

(2000) 09 BOM CK 0059

In the Bombay High Court

Case No : Notice of Motion No. 2641 of 2000 in Suit No. 2829 of 1998

Mr. Felix Pinto and Others

APPELLANT

Vs

Satyam Computer Services Ltd. and Others and Amgis Holdings (P.) Ltd.

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2A, 151

Citation : (2001) 2 BomCR 171 : (2001) 1 BOMLR 129 : (2001) 104 CompCas 707 : (2000) 4 CompLJ 302 : (2001) 1 MhLj 512

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Mr. R.M. Kadam and Mr. Chetan Kapadia, instructed by Nankani and Associates and Mr. D.H. Mehta, instructed by Law Loyals, for the Appellant; Ms. Anita Castelino, instructed by Pandya and Co., for the Respondent

Judgement

F. I. Rebello, J.

Heard forthwith.

1. This Motion raises the following important question of law :- Can an injunction be dissolved at the instance of a party not a party to the suit or as a corollary, can the Court dissolve an injunction granted in favour of the plaintiff, after satisfying itself that the subject-matter of the dispute has to be protected, by dissolving the injunction and restricting the final reliefs sought for by the plaintiff, at the instance of a stranger, to whom it cannot finally issue any direction as a part of the decree, which could be executed.

2. Plaintiffs as the owners of shares of defendant No. 1 Company, have filed the suit seeking various reliefs. It is the case of the plaintiffs that plaintiff No. 1 was holding 2900 shares and plaintiff No. 2 was holding 1800 shares under Folio No. 148934. Out of these shares 1500 shares belonging to plaintiff No. 1 and 600 shares belonging to Defendant No. 2 had been transferred from the name of the

plaintiffs to the defendant Nos. 6 and 7. The plaintiff No. 1 had pledged the suit shares with defendant No. 2 for a period of one year for consideration equivalent to the then market price of the suit shares and by way of collateral security signed blank transfer deeds and handed the same over to defendant No. 2. An agreement relating to the pledge of the suit shares containing the terms and conditions was executed between the plaintiff No. 1 and Defendant No. 2 on 1st September, 1997. Plaintiffs have not received the dividend on the shares pledged with defendant No. 2 from defendant No. 1. In September, 1997 on making enquiries they were shocked to learn that defendant No. 1 had transferred some of the shares in the name of defendant Nos. 6 and 7 without the knowledge, consent and approval of the plaintiffs.

The plaintiffs on the very same day contacted defendant No. 2 and sought explanation for such illegal transfer. Defendant No. 2 assured the plaintiff, that plaintiffs investment was safe under the agreement. The defendant Nos. 2 to 5 assured 60% loan to the plaintiffs on the aggregate market value of the suit shares. They also informed that the said amount would be reinvested with the defendant No. 2 again for a period of two years with interest at 2.5% per month. Plaintiffs neither received any loan amount nor interest from the defendant No. 2 for the value of the suit shares. The plaintiffs in January, 1998 came to know on making enquiries that defendant Nos. 2 to 5 were indulging in malpractice of dealing in shares. Plaintiffs thereafter immediately tried to contact defendant Nos. 3 to 5. They got no information as office of the defendant No. 2 was found locked and whereabouts of defendant Nos. 3 to 5 were not known. A complaint was, therefore, lodged with the General Branch, Crime Branch Economic Offence Wing. The plaintiff No. 2 through an Advocate also issued stop transfer instructions of shares to defendant No. 1. On 3rd February, 1998 plaintiff No. 1 received a reply from the defendant No. 1 that the suit shares have already been transferred to defendant Nos. 6 and 7 and requested the plaintiffs to obtain injunction from appropriate Court. On 12th March, 1998 the General Branch, C.I.D. lodged a F.I.R. being No. 12 of 1998 against defendant Nos. 3 to 5. It is in these circumstances that the plaintiffs had come to file the suit. They have also taken out a Notice of Motion being Notice of Motion No. 2362 of 1998. On 9th July, 1998 by way of ad interim order as defendants though served did not appear, the Court was pleased to direct that the defendant No. 1 shall not effect further transfer of the shares in dispute till the Motion is heard.

The principal contention on behalf of the plaintiffs in support of the final reliefs are :-

- (a) the shares were pledged with defendant Nos. 2 to 5, without any authority to sell.
- (b) The sale if any is without consideration.
- (c) The signatures on the blank forms for transfer of shares, was only as a collateral security for the loan to be advanced by defendant Nos. 2 to 5.

3. On 13th August, 2000 the applicant has moved this Court on an application, to vacate the order granted by this Court on 9th July, 1998. They have also prayed that the order of 9th July, 1998 be stayed. In support of the Motion defendants have filed an affidavit. It is their case that they are the member of the National Stock Exchange. One M/s. R. R. & Co., appointed the applicant as their broker. The said R. R. & Co., placed an order for sale of several shares including 4500 shares of defendant No. 1 Company. The applicant through their main broker of the Mumbai Stock Exchange sold 3000 on behalf of M/s. R. R. & Co. and 1500 shares through the National Stock Exchange. The applicant executed the said orders and accordingly issued contract note and bill for the same in favour of R. R. & Co. It is contended that the sale transaction on behalf of R. R. & Company was entered into and accordingly credit for the sale price was given by the applicant to R. R. & Co. The amounts were paid by cheque on 10th September, 1997. The applicants have also paid the amount towards the sale of 3000 shares done in the Stock Exchange, Mumbai. It is contended that the plaintiffs herein had filed a suit before the Bombay City Civil Court with regard to 2600 shares of defendant No. 1 Company. An order of injunction had been passed by the Bombay City Civil Court regarding the subject- matter of the said shares. As injunction was operating the same shares came under objection as and by way of bad delivery before the Stock Exchange, Mumbai. The applicant filed Chamber Summons in the Bombay City Civil Court. By order dated 4th February, 1999 the Bombay City Civil Court was pleased to vacate the earlier injunction. An Appeal was preferred against the said order. The learned Single Judge of this Court by order dated 22nd May, 2000 was pleased to stay the order dated 4th February, 1999. Thereafter some of the shares forming subject-matter of the suit filed by the plaintiff in the Bombay City Civil Court came under objection. The main broker of the applicant M/s. P. R. Shah & Co., filed a Civil Application in this Court in Appeal From Order No. 141 of 1999. By order dated 10th July, 2000 the learned Judge hearing the Appeal was pleased to dispose of the same. By that order M/s. P. R. Shah & Co., Brokers Pvt. Ltd., were directed to deposit Rs. 20.00 lacs in the Trial Court, which was the value, the shares would have fetched in March, 1998 if the suit was decreed at that point of time. Mr. Jain appearing for P. R. Shah & Co. agreed to deposit the amount. The Court then observed That Rs. 10.00 lacs if deposited in the Trial Court no injunction would survive. Some other directions were given. The arrangement was without prejudice to the rights and contentions of the plaintiffs and other parties. With some other observations the Appeal was disposed of. The plaintiffs had preferred SLP to the Supreme Court, which has been dismissed.

4. It is the further case of the applicant that on two occasions in August, 1999 and June, 2000 they have been called upon by the Bad Delivery Cell of the National Stock Exchange to satisfy the queries of the National Stock Exchange on certain shares returned by the defendant No. 1 Company which had been sold through the applicant. The applicant contended that they had cleared the objections in August, 1999 and July, 2000. The applicants thereafter in view of

the objections raised, inquired with the defendant No. 1 Company. In response the defendant No. 1 has addressed a letter to the Applicant, informing the fact of the plaintiffs filing the suit and the order dated 9th July, 1998. It is stated that 1500 shares described in Exhibit "C" and "D" form part of the suit shares. It is pointed out that the applicants have once again received on 16th August, 2000 bad delivery notice, from the National Stock Exchange regarding 200 shares forming the subject-matter of M/s. R. R. & Co. It is contended that the defendants have exercised the special equity entrusted by the plaintiffs in their favour and sold the said share. The plaintiffs, it is contended, were and are fully aware of the same and in spite of that the plaintiffs have chosen not to sue the defendants for damages. The applicant, it is contended, has merely acted as mercantile agent in the transaction where under R. R. & Co., have sold the said shares through the applicant on the N.S.E. and through their main brokers of the Applicant at Stock Exchange, Mumbai. In view of that it is contended that the shares sold on behalf of R. R. & Co., which include the suit shares have been declared as bad deliveries. It is therefore, prayed that it is just and necessary that this Court should grant the reliefs as prayed for which include vacating the injunction granted in favour of the plaintiffs.

5. The immediate question that, therefore, arises is whether the Applicant who is not a party to the suit can maintain the present application. The Applicant himself has not moved to be added as a party. The reliefs that he has prayed in the Motion are set out therein. In so far as the reliefs prayed for in the suit are concerned, the applicant is not a necessary party for the adjudication of the issues that would arise and for the grant of effective relief, if the suit is to be decreed. The presence of the applicant is also not required for effectively deciding the issue in controversy. Hence he is also not a proper party. The cause of action claimed by the plaintiffs for filing the suit is that the defendant No. 2 of which defendant Nos. 3 to 5 are partners have without authority sold the shares which were pledged in their favour. The case of the plaintiffs is that they had not authorised defendant Nos. 3 to 5 to sell the suit shares. The applicant had chosen not to be added as a party under Order I Rule 10 of the C.P.C. The Court could still add parties to avoid multiplicity of proceedings who are necessary for effectively deciding the issues in controversy. Otherwise it is the plaintiff who is dominus lit is in the proceedings.

The applicant herein is merely a broker. He has no title in the suit shares. He has acted directly as broker on the N.S.E. and as sub-broker has acted through the main broker on the B.S.E. and sold shares offered by M/s. R. R. & Co. The main grievance of the applicant is that, on account of bad delivery, it is the applicant who has to make payment and it is in these circumstances that the relief as prayed for should be granted, even if he is not a party to the suit. It is the case of the applicant that they are entitled even without they being made as party, to get the injunction vacated.

6. The issue that has to be decided, therefore, is, whether an injunction can be

dissolved or vacated at the instance of a party who is not a party to the suit as contemplated by Order I of the Code of Civil Procedure, 1908. In Halsbury 4th Edition, Vol. 24 it is observed as under :-

Apparently a stranger to a suit, who is affected by an injunction, can apply to dissolve it. Similar observations are also found in the commentary by "Kerr on Injunction, 6th Edition, in the Chapter on Dissolution of Injunction, the learned Author has observed as under :-

"Where a stranger to the action is affected by an injunction he may apply to have the injunction set aside."

Both in Halsbury's Law of England and Kerr on Injunctions, reliance is placed on the judgment in the case of *Bour Baud v. Bour Baud*. A Single Judge of the Calcutta High Court in the case of *Narayan Chandra Garai & Ors. v. Matri Bhandar Pvt. Ltd., and Anr.*, has considered the same and commented on it. In the case before the Calcutta High Court, a petition was moved by one Smt. Annapurna De to be added as party-defendant and for vacating the injunction. After considering the facts on record the Court held that the applicant was neither a necessary nor a proper party. The Court thereafter examined whether the injunction could be dissolved at the instance of the party who was not made a party to the proceedings. The Court observed that the petition cannot be treated as a proceeding in the nature of *pro inter-esse-suo*. Relying on the judgment in the case of *Central Bank v. Srish Chandra Guha*, the Court held that the position in *pro inter-esse-suo* is not provided for either in the CPC or in the Rules of the Original Side of that Court. The same is imported from England and therein it is held that in order to do justice to a person the Court allows a person to come in and be examined as to his title, to the goods or property over which a Receiver has been appointed. That is done so that no person may suffer because of any order that may be passed by the Court. Before the learned Single Judge of the Calcutta High Court reliance was placed on the case of *Bour Baud v. Bour Baud* (supra). In that case the suit was filed in England by the plaintiff, a French Brandy Merchant against his agent and the London Dock Company at London to restrain the defendants from dealing with certain dock warrants for brandy which had been shipped by the plaintiff. The plaintiff had been described as a bankrupt abroad. The petitioner a Pledgee of the dock warrants filed a petition to set aside an injunction earlier passed in the suit. The petitioner was held to be admissible amongst others for the reason that on account of the plaintiffs bankruptcy abroad, the proper procedure in a foreign bankruptcy, was thought to be to have an injunction dissolved unless the suit was presented within a given time. In para 12 of the said judgment the facts of the case have been discussed. Though the learned Judge dismissed the petition, however, has observed as under :-

The circumstances of the present case is not one which would import application of the principles involved in the case of *Bour Baud v. Bour Baud* (supra). It is not possible to visualise all possible contingencies. While normally the Court does not grant any relief at the instance of a stranger to the suit the Court may however

in an appropriate case give relief to a stranger by dissolving an order of injunction as was made in the aforesaid case in the interest of justice."

Based on these contentions it is contended that, therefore, there is sufficient authority for the proposition that such an application is maintainable.

7. The question is whether the application as filed would be maintainable considering the provisions of the CPC and the Rules framed by this Court under the Original Side. Our processual law is governed by the provisions of C.P.C. Therefore, firstly a party seeking such a relief must point out that it is possible for a party not party to the proceedings to get an injunction dissolved if it affects that party. Order 39 of the C.P.C. will indicate that the only parties who can get an injunction are parties to the suit i.e. plaintiffs or defendants. A stranger is not a party to the suit. The expression party in Order 39 must get its colour from Order I. So considered a stranger is not a party. Similarly even if Section 151 is considered it is for the purpose of doing justice between the parties in respect of matters not provided by the Code. Section 151 cannot be resorted too, at the instance of strangers, as the Code itself provides a mechanism in such a situation. Firstly no injunction is binding on a party, who is not a party to the suit. Such a party if proceedings are initiated under Order 39 Rule 2(A) will have the opportunity of showing cause and establishing that the injunction is not binding on him and he cannot be held liable. An order of injunction even at the interim stage can be executed in a like manner as provided under Order 21 Rule 32. Therefore, in proceedings for execution, the objections available can be raised.

In the instant case the injunction sought to be dissolved is on the ground that the shares sold on behalf of Respondent No. 6 have been returned as bad deliveries, for which he has to make good deliveries in terms of the Rules, Regulations and By-laws of the Stock Exchange. It is purely, therefore, not a claim against the plaintiffs or defendant Nos. 1 to 5. His cause of action is against M/s. R. R. & Co., on whose behalf he sold the shares. The course of action of the applicant is against the person on whose behalf he had traded the shares namely R. R. & Co. Ltd. The applicant however, seeks a remedy against the plaintiffs who were not a party to the transaction. Learned Counsel points out to the agreement between the plaintiffs and defendant No. 2. That is an agreement, the contents of which will have to be proved. That might be a defence if any for defendant Nos. 2 to 5 against the plaintiffs. The plaintiffs, however, have approached this Court on the ground that inspite of the agreement, what was agreed was merely a pledge of the shares and nothing more. Therefore, even if there are terms in the agreement whereby the defendant No. 2 was authorised to sell the shares, nevertheless considering the averments in the plaint that agreement is only an agreement of pledge as per averment of the plaintiff. The Court will have to consider the true import of the agreement after evidence. While considering the agreement the applicant would not be a party to the proceedings. In other words the applicant on the one hand

seeks dissolution of the injunction and if subsequently the Court comes to the conclusion that the plaintiff had proved his case that the defendant Nos. 2 to 5 had no authority to sell the shares, the plaintiffs would be left without any remedy in respect of the suit shares as by then they are likely to change hands and it will be difficult for the plaintiff to chase the ultimate purchasers. Their only relief then against the defendant Nos. 2 to 5 will be for moneys. That may be a paper decree. The plaintiffs would have no remedy against the applicant, as the applicant is not a party to the suit and also cannot be added as they are neither a necessary or proper party to the suit.

8. It is then sought to be contended that the inherent powers of the Court can always be exercised for the purpose of considering the grant of interim relief. If the applicant is neither a necessary nor a proper party the question of joining the applicant and having the controversy decided would not arise. That aspect has been dealt with earlier. Section 151 definitely cannot be invoked at the instance of a party, not a party to the suit.

9. If that be the case the applicant would not be entitled to the dissolution of injunction as sought for. It is true that the statement of law as expressed in Halsbury and Kerr on injunction is that even a stranger can get the injunction dissolved. That is based on a solitary judgment. No Court in this country has accepted that principle. Even the Calcutta High Court did not fully approve the law enunciated but considering that various situations that could not be visualised, held that normally the Court does not grant any relief at the instance of a stranger to the suit, the Court may however, in an appropriate case give relief to a stranger by dissolving an order of injunction.

10. The only other limited question is whether the applicant can be allowed to intervene by styling the proceedings as pro inter-esse-suo. In Black's Law Dictionary, Sixth Edition the meaning of expression is described as :-

"According to his interest; to the extent of his interest. Thus, a third party may be allowed to intervene in a suit pro inter-esse-suo ."

Examination pro inter-esse-suo, when a person claims to be entitled to an estate or other property sequestered, whether by mortgage, judgment, lease, or otherwise, or has a title paramount to the sequestration, he should apply to the Court to direct an inquiry whether the applicant has any, and what, interest in the property; and this inquiry is called an "examination pro inter-esse-suo."

This expression came up for consideration, as already referred to, before the Calcutta High Court in Central Bank of India (supra). The learned Judge of the Calcutta High Court has observed as under :-

"9. A proceeding in pro inter-esse-suo is not provided for either in the CPC or in the Rules of the Original Side of this Court. This is a procedure imported into this country from England. In order to do justice to a person, the Court allows that person to come in and be examined as to his title to the goods or property over

which the Court has appointed Receiver in a proceeding between persons other than the said person. That is done so that no person may suffer because of any order that may be passed by the Court. It is the right in such a proceeding of that person who claims to be the owner of the goods or property to be examined as to his title to the said goods or property. It is in that sense a personal right of that person only. That person cannot in my opinion in such a proceeding ask the Court to examine some other person with regard to that person's right or title in the goods or property over which the Court has appointed a Receiver."

It is, therefore, clear that to a limited extent in a case where a third party claims right, title and interest he can move the Court even if not a party to the proceedings and the Court in order to avoid multiplicity of proceedings may examine such person as to title to the property. Before the Calcutta High Court apart from examining the petitioner therein, the petitioners sought to examine other witnesses in a case where Receiver had taken possession. The learned Judge as already reproduced above, has held that a summary procedure in the form of an application in pro inter-esse suo can be allowed to be resorted to only by a person who shows the utmost diligence *Sreedhar Chaudhury v. Nilmoni Chaudhury*. The Court held that the applicant cannot in such a proceeding examine some other person with regard to that person's right or title in the goods or property. It is further observed that the examination pro inter-esse-suo is never ordered unless the applicant shows diligence. In the instant case, as may be seen, the applicant does not seek to be examined as to his right, interest or title to the property. That he has none. All that he claims is that the shares were sold when he acted as a broker. That transaction gives him a right to move the Court. Even considering what has been set out by the Calcutta High Court, with which I am respectfully in agreement, it will be clear that the applicant has not shown any right, title or interest in the property which is the subject-matter of the suit and, therefore, even if he had applied to be examined, that could not have been done as the applicant had no right, title or interest in the property. The injunction was granted in the year 1998.

11. In the instant case we are concerned with the suit as filed by the plaintiff and the reliefs prayed for therein. The reliefs will have to be considered on the touch stone of the pleadings of the parties. The contentions raised on behalf of the applicant based on affidavit are immaterial for deciding the controversy that will arise. Even if the law as set out in *Kerr on Injunction* and *Halsbury* is to be accepted, atleast to my mind on the facts of this case the applicant who is a total stranger, will have no locus to ask for dissolution of injunction. Otherwise merely because he has to part with money on account of bad deliveries, is no ground to grant relief when at the end of the day he would not be liable or cannot be held to be liable in the absence of the Applicant being a party to the suit. As pointed out earlier, he is neither a necessary nor a proper party in the suit. Considering the above, to my mind though the Motion is at an ad interim stage Motion as taken out is not maintainable. There is even otherwise no merit in the motion which is accordingly dismissed. No order as to costs.

All Authorities to act on an ordinary copy of this order duly authenticated by the Associate of this Court.