

(1987) 12 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 94 of 1987

M.P. Oil Extraction Pvt. Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 80(1), 80(2)

Citation : (1990) 35 MPLJ 675 : (1990) MPLJ 675

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : N.S. Kale, for the Appellant; G.C. Jain, Dy. Govt. Advocate for respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, J.

This appeal under Order 41, Rule 1(r), CPC is filed by the plaintiff/appellant against the order dated 18-3-1987 passed by the First Additional Judge to the Court of District Judge, Bhopal whereby injunction as sought for against the respondent State of Madhya Pradesh for encashment of Bank guarantee furnished by the appellant in favour of the respondent No. 1, State of Madhya Pradesh for a sum of Rs. 3 lakhs, has been rejected.

In short, the appellant filed a suit for declaration, permanent injunction and rendition of accounts including claiming various reliefs. Though notice u/s 80, CPC was served, yet the appellant felt urgency in seeking injunctio, therefore, an application under sub-section (2) of section 80, CPC was made for taking leave of the Court for granting interim relief in his favour before expiry of the statutory period of 60 days, as contemplated u/s 80, Civil Procedure Code.

The learned Trial Judge as such issued notice to the State Government and decided the application by the impugned order whereby not only that interlocutory application for grant of temporary injunction was rejected but by

exercise of the powers under the proviso to sub-section (2) of section 80, Civil Procedure Code, the plaint was also returned for presentation to it after complying with the requirement of sub-section (1) of section 80, Civil Procedure Code. It is against this Order that the present appeal has been filed.

Shri N. S. Kale, learned counsel for the appellant has contended that the appellant has furnished a Bank Guarantee on 31-5-1984 for a sum of Rs. 3 lakhs in accordance with the clause (ii) of the agreement dated 12-12-1983 which runs thus:

"For the due performance and observance of the terms and conditions of this agreement, the purchaser shall furnish to the Chief Conservator of Forests (Production), Madhya Pradesh, cash security for an amount of Rs. 3 lakhs (Rupees three lakhs only) on which no interest shall be payable by the Governor :

PROVIDED THAT the purchaser may, in lieu of cash security furnish a bank guarantee of any nationalised bank in such form as may be approved by the Governor. The bank guarantee shall be renewed by the purchaser from year to year until 12 months after the date of expiry of this agreement, but in the event of aforesaid bank guarantee not being renewed or its lapsing for any reason whatsoever, the purchaser shall immediately furnish cash security for the above mentioned amount and, until it is done, it shall not be entitled to any privilege or facility under this agreement."

Further, Shri Kale submitted that the said Bank Guarantee was renewed from time to time and extended upto 31-3-1986 and then upto 31-3-1987. However, it is submitted by Shri Kale that no sal seeds, as per agreement were supplied to the appellant and therefore, the respondents are not entitled to encash the Bank Guarantee, so furnished by the appellant.

On behalf of the State/respondent No. 1 it is submitted that sal seeds were supplied to the appellant. It is further submitted that the period as extended from year to year was just to enable the State of Madhya Pradesh to recover any amount due to the previous year. While giving reference of letter dated 23-10-1986, addressed to the State of Madhya Pradesh by the appellant, it is submitted that the appellant has accepted this position that anything whatsoever due pertaining to the year 1985 towards sal-seed supply, the same can be recovered from the amount of the Bank Guarantee. In pursuance thereof the State Government is encashing the Bank Guarantee. Therefore, it is submitted that the trial Court has rightly reached the conclusion that there was no prima facie case made out by the appellant for invoking jurisdiction under Order 39, Rules 1 and 2, CPC for grant of injunction in favour of the appellant. Thus, the trial Court has rightly rejected the application for grant of injunction.

Having found that there was no urgent or immediate relief to be granted in the suit in favour of the appellant, the trial Court has rightly passed the order impugned for return of the plaint for its presentation after complying with the requirements of sub-section (1) of section 80, Civil Procedure Code.

Shri Kale, learned counsel for the appellant, first submitted that once the Court has reached the conclusion that there is urgency for which immediate relief need to be granted and for that purpose if permission is, granted to file the suit under sub-section (2) of section 80, Civil Procedure Code, the same cannot be withdrawn subsequently.

To deal with the arguments as advanced by Shri Kale, it is necessary to refer sub-section (2) of section 80, CPC which reads as under:

"80.(1)....

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his "official capacity, may be instituted with the leave of the Court, without serving any notice as required by sub-section (1), but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3)...."

The following words used in sub-section (2) of section 80, CPC have got a wide connotation:

"...with the leave of the Court without serving any notice as required by sub-section (1), but the Court shall not grant relief in the suit whether interim or otherwise except after giving notice to the Government or public officer as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit."

In this context a bare reading of proviso to sub-section (2) of section 80, CPC makes the whole position clear. Permission to file a suit as contemplated under sub-section (2) of section 80, CPC is subject to the proviso. The intention of the Legislature while making this sub-section (2) of section 80, CPC is that only in urgent and immediate matters where relief in favour of the plaintiff becomes expedient, permission can be granted without complying the terms of 60 days" notice, but the Court is to be satisfied for the "urgent or immediate" relief showing as to what was that urgency which required the plaintiff to take leave of the Court without complying the 60 days" statutory period of notice and if ultimately after hearing the opposite party as contemplated under sub-section (2) of section 80, Civil Procedure Code, the Court reaches the conclusion that there was no urgency in filing such a suit after taking leave of the Court, then in such circumstances proviso to sub-section (2) of section 80, CPC has to be acted upon, thereby returning the plaint for presentation to it after complying with the

requirements of sub-section (1) of section 80, CPC by giving statutory notice of 60 days.

Granting leave to file the suit without complying with the requirement of giving 60 days' notice depends upon the satisfaction of the Court as to the urgency of the relief sought and therefore, in the instant case, while considering the injunction application, the Court below reached the conclusion that no case for grant of injunction was made out as there was no urgency in the matter requiring immediate relief in favour of the plaintiff, hence, it has rightly passed the order impugned under the proviso to sub-section (2) of section 80, Civil Procedure Code.

Further by reading section 80, CPC as a whole particularly sub-section (2), it can safely be inferred that this sub-section (2) is subordinate to its proviso which contemplates that in the event of failure to establish a prima facie case in an interlocutory application, the plaint is to be returned for its presentation after complying the requirement of sub-section (1) of section 80, CPC and this harmonises the provisions of sub-section (2) and its proviso. This being so, sub-section (2) of section 80, CPC does not contemplate two orders i.e., first, to grant leave to file suit without complying with the provisions of section 80(1) and secondly, to hear the interlocutory application. Thus, to grant leave depends upon allowing the prayer claimed in interlocutory application after hearing the opposite party.

In the instant case when no prima facie case has been found to grant temporary relief sought, the trial Court, in the opinion of this Court, has rightly exercised its jurisdiction under the proviso to section 80(2), CPC (see Union Territory of Chandigarh and Others Vs. V.K. Khanna and Others, .

Thus, there is no force in Shri Kale's contention that once having given leave to file the suit without complying with the requirements of section 80(1), Civil Procedure Code, the same cannot be withdrawn as granting such leave depends upon the consideration of urgency as stated above.

Shri Kale during the course of the arguments made a statement at the Bar that even after complying the statutory requirement of section 80(1), Civil Procedure Code, the suit was not represented before the Court. This being so, the injunction application being interlocutory one and the order passed thereon being an interlocutory order, the same is conterminous with the life of the suit and there remains nothing before the Court.

Besides this, in United Commercial Bank Vs. Bank of India and Others, , the Apex Court of the land has held that the Courts should refrain from granting injunction restraining encashment of bank guarantee.

From the discussion aforesaid, the appeal fails and is hereby dismissed. However, the parties are directed to bear their own costs.