
(1993) 07 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Revision No. 338 of 1993

Prem Chand Sindhi

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1993) WLN 322

Hon'ble Judges : Rajesh Balia, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—This revision is directed against the order of the District Judge Udaipur dt. 5.6.93 affirming the order of rejection of application under order 39 Rule 1 and 2 C.P.C. passed by the Learned Munsif and Judicial Magistrate, First Class Udaipur City (North), Udaipur dt. 17.5.93.

2. The brief facts which led to this revision may be stated that the petitioner was registered as "A" class contractor, the defendant issued an order on i. 12.92 that the petitioner shall pay Rs. 3,78,591/- which were claimed as damages for breach of agreement else he will be blacklisted and may not be allowed to participate in future tenders. The petitioner filed a suit for permanent injunction restraining defendants from giving effect to that order and also prayed for temporary injunction that on the basis of said demand, the petitioner may not be blacklisted by the defendants and he be not further precluded from participated in future contracts.

3. Principal contention of learned Counsel for the plaintiff before the trial court was that alleged demand of Rs. 3,78,591/- is subject to an interim order passed by the Rajasthan High Court and respondents are not entitled to recover the said demand. It was further case of the plaintiff that he cannot be blacklisted without affording an adequate opportunity of hearing to show cause against the alleged reason for blacklisting him. According to him to notice prior to blacklisting the petitioner was served on him.

4. In the first instance trial court issued temporary injunction restraining the defendants from blacklisting the petitioner on 15.12.92. In spite of that order, an order of blacklisting the petitioner was passed on 23rd Jan. 1993. Application Under Order 39 Rule 1 and 2 was moved by the petitioner, which was registered as Misc. case No. 35/93, for taking contempt proceedings against erring defendants. Thereafter the order dt. 23rd Jan. 1993 was kept in abeyance by the defendants.

5. The trial court after taking into consideration all the material came to concluding that (i) defendants are bent upon to blacklist the petitioner (ii) that since both the recovery of Rs. 1,26,000/- and Rs. 3,78,591/- are subject matter of different orders of the court, it is not justified to make the non-payment of the said sums, basis for blacklisting the petitioner, and that (iii) prima facie the order of blacklisting has been made against the petitioner without notice to him.

6. However the trial court was of the view that as the defendants themselves have put in abeyance the order dt. 22nd Jan. 1992 8.2.93, therefore the application no. 35/93 has become infructuous and consequently it came to the conclusion that no prima facie case is made out in favour of the petitioner and therefore the application was dismissed.

7. Aggrieved with the aforesaid order the plaintiff preferred an appeal before District Judge Udaipur who by his order dt. 5.6.93 affirmed the order by adopting additional reason.

8. The District Judge reasoned that the order of the High Court in Civil Revision No. 215/92 was only in respect of staying the penalty but not in respect of staying specific sum of Rs. 3,78,591/- and therefore it cannot be said that recovery of the said sum was stayed by the High Court. He further went on to hold that by taking this plea that aforesaid sum is subject matter of an interim order passed by this court, the plaintiff has made his conduct suspicious. He also came to the conclusion that if after very many reminders the plaintiff failed to pay the sum of Rs. 3,78,591/- and for that reason if petitioner was blacklisted, such order should not be interfered with by temporary injunction. The learned District Judge further went on to hold that before blacklisting the petitioner, was required to deposit Rs. 3,78,591/- and was informed about the consequences of non-deposit, therefore it cannot be said that in blacklisting the petitioner, principle of natural justice has been breached.

9. With these reasonings the appellate court further came to the conclusion that as a consequence the questions of balance of convenience and irreparable injury also has to be decided against plaintiff.

10. As a result of aforesaid conclusions the Learned District Judge affirmed the order of the learned Munsiff on 5.6.93.

11. Learned Counsel for the petitioner urged that learned district Judge has committed material irregularity in exercise of its jurisdiction in deciding the

appeal, in the manner, it has decided by taking into consideration very many irrelevant considerations. He contended that the merit of the demand which has been made the basis of impugned order or blacklisting the petitioner was not the subject matter of the issue and could not have been taken into consideration by the lower appellate court. Petitioner's case was that both the demands are disputed in appropriate forums and subject matter of the interim order passed by the competent courts and therefore this cannot be made basis of blacklisting the petitioner. Moreover merely because the plaintiff has failed to make the payment of such disputed demand, the order of including the name of petitioner is blacklist could not have been passed without affording reasonable opportunity of hearing in respect of reasons for the proposed blacklisting of the petitioner-plaintiff. The fact that plaintiff has not decided to secure the return of the plaint but decided to prosecute remedy under the arbitration clause of agreement cannot be held against him. He also contended that by holding that demand of sum of Rs. 3,78,591/- from the petitioner does not relate to any interim order passed by the Rajasthan High Court, which stayed any amount of penalty demand by the respondents amount to negating the orders passed by this court. The conclusion that payment of sums demanded by respondents, which are subject matter of interim orders passed by courts of competent jurisdiction and are in force does not result in irreparable injury is the very negations of rule of law and authority of courts of law as it amounts to inducing the respondents to commit the avoidance of order passed by courts by pressurizing the petitioner to make payment of amount of penalty determined by them for breach of contract in spite of interim order being operative in his favour.

12. On that other hand, learned Counsel for the respondent contended that the respondent had necessary power to blacklist the petitioner, and in that power it is inherent that the respondent can suspend the petitioner, during the tendency of inquiry into the proposed blacklisting of the said contractor, from participating in further contracts. According to him since inquiry into the question of blacklisting the petitioner is pending, therefore respondents cannot be compelled to deal with the petitioner and the order debarring the petitioner from participating in future contract is fully justified."No case for issuing of temporary injunction has been made out.

13. Having carefully considered the rival contention raised before me I am of the opinion that this petition merits acceptance.

14. At the outset it is to be noticed that the findings of the trial court about the determination of the defendants to blacklist the petitioner, come what way, that the non-payments of two demands which have been made basis for blacklisting the petitioner and absence of notice before plaintiffs blacklisting have not been upset by the lower appellate court. The learned District Judge, while accepting these findings have merely sought to strengthen the order by supporting additional reasons. Once aforesaid findings of trial court is accepted the two things must be held to the prima facie established.

- (i) Prejudicial disposition of defendants towards plaintiff which taints the State action blacklisting the plaintiff petitioner undoubtedly is, with malice and
- (ii) the impugned action is violative of principle of natural justice.

15. The findings above, in my opinion, leads to irresistible conclusion that prima facie case exists in favour of the plaintiff to obtain a temporary restraint order against defendants from desisting to give effect to an order which is prima facie tainted with malafide and is void for reason of having been passed in breach of principles of natural justice. Law is well settled that where an authority is passing any order or taking any action which adversely effects the interest of person against whom it is passed, is required to adhere to principles of natural justice and if the authority acts in breach of principles of natural justice, the order or act is void ab initio.

16. It also cannot be disputed that an order for blacklisting a contractor which persuades him from participating in process for considering grant of contract, a State largess, in future cannot be passed without adhering to principles of natural justice. The proposition is well settled by a large catena of decisions since Supreme Court in *Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others*, as under:

Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting Indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

17. Learned District Judge has construed the communication dt 21.12.91 to deposit Rs. 3,78,591/- else he will be blacklisted as a requisite notice fulfilling requirement of natural justice. I am afraid that this explanation to fulfilling the requirement of natural justice cannot be accepted. The letter dt. 21.12.91 was not to show cause against the proposed action of blacklisting the petitioner but was an order providing consequences of not making the payment. Both the courts below has acted with material irregularity in exercise of their jurisdiction in arriving at the conclust about prima facie case completely oblivious of settled legal principles.

18. It may be further noticed that the decision of the learned District Judge has been seriously influenced by the fact that the plaintiff has not taken the follow up action after his plaint was ordered to be returned for want of notice u/s 80 CPC and he, by abandoning the proceedings of the suit, decided to follow the proceedings under arbitration Act. Learned District Judge, in my opinion, has acted illegally and with serious irregularity in exercise of its jurisdiction while deciding appeal in respect of application order 39 Rule 1 and 2, influenced by wholly irrelevant consideration and inference not warranted on any principles. It is not the case of the parties that there is not arbitration agreement. In such

case resort to arbitration to decide the dispute arising out of contract was the only appropriate course. Suit to secure immediate relief through temporary injunction was an extra ordinary measure. When the plaintiff was asked to adopt regular procedure by having recourse to give notice u/s 80 CPC before coming to courts, the resort arbitration clause under the agreement, in my opinion, cannot be inferred as suspicious conduct. The approach of the learned District Judge in deciding the appeal and dealing with the matter in the facts and circumstances was based on wholly irrelevant considerations and he acted by ignoring the effect of prima facie conclusion, of the trial court with which he had no disagreement. In doing so it has clearly acted with material irregularity in the exercise of its jurisdiction.

19. It may also be mentioned here in this connection that learned District Judge totally misread the judgment the trial court. The trial court has come to definite conclusion that two demands which have been made basis of the order of blacklisting the petitioner are disputed and are subjected matter of two separate litigations which have yet to be decided the same cannot be made basis of the order of blacklisting the petitioner. Against this learned District Judge attributed the finding to the trial court that it found that two demands were not disputed at all.

20. While deprecating the conduct of the plaintiff with reference to demand of Rs. 3,78,591/- it appears that learned District Judge has not taken into consideration the agreement under which the said demand was raised and in the light of which the interim order was passed by this court that the defendant shall not recover any demand by way of penalty under the agreement. Defendant has not pleaded not in a position to state that the said demand is in any way different from the amount of penalty or damages determined under the agreement by the defendant, to be recovered from the plaintiff. If that be so there cannot be any recovery of the amount of Rs. 3,78,591/- by the defendants whether directly or indirectly by holding out the threat of blacklisting the petitioner and excluding him from participation in future tender proceedings. Taking any other view would be to permit avoidance of orders of this court by adopting indirect methodology by pressurising the person in whose favour the order has been passed by the competent court. Recourse to such methodology cannot be supported on any ground whatsoever.

21. As is apparent two demands, which have been made foundation of blacklisting the petitioner-plaintiff, are subject of two court's proceedings and in both the proceedings interim orders have been passed by two different courts. Therefore the minimum that can be said is these two demands cannot be made basis for blacklisting the plaintiff-petitioner and to that extent trial court was right in its conclusion which have been misread by the appellate court as I have noticed above. This is yet another illegality in the exercise of its jurisdiction by the lower appellate court. In that view of the matter that conclusion is irresistible that the plaintiff has prima facie case in his favour.

22. The fact that defendants have put it in abeyance the order of blacklisting which was made in breach of interim order passed by trial court after an application Under Order 39 Rule 2A, was moved for punishing the person responsible for a disobedience of the orders of the courts, does not make an application for temporary injunction infructuous.

23. In view of the fact that both the demands are subject matter of two different stay orders by different courts, conclusion of the Learned appellate Judge that if the demands are paid it will not result in irreparable injury to the plaintiff also cannot be supported. Permitting the recovery of amount which has been stayed by competent court by adopting subterfuge which results in nullifying the orders passed by a competent court cannot be countenanced such a result by itself is an irreparable injury, not only to the petitioner concerned but to the very foundation of rule of law and administration of justice through the institution of courts,

24. As a result the petition is allowed the orders of the two courts below are set aside. The application under Order 39 Rule 1 and 2 filed by the plaintiff is allowed, and the respondents are restrained from blacklisting the petitioner on the basis of disputed demands of Rs. 1,26,000/- and Rs. 3,78,591/- respectively.

25. Respondents are further restrained from excluding the petitioner from participating in future contract as and when occasion for the same arises on the very same reasons. However it is made clear that it gives the plaintiff-petitioner merely the right of consideration by participating in the process of grant of future contract, but it does not confer the right that contract must be granted to him.

26. The petitioner shall get the costs of this petition from the respondents.