

(1936) 05 CAL CK 0038
In the Calcutta High Court
Case No : Suit No. 701 of 1936

Rameswar Lath and Another

APPELLANT

Vs

The Calcutta Wheat and Seeds Association

RESPONDENT

Date of Decision : 15-05-1936

Acts Referred:

Citation : (1936) 05 CAL CK 0038

Final Decision : Dismissed

Judgement

McNair, J.—This is an application that the Calcutta Wheat & Seeds Association may be restrained from preventing the Plaintiff from having access, at all reasonable times, to the books of the Association, and from preventing the Plaintiff from making extracts from those books. In effect, it is an application for a mandatory injunction upon the Association to allow inspection and notes to be taken. The application is made in a suit in which the relief claimed is almost identical with the relief which is now asked for, though in the plaint the Plaintiff does ask in addition for a declaration of the rights of members of the Association to inspect the books of the Association and take extracts.

2. In support of the application, I have been referred to the decision in *Mutter v. Eastern and Midlands Railway Company* L.R. 38 Ch. Div. 92 (1888), where it was held that a share-holder under the Companies Clauses Act had a right to inspect the register of the debenture-holders, and that that right includes a right to take copies.

3. In the present case, the Plaintiff had, at one time, been allowed to inspect, but it was denied that he had any right to take copies or notes of the subject-matter of the inspection. In *Mutter v. Eastern and Midlands Railway Company* L.R. 38 Ch. Div. 92 (1888), the action was brought to restrain the Defendant Company from preventing the Plaintiff from having access to the books and registers, and it was held that when there is a right to inspect, that right carries with it the right to take notes or copies. The Plaintiff there moved for an injunction, and the injunction was granted by Mr. Justice Chitty, whose order was upheld by the

Court of Appeal.

4. Reference was also made to *Davios v. Gas Light and Coke Company* [1909] 1 Ch. 708, where a share-holder issued a writ in the action claiming a mandamus commanding the Company to supply him with the names and addresses of the share-holders. The order was made as prayed, and an appeal from that order was dismissed.

5. In each case, it was argued that the motives which impelled the Plaintiff to ask for the order were not bona fide, and the Court held that there was no jurisdiction to enquire into the motives of the applicant.

6. The Respondents oppose this application on the ground that it is not the practice of the Court to grant on an interlocutory application an injunction which will have the practical effect of granting the sole relief that is claimed. The effect of giving the injunction prayed for, it is contended, will be to decide what is really the sole issue in the suit.

7. In support of that contention, reference has been made to the case of *Dodd v. The Amalgamated Marine Workers Union* [1921] 93 L. J. Ch. 65, 105: S.C. (1924) 1 Ch. 116. There, a member of a Trades Union claimed the right to inspect the books of the Union with the help of an Accountant. The Plaintiff had obtained an order that his expulsion from the Union was not valid, and he was refused such inspection of the books. The Plaintiff then commenced proceedings against the Union and applied on an interlocutory motion for an order for inspection. That order was granted by the trial Judge, Mr. Justice Astbury, but his decision was overruled by the Court of Appeal, on the ground that the question raised by the motion was the question to be tried in the action, and therefore should not have been decided upon the motion. Lord Sterndale, M. R., in his judgment said:--

It may be right in certain cases to give all the relief claimed in the action upon interlocutory motion even although there has been no agreement between the parties to treat the motion as the trial of the action but that is not the rule, and it is not the usual practice of the Court.

8. Lord Justice Warrington said:--

I am of the same opinion. For all substantial purposes the order made was judgment in the action, and there was no consent to treat the motion as the trial..... The general rule of practice is not to grant all the relief claimed in the action on motion.

9. Lord Justice Younger gave judgment to the same effect.

10. The Article of Association on which the Plaintiff bases his right is Art. 34 which provides inter alia that the record of the proceedings of the committee shall be open to the inspection of members, subject to such regulations as the committee may from time to time deem expedient. On the cases, it seems quite

clear that the right of inspection does involve the right to take notes or copies, but the Article empowers the committee to make such regulations as to them may seem expedient, and before this action was brought, the committee had in fact passed a resolution on the 26th April, 1936, that no member shall be allowed to take a copy or notes from the Minute Book, and further empowering the committee to refuse inspection of the proceeding Book to any member whom they consider as acting prejudicially to the interest of the Association.

11. In my opinion, the relief which is asked for now is in effect the whole of the relief that is asked for in the plaint. There is no statement or pleading as to the injury which will be suffered by the applicant if he does not get the injunction which he now prays for, and I am not satisfied that there is any urgency in the matter. In the result, I consider that no injunction should be granted. for its effect will be to decide the issues in the suit. The application is dismissed. Costs will be reserved.