
(2003) 03 CAL CK 0020
In the Calcutta High Court

Case No : G.A. No. 5070 of 1999 and C.S. No. 613 of 1999

Sabari Ventures Limited

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4

Citation : (2004) 1 CALLT 155

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Anindya Mitra, Bimal Chatterjee, Joy Saha and Debasish Mitra, for the Appellant; Sudipta Sarkar, Sanjib Banerjee and Debanshu Basak, for the Respondent

Judgement

A.K. Banerjee, J.—After hearing the parties it appears to me that moot question which falls for adjudication is whether a non-party to a suit can apply for vacating of an interim order and whether, in any event, such interim order can bind him when he is not a party to this suit.

2. The facts are briefly narrated hereinafter.

The plaintiff through its banker being defendant No. 1 opened a letter of credit. The dispute arose when according to the applicant being the negotiating banker, made a claim on the basis of the said letter of credit to the defendant No. 1 on the ground that it had already made payment to the corresponding party being the defendant No. 3 under the said letter of credit. The defendant No. 1 refused payment on the ground that the papers were not in order. Plaintiff, in the meantime, approached this Court by filing the above suit and obtained an order of injunction in terms of prayer (a) and (c) of the interim application which are quoted below:

(a) An injunction do issue restraining the defendant No. 1 and/or its servants and agents from remitting any money under or pursuant to the said letter of credit

bearing No. 0312 FLC 045599 dated 10.9.1999 to the defendant No. 1 or its banker;

(b) An injunction do issue restraining the defendant No. 3, its servants, agents and assignees from making demand or receiving any payment of money under the said letter of credit No. 0312 FLC 045599 dated 10.9.1999.

After coming to know of the said order, the applicant made the instant application being G.A.No. 5070 of 1999 inter alia praying for the following reliefs:

"(a) The orders dated November 5, 1999 and November 26, 1999 in so far as it restrains payments being released by the defendant No, 1 to the applicant in the subject letter of credit be vacated and/or suitably varied and/or modified and/or stayed;

(b) If necessary, leave be given to the applicant to intervene in the plaintiff's interlocutory application in the instant suit being G.A. No. ... of 1999;"

3. The application was moved upon notice to the parties to the suit. The defendant No. 1 had chosen not to oppose this application by filing any affidavit. Today, at the concluding stage of hearing the learned counsel for the defendant No. 1 appeared and made his submissions which are recorded hereinafter at the appropriate place.

4. Mr. Sudipta Sarkar (Mr. Sanjib Banerjee and Mr. Debanshu Basak appearing with him), learned senior counsel for the applicant, submits that being a negotiating banker, the applicant was bound by the terms of the letter of credit and in fact, the applicant had honoured such letter of credit by making payment to the defendant No. 3 and as such was entitled to payment from the defendant No. 1 which was refused. The ex parte ad interim order of injunction obtained by the plaintiff had caused injury to the applicant although he was not made a party to the suit.

5. Mr. Anindya Mitra (Mr. Bimal Chatterjee, Mr. Joy Sana and Mr. Debasish Mitra, appearing with him), the senior counsel opposing this application on behalf of the plaintiff, submits that to prove the locus of the applicant the applicant is bound to produce document in support of so called payments made by the applicant to the defendant No. 3. Mr. Mitra has taken me to various paragraphs of the pleadings to demonstrate that no proof of payment made by the applicant to the defendant No. 3 has been annexed to the pleadings.

6. Mr. Mitra further submits that since the documents were not in order, the defendant No. 1 was not bound to honour such letter of credit and had rightly rejected the claim of the applicant.

7. On the question of vacating of the interim order Mr. Mitra submits that the injunction granted by this Court was to, restrain the defendant No. 1 from making any payment and the defendant No. 3 from receiving any payment. According to Mr. Mitra, assuming that the payment had been made by the

applicant to the defendant No. 3, such fact is not at all relevant herein unless and until the applicant prays for its addition as a party defendant in the present suit. According to him, an order of injunction might affect third party's interest as a consequence, that does not give right to the applicant to apply for vacating without being added as a party to this suit. In support of his contention, Mr. Mitra has relied on a single Bench decision of this Court reported in AIR 1974 Cal 84 (Narayan Chandra Garai v. Matri Bhandar Pvt. Ltd. and Ors.). In the said case before His Lordship a stranger applied for her addition in a suit for specific performance and also prayed for vacating of the order of injunction. Such application was opposed by the plaintiff principally on the ground that the applicant had no right to be added as a party although the order of injunction might affect her right. She being a non party could not maintain the application for vacating of the interim order. Considering the facts and circumstances of that particular case His Lordship dismissed the application for addition. However, on the question of maintainability, His Lordship made some observations in paragraph 12 of the said judgment which is quoted below and the relevant portion His Lordship's observation in such paragraph stands underlined:

"12. The said case is referred to by Kerr on Injunctions (6th ed. p., 662) for the proposition that "where a stranger to the action is affected by an injunction he may apply to have the injunction set aside." Halsbury's Laws of England (3rd ed) vols. 21 also mentions the same case as an authority for the observation that apparently a stranger to a suit, who is affected by an injunction, can apply to dissolve it. That was a suit filed by a French Brandy merchant against his agent and the London Dock Company at London, inter alia, to restrain the defendants from dealing with certain dock warrants for brand which had been shipped by the plaintiff. The petitioner a pledgee of the dock warrants filed a petition to set aside an injunction earlier passed in the suit. The petition was held to be admissible. There were however certain peculiar features of that case (i) since injunction on account of the plaintiff's bankruptcy no proceedings had been taken in the suit, (ii) on account of the plaintiff's 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, (iii) the suit had been looked at as one abated on account the plaintiff's bankruptcy. Although the case is a very old one for more than a century the same does not appear to have been dissented from. Both Kerr in work in Injunction and Halsbury in the Laws of England, 3rd edition still rely on the same. No corresponding Indian authority has been brought to the knowledge of the Court. The circumstances of the present case is not one which would import application of the principles involved in the case (1864)10 LT 781. 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."

8. In my considered view such observation of His Lordship supports the case of the applicant before me. In a suit between the parties appropriate application

can be made under Order 39 of the CPC for preservation of the status of the subject matter of dispute as well as to prevent further disturbance of the status of the parties to the suit so that at the ultimate hearing of the suit, the Court can decide the issue appropriately. In the instant case, the plaintiff filed a suit for appropriate declaration and injunction and obtained an order of injunction against the defendants. In this suit, in my view, such order of injunction can only bind the parties to the suit and nobody else. The letter of credit is an independent document. It gives independent cause of action to the parties to the said letter of credit. I am not here to decide as to whether the applicant being the negotiating banker had submitted proper papers and documents in support of their claim. I am also not deciding whether the defendant No. 1 was right in rejecting such claim on the basis of submission of improper documents as those are not issues involved in the application being heard by me.

9. On the question of maintainability, I rely on the observation of His Lordship in the case of Narayan Chandra Garai (*supra*) that in an appropriate case a non party is entitled to apply before this Court for vacating the order of injunction. As such, the application before me in the facts and circumstances discussed hereinbefore is maintainable.

10. Mr. D.P. Das learned counsel appearing for the defendant No. 1 submits that since the negotiating banker being the applicant herein could not submit appropriate documents in terms of the letter of credit, the defendant No. 1 had rightly refused payment. Had there been appropriate papers lodged by the applicant, the defendant No. 1 could have made payment on the question of maintainability of the application or on the question of vacating of the interim order, Mr. Das does not make any further submission.

11. I only observe and hold that the *ex parte* ad interim order dated Novembers, 1999 as extended by further order dated November 26, 1999 can only bind the parties to the suit and cannot bind the applicant in any way.

G.A. No. 5070 of 1999 is disposed of accordingly. There will be no order as to costs.

Xerox certified copy of this judgment, if applied for, be made available to the parties as quickly as possible.