

(1998) 07 MAD CK 0054

In the Madras High Court

Case No : C.R.P. NO. 1133 OF 1998 and C.M.P.No.5744 of 1998

Hindustan Photo Films Manufacturing Co. Ltd.

APPELLANT

Vs

R. Lakshmanan

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

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

Citation : (1998) 2 CTC 474

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr.T.Dalit Singh, for the Appellant; Mr.Elango Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This revision is filed under Article 227 of the Constitution of India against the interim order of the lower Court granting interim injunction

restraining the petitioner herein from continuing in the service of the respondent.

2. The facts necessary for proper disposal of the revision could be summarised thus: Respondent herein joined the petitioner-company limited on

24.1.1981/which is a Government of Tamil Nadu undertaking, as Deputy Personnel Manager stating his date of birth as 3.2.1940 and he was

promoted thereafter. As per rules governing the company, he has to retire on 28-02-1998, i.e. at the month end of the year when he attains the

age of 58 years. A fare-well party was conducted and the respondent also participated and received gifts and mementos. Even before his

retirement, he filed a suit on 29.4.1997 as O.S.No.289 of 1997 on the file of District Munsif Court, Udhagamandalam, seeking a declaration that

his date of birth is 1.9.1940. In that suit, he did not file any application for

injunction. Thereafter, he filed a petition in Tr.O.P.No.6 of 1998 before the District Court, Udhagamandalam, to transfer the suit pending on the file of the District Munsif Court, Udhagamandalam to the file of Sub-Court, Udhagamandalam. The transfer petition was dismissed on 26.2.1998. Without disclosing the dismissal of the transfer petition, another suit was filed on 26.2.1998 seeking permanent injunction restraining the petitioner herein from superannuating him, till the disposal of O.S.No.289 of 1997 or till 31.8.1998. When the plaint was presented on 26.2.1998 there were some defects and the same was returned on the same and represented on 27.2.1998 and numbered as O.S.No.37 of 1998 and I.A.No.296 of 1998 was also filed along with it to restrain the petitioner herein from superannuating the respondent. An ad-interim injunction was granted.

3. The grievance of the petitioner is that even though he filed a counter, the lower Court was adjourning the case from time to time. Even when the matter was heard for some time, the lower Court has not passed any order and the settled law is being violated.

4. It is also contended by the learned counsel for the petitioner that already a suit has been filed as O.S.No.289 of 1997 on the file of the District Munsif Court, Udhagamandalam to declare the date of birth as 1.9.1940 and the present relief in this suit O.S.No.37 of 1998 is only a consequential declaration and so, there was no necessity to file a separate suit when the earlier suit itself is pending. The lower Court has not considered any of these facts and simply granted interim order and that too, extending the order, inspite of the objections raised by the petitioner herein.

5. At the time of admission of this revision, I ordered notice of motion on 20.4.1998 and also granted interim order suspending /injunction.

Respondent was served and he has filed his counter affidavit.

6. The facts stated above shows that the respondent herein has filed O.S.No.37 of 1998 only to harass the petitioner and is purely an abuse of process of Court. It is better to take into consideration the relief sought for in the plaints in both the suits. In O.S.No.289 of 1997 the relief sought for reads thus:

(a) Declaring the plaintiffs date of birth as 01.09.1940.

(b) Consequently directing the defendant to alter the date of birth of the plaintiff in the service records under the custody of the defendant as

1.9.1940.

(c) Such other and further relief as the court may deem fit under the circumstances of this case.

In the later suit in O.S.No.37 of 1998 the relief sought for is as follows:

(a) Granting a permanent injunction restraining the defendant's company from superannuating the plaintiff and discharging the plaintiff from the

defendant's company till the disposal of the suit in O.S.No.289 of 1997 pending before the District Munsif Court, Ootacamund or till 31.8.1998;

(b) Cost of the suit; and

(c) Such other and further relief as the court may deem fit under the circumstances of this case.

7. Eventhough I do not want to make any remark, I would say that the filing the later suit before the Subordinate Court, Udhagamandalam was not

proper. After filing O.S.No.289 of 1997, the respondent himself wanted that suit to be transferred to the Subordinate Court. Udhagamandalam. I

do not know the reason why the said request was made. When that attempt failed, he files another suit before the Subordinate Court and gets the

relief. All these taken together creates a suspicion as to the bona fides of the respondent herein and sharp practice exercised by him. The lower

Court has also not considered whether such a suit is not maintainable. From the relief portion of O.S.No.37 of 1998, it is clear that already a suit is

pending on the same cause of action and the relief sought in O.S.No.37 of 1998 could very well be obtained in the suit filed earlier. That is why, in

the later suit, he wanted an injunction to restrain the petitioner herein from superannuating him till the disposal of the earlier suit. How such a suit

could be filed is nowhere stated.

8. The only reason that is mentioned for filing the second suit is advocates boycott. I do not think that will be a cause of action to file a separate suit

for a similar relief. The allegation that the later suit had to be filed because of the Advocates Boycott also cannot be true, since immediately after

O.S.No.289 of 1997 he wanted the suit to be transferred to the file of the Subordinate Court, Udhagamandalam. His intention was very clear. He

actually wanted to file a suit in the Subordinate Court. I do not want to comment

on the officer concerned, since he is not a party to this proceedings. The circumstances show that the second suit was filed with an oblique motive.

9. A recent decision reported in *Municipal Corpn. of Delhi v. Kamla Devi*, 1996 (8) S.C.C. 285 will throw some light regarding such cases. In

that case, the respondent before the Honourable Supreme Court filed a suit before the Ghaziabad Court and summons were also served to the

Municipal Corporation, Delhi and when they failed to appear an ex parte decree was passed. Challenging the procedure adopted, the respondent

therein filed an appeal after getting SLP Under Article 136 of the Constitution of India. While considering the same, the Hon^{ble} Supreme Court

held thus:

The facts and circumstances of the case show that it was a clear case of abuse of process of court and of law. The averment made in the plaint to

the effect that the officers of the appellant Corporation went Ghaziabad to attach the moveables of the respondent or her grandchildren to realise

the tax under the order of assessment was total falsehood and a mere pretence to create jurisdiction in Ghaziabad court as no document had been

filed before the Ghaziabad court in support of the allegations. Moreover, the frame of the suit and the language and terms in which the declaration

and prohibitory injunction were asked for suggest a clear attempt overreach the process of court. The object clearly was to obtain a declaration

that the assessment order was illegal and invalid from the court outside Delhi. The fact that the plaintiff- respondent choose to conceal the fact of

her filing the appeal against the assessment order is also indicative of the mala fides on her part. The bill of demand pursuant to the assessment

order was sent to the respondent after filing of the suit. once the Supreme Court is satisfied that the respondent abused the process of law and

misused the legal system, the objections put forward by the respondents counsel are of no consequence. The Supreme Court is entitled to act in

such cases to prevent such abuse and misuse. Accordingly, the judgment and decree of the Civil Judge, Ghaziabad is set aside. In view of their

reprehensible conduct, the respondents are directed to pay exemplary costs in a sum of rupees fifty thousand. Such practices ought to be put down

with a stern hand so that others similarly minded may desist from indulging in

similar acts." (Italics supplied).

10. The impugned order also lacks reasoning. The lower Court has stated that it has perused the records. From the list of documents filed along with the plaint, it is seen that the respondent admits that he has filed O.S.No.289 of 1997 on the file of the District Munsiff Court, Udthagamanadalam and the written statement is also filed by the petitioner. If only the lower Court has considered the same, the interim order would not have been passed. It seems that the lower court was very lenient in granting interim order without taking into consideration the law. Even the power of Court in granting injunction in such cases is very much limited. The court must understand that the plaintiff himself has admitted that his date of birth is 3.2.1940. Until the same is corrected, the admission stands. As on date, except the allegation in the plaint, there is no evidence. It is further alleged in the written statement filed in O.S.No.289 of 1997 that even the name of the mother of the respondent herein is different. The identity of the person was also disputed in regard to the date of birth certificate. When these facts are brought to the notice of the Court, I feel that the Court below was duty bound to consider the same while passing the interim order. Merely because the respondent therein was not heard at that time, that does not follow that the Court is duty bound to pass an order. The procedure adopted by the lower Court and the order passed by it are perverse.

11. It may not be out of place to make reference to a decision of this Court reported in Rajendran Vs. The Nagercoil Municipality, That was a case where a litigant moved an application before this Court to transfer a suit pending in the Court of District Munsif, Nagercoil on the ground that Advocate were boycotting therein. The learned Judge of this Court held thus: Now the transfer sought for is only on the ground that the advocates at Nagercoil and Kuzhithurai are boycotting the courts and they are not permitting any outside lawyers to appear in the Courts. The provisions for filing and transfer in the High Court is made available only in cases where the relevant Sub-Courts are closed or are not functioning. Such a condition cannot be said to prevail in this case. The Sub-Courts are very much kept open and functioning and it is only the lawyers in the Southern Districts who are avoiding appearance before Courts by adopting the

measure of boycott. It is not as though the Courts are not passing orders. As a matter of fact, in applications moved by parties and also by the counsel in cases at times in Chambers in some places, Courts have been passing orders. Therefore, the refusal of the lawyers to appear and plead before courts is no ground or reason to contend legitimately that the Sub courts or a particular court in the districts is not functioning. If the transfer is to be ordered on this ground, I am of the view, then, this Court will not only be opening the flood gates for such transfer applications, but encouraging and putting its seal of approval over extra legal methods adopted on extraneous grounds. I can take judicial notice of the fact that the entire Bar Members throughout the southern District from Madurai to Kanyakumari are boycotting the courts for the past three months and refusing to appear and plead before courts though the Presiding Officers are available and sitting and courts as such are functioning and do not remain closed. In such situation, I do not think any transfer can be ordered on the ground now put forth ""(Italics supplied).

If this is the decision in regard to the transfer application, when the litigant pleads before the Court, to transfer the case on the ground of Advocates boycott, the same law must apply in regard to institution of suits. If a suit cannot be taken up because of advocates boycott, naturally, for the same purpose another suit cannot be filed before another court.

12. In the result, I find that the suit filed by the plaintiff in O.S.No.37 of 1998 on the file of the Subordinate Court, Udhagamandalam is purely an abuse of process of Court and is a sharp practice exercised by the respondent herein. It is not proper to retain the same on file. The plaint in O.S.No.37 of 1998 on the file of the Subordinate Court, Udhagamandalam shall stand struck off the file and the Registry is directed to inform the same to the Court concerned.

13. Consequently, the revision is allowed with costs. Advocate fee Rs.3,000-. The connected C.M.P. is closed.