
(1993) 08 P&H CK 0150
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2590 of 1992

Indian Overseas Bank

APPELLANT

Vs

Mertinez Engineering Limited and Another

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1993) 105 PLR 293

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : O.P. Goyal and S.S. Salar, for the Appellant; A.R. Takkar, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jhanji, J.—This revision petition is directed against the order passed by the first appellate Court, reversing the order of the trial Court, on an application filed by the respondent under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

2. In brief, the facts are that respondent-company was maintaining a current account with the petitioner-bank, in its branch office situated at The Mall, Ludhiana. Vide its letter dated 4.3.1991, the bank intimated to the company their intention to close the company's current account. Letter closing the account of the company was challenged by the company by filing a civil suit on 10.4.1991, wherein declaration was sought for declaring letter dated 4.3.1991, sent by the bank to the company, to be illegal, void, arbitrary, and as a consequential relief, the company prayed for a decree for mandatory injunction, directing the bank for operation of the current account. Along with the suit, an application was made for grant of injunction in mandatory form for a direction to the bank to allow the company to operate on the current account during the pendency of the suit.

3. The suit as well as the application were contested by the bank on the ground

that there is no legal obligation for the bank to continue the account of the company. According to the bank, relationship between the bank and company was purely of debtor and creditor, which relationship could be terminated at any time. Further, the case was that company was causing harassment to the officials of the bank. Between two of them, there had been exchange of large number of letters. Repeated complaints were being made without any basis against the working of the bank and, there fore, the bank decided to close the account. With regard to ad-interim injunction application, it was stated that there are no exceptional circum stances which would justify the grant of injunction in mandatory form. On consideration of pleadings as well as material brought on record, the trial Court dismissed the application. On appeal by the company, order of the trial Court was set aside and as a consequence thereof, the bank was directed to allow the company to operate its current account. This order is now being impugned by the bank in the present revision petition.

4. At the time of motion, hearing, i.e. on 4.9.1992, operation of the impugned order was stayed by this Court.

5. Mr. O.P. Goyal, Sr. Advocate, counsel for the bank, contended that relationship between the bank and the company is of debtor and creditor and as such, relationship, if terminated, cannot be specifically en forced by way of suit. He further contended that mandatory injunction cannot be granted for relief which was not existing at the time of filing of the suit. He also contended that the company has failed to prove that it would suffer an irreparable loss if it is not allowed to operate the account.

6. In reply, learned counsel for the company, contended that the bank being an instrumentality of the State, is bound by the rules and regulations and cannot act arbitrarily. According to him, the plaintiff-Company has a legal right to continue operating its account with the bank.

7. Having heard the learned counsel for the parties, I am of the view that the civil revision deserves to succeed on the short ground that there are no exceptional circumstances which would warrant issuing of injunction in mandatory form. The Company itself has stated in the suit that the relations between the bank and the Company are not cordial. The first Appellate Court has also recorded a finding that" of course it is unfortunate that the relations between the parties have touched their nadir". The bank had issued letters dated 17.1.1991 and 28.1.1991 advising the Company to close their account. Besides, issuing 15 days"s notice to the Company for closing the account, the bank also issued a telegram to the Company in that regard. The amount which was lying deposited in the current account was also refunded by way of pay order which admittedly was not encashed by the Company. It has also come on record that civil and criminal litigation is going on between the bank and some sister concerns of the Company. According to the bank, as many as 8 suits and 4 criminal cases are pending and in one or two complaints, proceedings have been stayed by this Court. From his, one thing is patent that relations between the

bank and the Company are not good. It is now well settled that interlocutory mandatory injunction has to be issued only where there are compelling circumstances and where the injury complained of is likely to cause extreme hardship to the party complaining of such injury. It is equally true that relief of injunction is essentially an equitable relief, grant or refusal of which ultimately rests in the sound judicial discretion of the Court to be decided in the facts and circumstances of each case. The matter with regard to grant or refusal of an inter-locutory mandatory injunction came up for consideration before the Supreme Court in *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, wherein it was held as under:-

(i) The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining it. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are.

(i) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally for a prohibitory injunction.

(ii) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(iii) The balance of convenience is in favour of the one seeking such relief."

8. If the facts of the present case are viewed in the light of the judgment of the Supreme Court in *Dorab Cawasji Warden's* case (supra), I find that the Company is not going to suffer irreparable loss or serious injury if it is not allowed to operate upon the bank account because firstly, the company has an account in another bank in the city of Ludhiana and secondly, counsel for the Company gave an undertaking before the first Appellate Court that the Company would not insist upon the grant of certain facilities which were being enjoyed earlier by the Company. Otherwise also, large number of civil and criminal cases are pending between the bank, the Company and its sister concern and it will affect the functioning of the bank if the Company is allowed to operate upon its current account. Thus, without going into the merits of other arguments, I am of the view that the Company should not be allowed to operate upon its current account which was closed by the bank in March, 1991 as no case is made out for issuance of injunction in mandatory form.

9. Consequently, this civil revision is allowed, order of the first Appellate Court is set aside and that of the trial Court is restored with no order as to costs.