

(2008) 12 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 14033 of 2008

Ramgopal Polytex Ltd.

APPELLANT

Vs

Stone On Net India Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3
Constitution of India, 1950 — Article 227

Citation : (2009) 1 GLH 181 : (2009) 2 GLR 1477

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Mihir Joshi and Tanvish Bhatt, for Wadia Ghandy and Co, for the Appellant; Mihir Thakore and C.H. Vora for Respondent Nos. 1 and 2, for the Respondent

Judgement

M.R. Shah, J.—Rule. Shri C.H. Vora, learned Advocate waives service of rule on behalf of respondent No. 1-original plaintiff.

2. Shri Mihir Joshi, learned Senior Advocate seeks permission to delete respondent No. 2 so far as the present proceedings are concerned.

3. With the consent of the learned Advocates appearing on behalf of the respective parties, the present Special Civil Application is taken up for final hearing today.

4. By way of this petition under Article 227 of the Constitution of India the petitioner-original defendant has prayed for an appropriate writ, order or direction quashing and setting aside the impugned order dated 23-11-2008 passed by the learned Principal Civil Judge, Civil Court (Junior Division) and Judicial Magistrate, First Class, Dhandhuka below Exh. 7 in Regular Civil Suit No. 147 of 2008 by which the learned trial Court has granted ex parte ad-interim mandatory injunction in favour of respondent No. 1-original plaintiff on Sunday at his residence.

5. Shri Mihir Joshi, learned Senior Advocate appears on behalf of the petitioner-original defendant and Shri Mihir Thakore, learned Senior Advocate appears on behalf of respondent No. 1-original plaintiff.

6. Shri Mihir Joshi, learned Senior Advocate has vehemently submitted that as such the Civil Court at Dhandhuka had no territorial jurisdiction at all as admittedly the goods were lying at Navlakhi Port, District Rajkot. It is further submitted that as such there was nothing mentioned in the application, Exh. 5 justifying the extraordinary urgency moving the Court on Sunday at his residence. It is also further submitted that even otherwise there was no extraordinary urgency justifying the trial Court to exercise the power and passing the order on Sunday at his residence, which could not have been waited till the next date i.e. Monday. It is further submitted that even otherwise such a mandatory injunction could not have been granted by the learned trial Court virtually allowing the suit and granting final relief and that to ex-parte, and therefore, it is requested to allow the present Special Civil Application and quash the impugned order with exemplary costs. It is further submitted that in absence of any extraordinary urgency to approach the learned trial Court at his residence on Sunday and to obtain such an ex-parte mandatory injunction itself speaks volumes about the mala fides and the dishonest attempt on the part of everybody i.e. the plaintiff, learned trial Court etc.. It is further submitted that to entertain the suit and Exh. 5 on Sunday at the residence by the learned trial Court without any extraordinary urgency, which could not have waited till the next day and/or reopening of the Court and granting such an ex-parte mandatory injunction creates doubts and bona fides of even the learned trial Court, which is an extraneous ground and the same is required to be viewed very seriously, otherwise the faith of the litigants in the entire judicial system will be shaken.

7. Shri Mihir Thakore, learned Senior Advocate appearing on behalf of respondent No. 1-original plaintiff is not in a position to dispute that the Civil Court at Dhandhuka had no territorial jurisdiction. Having realised the same, he seeks permission to withdraw the main suit itself with a liberty to file afresh with an appropriate prayer before appropriate Court having jurisdiction. He has further submitted that in view of the above, he has no objection if the impugned order passed by the learned trial Court is quashed and set aside.

8. Heard the learned Advocates appearing on behalf of the respective parties. This Court has considered the averments made in the plaint, the application, Exh. 5 and the impugned order.

9. Looking to the averments made in the plaint, this Court is of the firm opinion that the Civil Court at Dhandhuka had no territorial jurisdiction at all and as such the learned trial Court could not have entertained the suit and granted the ex-parte ad-interim injunction. As stated hereinabove, the learned Senior Advocate appearing on behalf of respondent No. 1-original plaintiff is also not in a position to dispute that the Civil Court at Dhandhuka had no jurisdiction at all. Under the

circumstances, the impugned order passed by the learned trial Court is absolutely without jurisdiction.

10. This Court has also considered the impugned order passed by the learned trial Court on Sunday at his residence, which is mandatory in nature. By virtue of the ex-parte ad-interim mandatory injunction, the learned trial Court had virtually allowed the suit and granted the relief, which is the main relief in the suit. Apart from that, such an ad-interim injunction, which is mandatory in nature, cannot be granted even after bipartite hearing.

11. Now, so far as the exercise of jurisdiction by the learned trial Court entertaining the suit and the application, Exh. 5 on Sunday at his residence is concerned, on going through the application, Exh. 5 and the impugned order, this Court is of the firm opinion that there is no justification at all by the learned trial Court to entertain the suit and the application, Exh. 5 for ad-interim injunction on Sunday at his residence. Nothing is on record to show that the matter could not have waited till the next date i.e. the reopening of the Court. On this aspect, this Court called for the report of the learned Judge and the same is received by this Court and this Court has gone through the same and on considering the same, this Court is not satisfied at all with respect to the explanation given by the learned Judge justifying the entertaining of the suit and granting the ad-interim injunction on Sunday at his residence. The aforesaid aspect will be dealt with by this Court in a separate order so that the same may not form the part of the present order as it is to be dealt with separately on administrative side and a separate detailed order is being passed on the aforesaid aspect.

12. Suffice it to say, there was no justification at all by the learned Judge to exercise the powers and entertain the suit and the application, Exh. 5 on Sunday at his residence. Unless and until extraordinary urgency is shown and appropriate case is made out that it cannot wait till the next date and/or reopening of the Court, no Court shall exercise any power at his residence and pass such an order. The powers can be exercised at the residence of a Judge if great urgency is shown and/or in an absolutely exceptional case. Otherwise, it creates doubts in the minds of other parties to the suit. Such an eventuality should be avoided by the Judge/Court. Justice is not only to be done but is also seen to have been done. Any action/order passed by the Court/Judge should be above suspicion and transparent otherwise the faith of the litigant in the judicial system may be shaken. All the Courts/Judges shall perform their duties in such a manner that faith of the litigants in the judicial system and justice delivery system is not shaken and faith in the institution maintains. Independence and impartiality and objectivity would be tall claims hollow from within, unless the Judges be honest-honest to their office, honest to the society and honest to themselves. Society demand for honesty in a Judge is exacting and absolute. The standards of judicial behaviour, both on and off the Bench, are extremely high. For a Judge, to deviate from such standard of honesty and impartiality is to betray the trust reposed in him. No excuse or no legal relativity can condone

such betrayal. The slightest hint of irregularity of impropriety in the Court is a cause for great anxiety and alarm. A Judge must keep himself absolutely above suspicion to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

13. This Court has called for the report/explanation from the learned Judge who passed the impugned order and to submit the reason to exercise jurisdiction and entertain the suit and the application, Exh. 5 at this residence on Sunday, which could not have waited till the reopening of the Court i.e. on the next day i.e. Monday and what was the urgency to exercise such power and this Court has received the report from the learned Judge. This Court is not satisfied at all with the explanation of the urgency to exercise the powers at his residence on Sunday.

13.1. As stated hereinabove, the same will be dealt with in a separate order. Suffice it to say that at this stage looking to the conduct and the manner in which the learned Judge has passed the impugned order granting ex-parte mandatory injunction at his residence on Sunday without any urgency whatsoever, which could not have waited till the next day on the reopening of the Court, the same is highly deprecated and the same is required to be viewed very seriously. Under the circumstances, the Registrar General is directed to place the present order before the Hon'ble the Chief Justice immediately for his kind perusal and take appropriate decision.

14. Even considering the impugned order passed by the learned trial Court granting ex-parte ad-interim mandatory injunction, the same cannot be sustained and the same is de hors Order 39, Rule 3 of the Code of Civil Procedure.

As per Order 39, Rule 3 of the Code of Civil Procedure, the Court shall in all cases, except where it appears that the object of granting injunction would be defeated by the delay, before granting any injunction, direct notice of the application for the same to be given to the opposite party:

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.

15. Even Order 39, Rule 3 would be applicable where ex-parte injunction is to be granted and not where ex-parte mandatory injunction is to be granted. Even when mandatory injunction is to be granted, the same cannot be without issuing any notice to the other side and ex-parte mandatory injunction cannot be granted. While considering the impugned order, it appears that no reasons have been recorded by the learned trial Court while granting such an ex-parte mandatory injunction. Thus, on this ground also, apart from the concession given by the learned Senior Advocate appearing on behalf of respondent No. 1-original plaintiff, the impugned order cannot be sustained and the same deserves to be quashed and set aside.

16. In view of the above, more particularly, in view of the fact that it is requested by the learned Senior Advocate appearing on behalf of respondent No. 1-original plaintiff that he may be permitted to withdraw the suit with a liberty to file afresh with an appropriate prayer before appropriate Court having jurisdiction, automatically, the impugned order will also go.

17. Irrespective of the above and as stated hereinabove, the impugned order passed by the learned Judge at Dhandhuka is without jurisdiction and is absolutely illegal and against the provisions of Order 39, Rules 1 and 2 of the CPC and such a mandatory injunction could not have been granted by the learned trial Court, which deserves to be quashed and set aside.

18. In view of the above, the present Special Civil Application is allowed. The impugned ad-interim injunction granted by the learned Principal Civil Judge, Civil Court (Junior Division) & Judicial Magistrate, First Class, Dhandhuka below Exh. 7 in Regular Civil Suit No. 147 of 2008 is hereby quashed and set aside.

19. As requested by Shri Mihir Thakore, learned Senior Advocate appearing on behalf of respondent No. 1-original plaintiff, respondent No. 1-original plaintiff is hereby permitted to withdraw Regular Civil Suit No. 147 of 2008, pending in the Court of learned Civil Judge, Civil Court (Junior Division) & Judicial Magistrate, First Class, Dhandhuka with a liberty to file afresh with an appropriate prayer before appropriate Court having territorial jurisdiction. In view of the above, Regular Civil Suit No. 147 of 2008 pending in the Court of learned Civil Judge, Civil Court (Junior Division) & Judicial Magistrate, First Class, Dhandhuka is ordered to be dismissed as withdrawn with the above liberty in favour of respondent No. 1-original plaintiff. Respondent No. 1-original plaintiff to produce this order before the learned trial Court for completing the record of the aforesaid Regular Civil Suit No. 147 of 2008, and henceforth, Regular Civil Suit No. 147 of 2008 be treated as dismissed as withdrawn.

20. Shri Mihir Thakore, learned Senior Advocate appearing on behalf of respondent No. 1-original plaintiff has stated at the Bar, under instructions from his client who is personally present in the Court, that the goods, which were lifted by respondent No. 1-original plaintiff pursuant to the ex-parte ad-interim injunction has been returned to the petitioner-original defendant and the same is confirmed by Shri Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner-original defendant. He has produced on record the communication from respondent No. 1-original plaintiff Gujarat Maritime Board permitting respondent No. 1-original plaintiff returning 76.340 Metric Tons of goods to the petitioner-original defendant, which is directed to be taken on record.

21. With this, the present Special Civil Application is allowed. Rule is made absolute accordingly with exemplary cost, which is quantified at Rs. 25,000/-. Respondent No. 1-original plaintiff shall deposit the same with the Registry of this Court within a period of one week from today and the receipt shall be produced in the present proceedings. Out of the aforesaid amount, Registry is

directed to transmit Rs. 15,000/- to the Gujarat High Court Legal Aid Committee and Rs. 10,000/- to the Gujarat High Court Advocates Library immediately.

22. Before parting with the order, it is observed and clarified that this Court has not expressed any opinion on merits of the case and/or the dispute between the parties in favour of either parties and as and when such proceedings are initiated before appropriate Court with an appropriate prayer, the same shall be considered in accordance with law and on its own merits.

Direct Service is permitted.