rs. 2500/- has already been deposited by the petitioner firm. There seems to be no reason to impose any further conditions on the petitioner firm. It may be that the amount of profit which Behari Lal would have derived if he had been allowed to gather the leaves might have been larger than Rs. 2500/-; but that is a matter between him and the State of U. P.

So far as the petitioner firm is concerned, its writ petition was directed only against the act of the State of U. P., and with regard to that the sum of Rs. 2500/- which the petitioner has already deposited affords sufficient security.

21. The application of Behari Lal dated 12-5-1955 is dismissed with costs and the order dated 6-5-1955 passed by this Court is maintained.