
(1945) 03 AHC CK 0029
In the Allahabad High Court

Kr. Shushilendra Pal Singh

APPELLANT

Vs

B. Kailash Chand Bhargava and Others

RESPONDENT

Date of Decision : 26-03-1945

Acts Referred:

Specific Relief Act, 1877 — Section 19, 42

Citation : AIR 1945 All 395 : (1945) 15 AWR 258

Hon'ble Judges : Wali Ullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Wali Ullah, J.—This is a defendant's appeal against an order of remand passed by the learned District Judge. The relevant facts necessary for the purposes of this appeal are these: B. Kailash Chand Bhargava is the proprietor of "Kailash Electric Mart" at Aligarh. Defendant 1, Pt. Tula Ram, started a cinema of the name of Pearl Talkies. This cinema was housed in a building owned by B. Kailash Chand, defendant 3. The plaintiff and Pt. Tula Ram, defendant 1, entered into a contract on 25th December 1939 whereunder the plaintiff was to put up electric installations in the cinema hall and it was provided that Pt. Tula Ram would pay Rs. 100 at once and Rs. 100 on the day that the cinema started and that thereafter the Balance of the total amount of Rs. 1600, the costs of the installation, would be paid off by him at the rate of Rs. 100 per month. In case of even one default in payment, it was provided, that the plaintiff will have the right to remove his electric installations. It appears that Rs. 100 were paid at the time of the agreement; Rs. 100 were further paid on the day that the cinema started but thereafter no payment was made by Pt. Tula Ram. Subsequently it appears that Kr. Sushilendrapal Singh defendant 2, either took over the cinema business from Pt. Tula Ram or entered into a partnership with him.

2. On these facts the plaintiff filed the suit, out of which this appeal has arisen, on 7th January 1941, and he prayed for a perpetual injunction restraining the defendants from using the electric installations in the cinema house and also

restraining them from obstructing the plaintiff in removing the electric fittings. He prayed for no specific relief with regard to damages but said that he would file another suit later on if he considered it necessary (vide para. 6 of the plaint). The suit was contested by all the three defendants on various grounds. It is not necessary to go into the details of all the pleas set up in defence. The Court of first instance decided only one issue, namely issue 10 : "Whether the suit is barred by Section 42, Specific Relief Act." It found that the plaintiff's suit as framed was not maintainable. It also found in effect that the contract dated 25th December 1939 between the parties could not be specifically enforced and therefore no injunction could be granted in view of the provisions of Sections 21 (a) and 56 (f), Specific Relief Act. In view of these findings the suit was dismissed by the Court of first instance. On appeal the learned District Judge concurred in the findings of the Court of first instance and held that the prayer for an injunction could not be granted. He, however, held, in view of the rulings cited before him and the provisions of Section 19, Specific Relief Act, that although the plaintiff was not entitled to the relief specifically claimed, namely, an injunction, he was nevertheless entitled to compensation. He accordingly set aside the decree of the Court of first instance and remanded the case to the Court of first instance for an inquiry, (1) whether there was a contract between the parties which had been broken by any of the defendants and (2) whether the plaintiff was entitled to compensation for that breach. He directed the Court of first instance to award compensation to the plaintiff, if the Court found that he was entitled to compensation for the breach of the contract in question.

3. In this second appeal before us it has been strongly contended by the learned Counsel for the appellant that the lower appellate Court has acted illegally in remanding the suit and that it had no jurisdiction to order retrial and to convert the suit into one for damages simpliciter. The learned Counsel for the respondents has, however, cited before us various rulings which fully support the view of the law taken by the lower appellate Court. In *Callianji Harjivan Trioum* ("95) 19 Bom. 764 it has been held by a Bench of two learned Judges, in circumstances very similar to those of the case before us, that when the Court holds in its discretion that neither specific performance of the agreement nor an injunction against the defendant would be a proper remedy on the ground that pecuniary compensation is an adequate remedy it ought not to dismiss the suit but should either itself award damages or order an inquiry with regard to the same. The plaintiff being held to be entitled to a remedy, the proper remedy should be awarded. Again in *Arya Pradishak Pritinidhi Sabha v. Labori Mal* ("24) AIR 1924 Lab. 713 it has been held by a Bench of two learned Judges of the Lahore High Court with reference to Section 19, Specific Relief Act, that the object of the rule embodied in the section is clearly to prevent a multiplicity of suits and to do complete justice between the parties. It has been held, following the case reported in 19 Bom. 7641 above mentioned and the case in *Kallian Dass v. Tulai Dass* ("99) 23 Bom. 786 that the plaintiff is not obliged in a suit for specific performance to pray specifically for damages and the Court has always a

discretionary power to award damages in a suit for specific performance and ought to exercise that discretion when it is of the opinion that damages should be given. Their Lordships further referred to Order 7, Rule 7, Civil P.C. which provides that it is not necessary to ask in the plaint for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. Again it has been held in *K. H. Skinner v. Rosy Skinner* ("25) AIR 1925 Lah. 132 that in a suit for specific performance the plaintiff is not bound to pray specifically for damages either in addition or in substitution. He has a choice of remedies open to him to apply for and the Court has discretion to allow damages if it is of the opinion that damages are "the appropriate remedy. Again in *Ookerjee Cowasjee v. Sabhapathy Mudaliar* ("19) AIR 1919 Mad. 560 it has been held that in a case where the claim falls u/s 21 (a), Specific Relief Act, and cannot be specifically enforced the plaintiff is entitled to claim compensation in the alternative u/s 19 and under the explanation to that section the Court is not precluded from granting it by the circumstances that the contract has become incapable of specific performance and that there is no prayer for such relief in the plaint. In *Krishna Aiyer v. Shamanna* ("12) 23 M.L.J. 610 it was held that the Court can in such a case award damages in the alternative though not asked for in the plaint. To the same effect are the decisions of the Rangoon High Court in *U Aung Din v. B. K. Haider* ("35) 157 I.C. 26 (Rang.) and of two learned Judges of the Patna High Court in *Satyataran Chaudhury v. Jyoti Prasad* ("23) AIR 1923 Pat. 386.

4. The broad ground upon which these decisions rest may be stated thus : If, upon the facts pleaded in the plaint a case is made out which would lay the foundation for the relief granted, although not specifically asked for, the plaintiff is entitled to the relief which those facts will sustain, under the general prayer contained in the plaint. But there is, however, one important limitation. As held by their Lordships of the Privy Council in *Ardeshir H. Mama v. Flora Sassoon* ("28) AIR 1928 P.C. 208 if during the progress of the suit and before the final hearing the plaintiff abandons his claim to specific performance or disentitles himself to that relief by some act on his part, he cannot claim or be awarded by the Court damages in lieu of the specific performance of the contract. Jurisdiction to award damages in substitution of the relief for specific performance remains so long as the plaintiff does no act on his part to disentitle himself to a decree for specific performance. To the same effect is the decision given as long ago as 1806 by Lord Erskine L.C. in *Hiern v. Mill* (1806) 13 Ves. 114.

5. The position is substantially the same in English law. The High Court of Justice in England has, since the passing of the Judicature Act of 1873, power under its general jurisdiction to award either damages or an injunction. The power of awarding damages in lieu of an injunction is a discretionary power which must be exercised with an intimate knowledge of the facts. (Vide Halsbury, Hailsham Edition, vol. 18, para 27, pp. 20 and 21). The Court can exercise its discretion to award damages either in addition to or in substitution for, an injunction, whether or not damages have also been specifically claimed. (Vide Halsbury, Hailsham

Edition, Vol. 18, para. 33 p. 23). In view of the above authorities we are quite clear in our minds that the Court below followed the correct view of the law in passing the order of remand that it has done. There is therefore no force in this appeal. It is accordingly dismissed with costs. The cross-objections also fail and are dismissed with costs.