

(1978) 03 MAD CK 0068
In the Madras High Court
Case No : O.S.A. No. 17 of 1978

Gordon Woodroffe and Co., Madras (P.) Ltd.	APPELLANT
Vs	
C.D. Gopinath and Another	RESPONDENT

Date of Decision : 21-03-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 14, 37, 38, 38(3), 41

Citation : AIR 1978 Mad 374 : (1978) ILR (Mad) 248 : (1978) 91 LW 376 :
(1977) 90 LW 376

Hon'ble Judges : Ramanujam, J;Paul, J

Bench : Division Bench

Advocate : S. Chellaswami, for the Appellant; S. Govind Swaminathan, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—This appeal arises out of an order of Natarajan J. in Appln. No. 3892 of 1977 declining to grant an interim injunction pending disposal of C. S. No. 450 of 1977 filed by the appellant herein as plaintiff.

2. The circumstances under which the said suit came to be filed have been clearly and fully set out by Natarajan J, in the order under appeal and, therefore, it is not necessary to restate the same herein in elaborate detail and we will refer only to certain basic and salient facts. The appellant (plaintiff) was originally started as a partnership concern in 1868 but later converted into a limited company in 1924. It started as a subsidiary of Gordon Woodroffe Ltd., London which even now holds 79% of its shares. It has its registered office at Madras and branch offices at Kakinada and Vizagapattinam, for its steamer business. It was appointed as steamer agents of the Clan Line Steamers Ltd. in the year 1878, hereinafter referred to as Clan Line and the said agency was continued ever since. In the pooling system which was introduced in the year 1960. Clan Line had been allotted 47 per cent of the traffic from Kakinada and 30 per cent of

the traffic from Madras.

3. Under the Foreign Exchange Regulation Act which was introduced in June 1974, the appellant has to get the permission of the Reserve Bank of India to carry on its steamer agency activities as before as 79% of the shareholding in the appellant company is being held by the Gordon Woodroffe Ltd. London. Therefore an application was made by the appellant for such permission. The Reserve Bank of India by its letter dated 16-8-1977 stated that the permission sought for cannot be granted to the appellant in its present set up where the foreign shareholding is 79% and that permission would be granted if the appellant conforms to the provisions of the Foreign Exchange Regulation Act and the directives of the Reserve Bank of India by bringing down the holding of its shares by foreigners to 40% level, the balance of the 60% being taken by Indian Nationals. It is at that stage, the first respondent herein (the first defendant in the suit) who was functioning as Chairman of the appellant company under a service agreement dt 3-1-1975 for a period of five years was asked to put up certain alternative proposals to the Reserve Bank. The alternative proposals put forward by the appellant not being acceptable to the Reserve Bank, the first respondent wrote a letter on 13-10-1977 to the Reserve Bank stating that the appellant was prepared to give up the agency business, and that it may be given time till 1-2-1978 to complete the formalities in relation thereto. The first respondent thereafter got in touch with Clan Line and made them agree that with effect from 1-2-1978 they would divert their steamer agency to the second respondent to be started by him. Clan Line informed the appellant about its decision to terminate the agency with effect from 31-1-1978 and give it over to the second respondent. The appellant wrote many persuasive letters to Clan Line not to terminate its agency. But the Clan Line stuck to their original decision to terminate their agency with effect from 31-1-1978. Proceeding on the basis that the termination of the agency by the Clan Line has been purposely brought about by the respondent by making false, fraudulent and unauthorised representations both to the Clan Line and the Reserve Bank with a view to divert the steamer agency for his benefit, the appellant company terminated the services of the first respondent by an order dated 3-12-1977.

4. Subsequently the appellant filed the suit on 8-12-1977 against respondents 1 and 2 for (1) a permanent injunction restraining the defendants from taking over Clan Line Steamer agency for the Ports of Madras, Kakinada and Vizagapattinam and functioning as Clan Line Co-ordinating agents for their trade from India and functioning as Clan Line controlling agents for Cuddalore, Nagapatnam, Masulipatnam and Trivandrum or acting as agents for the Clan Line Steamers Ltd., London and (2) for a decree for a sum of Rs. 5,00,000, being the damages suffered by the appellant by the first defendant's breach of the service agreement dated 3-1-1975 entered into between the appellant and the first respondent.

5. After service of summons in the suit, the first respondent filed on 13-1-1978,

an application u/s 34 of the Arbitration Act for stay of the said suit on the ground that in view of the arbitration clause contained in the service agreement, the matter has to be settled only by arbitration as provided for therein. The second defendant a firm consisting of the first defendant and two others as partners, which is to take over the business of Clan Lines agency as and from 7-2-1978 after the plaintiff's agency stood terminated by the notice of termination of agency issued by the Clan Line on 19-10-1977 also did not put forward its defence pending the result of the application for stay filed by the first respondent.

6. Along with the plaint the appellant filed an application for interim injunction pending disposal of the suit restraining the defendants from taking over jointly and severally the said Clan Line Steamers agency, for the ports of Madras, Kakinada and Vizagapatnam and functioning as Clan Line agent for their trade from India and Clan Line controlling agents for Cuddalore, Masulipatnam, Nagapattinam and Trivandrum or acting as agents for the Clan Line Steamers Ltd., London in respect of the aforesaid agencies.

7. Though notice of this application was given to the defendants, they did not file any counter affidavit as they apprehend that any step taken by them in the said injunction application will prejudice them in the prosecution of their application u/s 34 of the Arbitration Act for stay of the suit.

8. In support of the application for injunction it was submitted on behalf of the appellant before the trial Court that it has been acting as the sole agent for Clan Line for the past 100 years and more, that on account of the efforts, exertions taken and investment of large sums of money made by the appellant the cargo trade of Clan Lines had been developed in a substantial measure in Indian Ports so as to enable it to get a quota of 47 per cent of the traffic from Kakinada and 30 per cent of the traffic from Madras and that as the agency is thus coupled with interest, it cannot be terminated by the Clan Lines unilaterally and the same diverted to defendants 1 and 2. Secondly it was contended that the first respondent who was in a fiduciary capacity cannot take advantage of his own fraud in diverting the agency business to his own advantage and therefore he must be restrained by an injunction from taking over of the agency business which not only amounts to a breach of the covenants contained in the service agreement, but also amounts to a breach of trust. Thirdly it was contended that the termination of agency will lead to disastrous consequences and great financial loss to the appellant and that such loss cannot be compensated in money. Fourthly it was said that the balance of convenience lay in favour of the appellant as the first and second respondents have not made any arrangements so far for taking over and carrying on the agency business.

9. Natarajan J. considered each one of the above contentions and finally held that there are several factors which militate against the grant of an interim injunction as prayed for by the appellant. The several militating factors referred to by the learned trial Judge are these-- (1) Neither Clan Line Steamer Co., nor its Managers, Cayzer Irwine and Co. Ltd. by whom the appellant had originally

been appointed as agent for Clan Line being parties to the suit, any order of injunction passed against respondents 1 and 2 touching the agency business of Clan Line will affect the interest of Clan Line which is not before the court and that, therefore, in their absence no interim injunction could be granted. (2) Even if an injunction is granted restraining respondents 1 and 2 from taking over the Clan Line agency business from 1-2-1978, Clan Line having already cancelled the agency of the appellant, any order of injunction will not benefit the appellant. (3) The appellant has not satisfactorily established that the loss that might be sustained by it by the alleged wrongful act of the first respondent or the wrongful termination of agency by Clan Line cannot be compensated in terms of money and that as a matter of fact the appellant itself has estimated the damages in a sum of Rs. 64-5 lakhs though it has restricted its claim to Rs. 5 lakhs; (4) The first respondent having filed an application for stay of the suit is handicapped in participating in the injunction petition and, therefore, it will be against equity and good conscience to grant an ex parte order of injunction. The said order of Natarajan J. refusing to grant an interim injunction has been challenged in this appeal by the appellant on the ground that in the circumstances of the case an interim injunction should have been granted.

10. Before going into the merits of the appellant's contentions, it is necessary to dispose of a preliminary objection taken by Mr. Govind Swaminathan learned counsel for the respondents as to the maintainability of this appeal. According to him an order refusing to grant an interim injunction pending the suit cannot be a judgment as contemplated by Clause 15 Letters Patent and as such it is not appealable. The learned counsel refers to the decisions in *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, and *Putla Rustomji Messman Vs. Gul Mani*, in support of his plea. In *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, the Supreme Court had to consider whether an order permitting amendment of a plaint will be a judgment within Clause 15 Letters Patent and could be appealed against. The Supreme Court expressed (at p. 1722)-

"In finding out whether the order is a judgment within the meaning of Clause 15 Letters Patent, it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the court. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability."

In *Putla Rustomji Messman Vs. Gul Mani*, , a Division Bench of the Bom-bay High Court had held that an order refusing to grant an interim injunction is not a judgment within the meaning of Clause 15 Letters Patent as none of the rights of the parties in the litigation was determined in the proceedings and that the entire litigation was still at large. The learned Judges in that case observed (at p. 51)-

"However, the legal position seems to be that the affectation of interference with the right of possession or any other right for the time being of a party must be the result of the court's order determining some right inter partes during that

litigation. If it is not so, then undoubtedly mere refusal to give interim relief in a litigation where ultimately the relief claimed may be granted would not amount to a judgment within the meaning of Clause 15."

11. As against these decisions, Mr. Chellaswami, learned counsel for the appellant, refers to the Full Bench decisions in *Tuljaram Rao v. Alagappa Chettiar*, ILR(1912) Mad 1, L.C.T.L.P.L. *Palaniappa Chettiar and Others Vs. M.R. Krishnamurthy Chetty and Others*, and *V/O Tractor Export, Moscow v. Tarapore and Co.* (1969) 82 Mad LW 361. In the first case, Sir Arnold White C. J. speaking for the Bench pointed out that an order on an independent proceeding which is ancillary to the suit, such as an order on an interim injunction application or for appointment of a receiver will certainly constitute a "judgment" within the meaning of Clause 15. The tests laid down therein for determining whether the order is a judgment within the meaning of Clause 15 Letters Patent are to see-

(1) If its effect is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending is concerned; or

(2) if the non-compliance therewith will have the effect of putting an end to such suit or proceedings; or

(3) if it is passed in an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment effective when obtained) e.g., an order on an application for temporary injunction or for the appointment of a receiver.

In *L.C.T.L.P.L. Palaniappa Chettiar and Others Vs. M.R. Krishnamurthy Chetty and Others*, another Full Bench of this Court reviewed the entire situation elaborately including the trends of the case law in the other High Courts and expressed the view that so long as there is a judgment in an independent proceeding, though it may be ancillary to the suit, which determines the rights of parties in that proceedings, it is appealable within Clause 15 and this was beyond any doubt or controversy. In *V/O. Tractor Export, Moscow v. Tarapore & Co.* (1969) 82 Mad LW 361 an appeal against an order granting an interim injunction was entertained on the basis of the above Full Bench decisions. The learned counsel also refers to the Bench decision in *Chittaranjan Mondal Vs. Sankar Prosad Sahani*, . In that case an order refusing to grant an injunction pending the suit was held to be appealable under Clause 15 Letters Patent (Calcutta) following the Full Bench decision in *Tuljaram Row v. Alagappa* ILR(1912) Mad 1. Therein the Court observed (at p. 470)-

"The position, therefore, is that in the present state of the law it is open to us to apply the third test of White C. J. to the facts of this case. The order of Amaresh Roy J. refusing to grant an injunction restraining execution of the judgment decree was passed in an independent proceeding which was ancillary to the appeal and as such it is a "judgment" within the meaning of Clause 15 Letters Patent. We hold that this is an appealable order."

Since for more than half a century this Court has been entertaining appeals under Clause 15 Letters Patent (Madras) from orders made on application in the exercise of its original jurisdiction, we see no justification for taking a different view. It is true the Bombay High Court in *Putla Rustomji Messman Vs. Gul Mani*, has taken a contrary view. But so far as this court is concerned, it has taken a uniform and consistent view, based on the earliest of the decisions in *Tulrajam Rao v. Alagappa* ILR(1912) Mad 1 that an order refusing or granting a temporary injunction pendente lite is appealable under Clause 15 and we are bound by the said Full Bench decision. We have to therefore hold that the appeal is maintainable.

12. Then the only question to be considered is whether the appellant has established a case for the issue of an interim injunction restraining the respondents from taking up the. Clan Line agency from 1-2-1978. In fact no injunction has been asked for against Clan Line regarding the cancellation of the agency by the Clan Line or their managers in the suit. Nor have they been made parties to the suit. Hence no relief could be claimed in this suit by the appellant against the Clan Line on the basis that the termination of its agency is wrongful and there can be no question of any mandatory injunction being issued against the Clan Line directing the continuation of the appellant's agency beyond 1-2-1978.

13. According to Mr. Chellaswami, learned counsel for the appellant, Clause 2 of the service agreement dated 3-1-1975 entered into between the appellant and the first respondent contains a negative covenant and the court can always prevent breach of such a negative covenant by issuing an injunction. It is also said that the first respondent's status under the service agreement is that of a trustee and that his conduct in procuring the termination of the Clan Line Agency in favour of the appellant and getting the benefit thereof to himself and the second respondent is in breach of trust. The learned counsel also submitted that the first respondent has not only acted in breach of trust but also is guilty of fraudulent conduct in acting against the interest of the appellant, his employer and securing a benefit for himself, and that, therefore, he cannot be allowed to enjoy or retain the benefit so obtained against the interest of his employer.

14. Chap. VIII of the Specific Relief Act, 1963, deals with perpetual injunction, and that Chapter consists of Sections 38 to 44. Section 38(1) says that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication, subject to the other provisions of the Act. Sub-section (2) of Section 38 says that when any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chap. II. Sub-section (3) however says that the court can grant a perpetual injunction in the following cases if the defendant invades or threatens to invade the plaintiff's right to or enjoyment of the property-

"(a) Where the defendant is trustee of the property for the plaintiff.

(b) Where there exists no standard for ascertaining the actual damages caused or likely to be caused, by the invasion,

(c) Where the invasion is such that compensation in money would not afford adequate relief;

(d) Where the injunction is necessary to prevent a multiplicity of judicial proceedings."

Section 40(1) enables the plaintiff to claim damages either in addition to, or in substitution for, such injunction. Section 41 says that an injunction cannot be granted-

"(a) (b) (c) (d) (e) to prevent the breach of a contract the performance of which would not be specifically enforced."

Section 42 however enables the Court to grant an injunction to perform negative agreement notwithstanding anything contained in Section 41(e) provided the plaintiff has not failed to perform the contract so far as it is binding on him.

15. Chap. II deals with specific performance of contracts and the provisions contained in that chapter are to govern the grant of injunctions as per Section 38(2). Section 10 deals with cases in which specific performance could be granted. Section 10(b) says that a specific performance can be granted in the discretion of the court if the act agreed to be done is such that compensation in money or its non-performance would not afford adequate relief. Section 14 which deals with contracts which cannot be specifically enforced also says that a contract for non-performance of which compensation in money is adequate relief cannot be specifically enforced. It is with reference to those statutory provisions the appellant's prayer for an interim injunction has to be considered.

16. It is well established that normally a contract of service or a contract of agency cannot be specifically enforced as the breach thereof can always be compensated in money. The learned counsel for the appellant does not dispute this proposition. But what he contends is that as the contract of service in this case contains a negative covenant, such a negative covenant can be enforced by granting an injunction pending the suit. It is said that u/s 42 the court is empowered to grant an injunction to perform a negative agreement. The learned counsel reads Clause 2 of the contract of service dated 3-1-1975 as providing for an implied negative covenant that the first respondent will work for the benefit of the appellant company and not for any body else including himself. Clause 2 of the service agreement is as follows-

"Mr. Gopinath shall be just, true and faithful to the Company in the performance and carrying out of his duties and shall use his best endeavours to ensure the advancement and prosperity of the business of the company and shall in all things carry out, obey and fulfil all such reasonable instructions and directions as shall from time to time be given to him by the company or any person or persons authorised by the company."

This clause says that the first respondent should be just, true and faithful to the company in the performance of his duties and shall use his best endeavours to the advancement and prosperity of the company. He has also to obey all reasonable instructions issued by the company from time to time. We are not inclined to construe this clause as implying a negative covenant. The said clause nowhere states that the first respondent cannot take up the same or similar agency after his services are terminated. It is true, so long as he is in office as Chairman of the Board of directors he cannot act against the interests of the Company but has to faithfully act for its advancement. In this case, as already stated, the first respondent's services have been admittedly terminated by the appellant company by an order dated 3-12-1977. Therefore, even assuming that Clause 2 can be construed as implying a negative covenant that the first respondent cannot compete with the appellant or take up any similar or same agency business, so long as his services stand terminated, the proviso to Section 42 comes into operation. The appellant having terminated the services of the first respondent, it is no longer in a position to perform its part of the service contract and, therefore, it cannot seek to enforce the alleged negative covenant contained in the contract of service. Any order granting an injunction now for the performance of a negative covenant would actually amount to specific performance of a covenant in an agreement which has been put an end to by the appellant itself. We are, therefore, of the view that the normal rule that the court shall not grant an injunction in the matter of a contract of service which cannot be specifically enforced, contained in Section 41(e) will apply to the facts of the case and the appellant cannot invoke the exception contained in Section 42, as it has terminated the service contract before it invoked the assistance of the court to enforce the negative covenant by the issue of an injunction. After the termination of the service agreement by the appellant there is no obligation existing in its favour which could be specifically enforced. Clause 2 of the said service agreement which is the only provision relied on by the appellant does not create any obligation in its favour after the contract of service comes to an end and it deals with the first respondent's obligations only during the currency of the service agreement. There is, therefore, no enforceable obligation in favour of the appellant as on the date of suit.

17. We are also satisfied that even if there is a breach of the negative covenant as alleged, it could be compensated in money and therefore Sections 38(3)(c) and 14(a) will come in the way of the court granting relief to the appellant by way of an injunction. This is the view taken by the trial Judge and we are in entire agreement with him. It is well established that a contract of service cannot be specifically enforced as a breach thereof can always be compensated in money. The general rule is that the grant of an injunction is a matter of discretion of the court and it cannot be claimed as of right. No doubt, the discretion has to be, exercised in a judicious manner and in accordance with the provisions relating to the grant of injunction contained in the Specific Relief Act. As already stated, in this case the appellant's prayer for an interim injunction is

based on Section 42, which is more or less an exception to the general rule contained in Section 41(e). That an injunction cannot be granted to prevent the breach of a contract which cannot be specifically enforced is not disputed. The learned counsel for the appellant refers to Clause 2 of the service agreement dated 3-1-1975 and submits that though there is no express negative covenant, a negative covenant that the first respondent cannot take over a similar or the same steamer agency should be implied. We do not see how the above clause in the service agreement can be construed as an implied negative covenant. Under this clause the first respondent is bound to be faithful to the company and should use his best endeavours to ensure the advancement and prosperity of the company and to obey all instructions of the Company, That does not expressly or impliedly prevent the first respondent from giving up his service under the appellant and starting an agency business of his own. As already stated, the first respondent's services have been terminated on 3-12-1977 and even if Clause 2 of the service agreement is construed as an implied negative "covenant not to work against the interests of the company, that negative covenant cannot subsist after the service agreement has been put an end to by the appellant itself by terminating the services of the first respondent. It is in this context the proviso to Section 42 becomes material. The proviso says that the applicant who seeks an injunction must be in a position to perform the contract so far as it is binding on him. The obligations of the first respondent under Clause 2 of the service agreement cannot extend beyond the period referred to in the service agreement and his obligations are limited only to the period of his service under the appellant. Now that the appellant has put an end to the service agreement by terminating the services of the first respondent, he has failed to perform his part of the contract by retaining the first respondent till the expiry of five years from 3-1-1975. In view of the proviso to Section 42 the appellant who has terminated the services of the first respondent unilaterally, cannot now seek to enforce the alleged negative agreement. In this view of the matter, the appellant has disabled himself from getting a relief of interim injunction by terminating the service agreement. Therefore it is not necessary to go into the various decisions and authorities cited by the learned counsel for the appellant,

18. The learned counsel for the appellant would contend that though the services of the first respondent have been terminated by the appellant by an order dated 3-12-1977, the service agreement should be deemed to continue or subsist for the purpose of claiming injunction u/s 42 and that the first respondent himself has treated the service agreement as subsisting by invoking the arbitration clause contained therein even after the filing of the suit. The learned counsel also refers to the fact that the first respondent has not accepted the validity of the order of termination of his services and states that therefore he is not entitled to take advantage of the order of termination of service and that the order of termination would not stand in the way of the appellant from getting a relief by way of injunction u/s 42. Mr. Govind Swaminathan, learned counsel for the first respondent, however, submitted that the first respondent has accepted the order

of termination and has invoked the arbitration clause contained in the service agreement only for damages arising out of the termination of services. The question is not whether the first respondent has actually accepted the order of termination of service or not. The relevant question is what is the conduct of the appellant with reference to the service agreement when he has approached the court seeking a relief of injunction. We are of the view that even if the first respondent has not accepted the validity of the order of termination, so far as the appellant is concerned, he having unilaterally put an end to the service agreement, he cannot seek the relief of injunction to enforce the so-called implied negative covenant in Clause 2 of the service agreement.

19. In support of his plea that the service agreement though terminated should be deemed to continue or subsist for purposes of Section 42, Mr. Chellaswami relies on the decisions in *Damodar Valley Corporation Vs. K.K. Kar*, and *Hill v. C. A. Parsons and Co. Ltd.*, 1972 1 Ch 305. In the first case it has been held that a mere repudiation by one party alone does not terminate the contract and that as even after such repudiation the contract subsists for the determination of the rights and obligations of the parties thereunder, an arbitration clause contained therein also survives. This decision recognises the well-established principle that even after the termination of a contract, the arbitration clause contained therein has to operate for the purpose of determining the rights and obligations of the parties thereunder. As a matter of fact, in most of the cases, arbitration agreement will be operative only after either of the party commits a breach of the agreement or resiles from the same. Therefore this decision which merely says that the arbitration clause in an agreement survives for the purpose of determination of the rights and obligations of the parties even though the contract has been put an end to, will not be of any assistance to the appellant who seeks to enforce a covenant in a contract by getting an injunction, after the contract has been put an end to. In *Hill v. C. A. Parsons & Co. Ltd.*, 1972 1 Ch 305, there was a termination of a service agreement unilaterally by the employer which was not accepted by the employee. The employee sought an injunction from the court to restrain the employer from implementing the notice of termination. In that case the employee who approached the court for an injunction was willing to perform his part of the contract while the employer had committed a breach of the contract of service by terminating the service of the employee without due notice as provided for in the contract. Therefore the court granted interim injunction. There the person who approached the court is not the one who terminated the contract of service. Therefore that decision also does not have any relevance in determining the question whether the appellant has satisfied the proviso to Section 42.

20. The learned counsel for the appellant also referred to the decision of the House of Lords in *American Cyanamid v. Ethicon*, 1975 1 All ER 504 in support of his plea that it is not necessary for the appellant to establish a prima facie case and that if the plaintiff's claim is not frivolous or vexatious, interlocutory relief could be granted after considering the balance of convenience. In that case the

House of Lords held that there was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should be granted unless the plaintiff succeeded in establishing a prima facie case or a probability that he would be successful at the trial of the action, that all that was necessary was that the court should be satisfied that the claim was not frivolous or vexatious, i.e., that there was a serious question to be tried. According to the learned counsel the appellant need not establish a prima facie case at this stage and it is sufficient if his claim in the suit is found to be not frivolous or vexatious. It is said that the appellant's claim in the suit is not frivolous or vexatious and, therefore, the court has to consider the grant of injunction on a consideration of the balance of convenience.

21. We have already held that the appellant by terminating the service contract has disabled itself from getting a specific performance of the negative covenant said to be contained in Clause 2 of the service agreement and in reaching that conclusion we have not proceeded on the basis that the appellant has not established a prima facie case, nor have we decided the matter on the basis of balance of convenience. Therefore, the above decision does not help the appellant. In this view we are not also considering the contention put forward by Mr. Govind Swaminathan, learned counsel for the respondents that on the facts of this case the appellant cannot get a permanent injunction even after the trial of the suit and, therefore, he cannot get an interim injunction. We are also of the view that it is unnecessary to decide the tenability of the contention urged by the learned counsel for the respondents that u/s 27 of the Contract Act any service agreement which puts a restraint on a contracting party exercising a lawful profession, trade or business of any kind will be void and the applicability of the decision of the Supreme Court in *Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.*, to the facts of this case.

22. Since we are of the view that the service agreement, the covenants of which are sought to be enforced by the appellant by the issue of an injunction does not subsist after its termination by the appellant itself on 3-12-1977, we are not going into the question whether the appellant has got a prima facie case or whether the balance of convenience warrants the grant of an injunction. Besides, we are inclined to agree with the learned trial Judge that even if an injunction is granted against the respondents restraining them from taking up the Clan Line Agency, it will not enable the appellant to continue the Clan Line Agency. We therefore find that there are no merits in the appeal.

23. The appeal is, therefore, dismissed with costs.

24. Any observation made in this appeal will not, however, prejudice the appellant in establishing its case at the trial of the suit. Mr. Chellaswami submits that having regard to the heavy stages involved, there may be a direction to the learned trial Judge to dispose of the suit C. S. 450 of 1977 expeditiously. Such a request may be made to the learned trial Judge and it is for him to consider the request and dispose of the suit as early as possible.

25. Appeal dismissed.