
(1949) 03 CAL CK 0016

In the Calcutta High Court

Case No : Civil Rule No. 1408 of 1948 and Cri. Misc. Case No. 31 of 1949

Saraju Prashad Singh

APPELLANT

Vs

Gangaprosad Shah and Others

RESPONDENT

Date of Decision : 03-03-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, Order 43 Rule 1

Citation : AIR 1951 Cal 446

Hon'ble Judges : Roxburgh, J; K.C. Chunder, J

Bench : Division Bench

Advocate : Chandra Sekhar Sen and Nani Coomar Chakravarty, for the Appellant; Naresh Chandra Sen Gupta and Sambhunath Banerjee (Sr.), for the Respondent

Judgement

Roxburgh, J.—Civil Revn. case No 1408 of 1948 is against an order of the Subordinate Judge, 24 Parganas, reversing on appeal an order of the Munsif, 2nd Ct., Baraset, granting an ad interim injunction at the instance of the present petnr. against defts. 1, 2, 3 & 5 in the suit before him from interfering, or in any way disturbing the exercise of the functions of the pltf. in the suit as Chairman of the Bhatpara Municipality. The ground on which the Rule has been issued was that the order of the Munsif was not a final order & was not, therefore, appealable.

2. The learned Subordinate Judge set aside the ad interim injunction granted by the Munsif, but sent the case back for a decision on the point whether a temporary injunction could be granted at all as prayed for by the pltf.

3. The pltf. is the former Chairman of the Municipality & alleges that he was coerced into drawing up a letter of resignation, but before it was accepted he asked that no action be taken on it. The defts. in the case, according to the pltf., however, purported to have his resignation accepted & had sent representation to Govt. regarding the meeting of 23-6-1948, when resignation was said to have been accepted.

4. It appears that on 14-7-1948, deft. 4 was elected Chairman of the Municipality & that on the 30th August at a meeting of the Comrs. the powers of the Chairman to operate the accounts of the Municipality in the Imperial Bank of India, the Sub-Treasury, Barrackpore, & the Savings Bank Account with the Post Office to meet the expenses of the Municipality were delegated to the Vice-Chairman of the Municipality, deft. 1.

5. On the 7th September, the pltf., the present petnr, instituted his suit before the Munsif. Defendant 4 (opposite party 4) appeared on that day & was heard, but an order of ad interim injunction was passed & notice was also issued on the remaining defts. to show cause within seven days of the service of the notice as to why an ad interim injunction pending the hearing of the suit, as prayed for by the pltf., should not issue.

6. Mr. Chandra Sekhar Sen, on behalf of the petnr., contends that as the order of the Munsif issuing the ad interim injunction showed that he had not finally made up his mind on the question of the issue of an injunction, the order was not final & therefore was not subject to appeal.

7. In our opinion, the argument confuses the temporary & limited nature of the injunction with the question of the finality of the order itself. The order, so far as it ran, though it was an order for an injunction for a limited period was clearly final. The pltf. wanted to restrain the opposite parties immediately from the time of filing of his plaint & for ever. The period may be divided into three parts : first, he wanted an immediate order to operate at once & temporarily until the Ct. could give notice & hear the remaining defts.; secondly, an order to cover the period from the time of hearing the deft. till the final disposal of the suit; and thirdly, an order in the suit itself for a permanent injunction. Each of the orders would be a final order so far as it went. In our opinion, the ad interim injunction was clearly one made under Order 39, Rule 2 & was appealable under Order 43, Rule 1, C. P. C.

8. It is no doubt unusual for such an ad interim injunction to be the subject-matter of an appeal & that for obvious reason ; the normal course is to appear before the Ct. issuing the ad interim injunction & to show cause against issue of a temporary injunction for the duration of the suit. If the cause is successful, no further action is necessary ; if unsuccessful, an appeal may be made.

9. In the present case, having regard to the needs of the administration of the Municipality, it was thought fit to take immediate action by an appeal against the first ad interim injunction & the learned Subordinate Judge was fully empowered to hear the appeal & to dispose of it.

10. On the merits of the order, nothing need be said. The matter was certainly discretionary & in any case, in our opinion the order passed by the learned Subordinate Judge was the correct one.

11. We would add that we do not wish it to be thought that we are giving any

encouragement to the view that any injunction should be issued at all in connection with the main suit. The matter of issuing injunctions is entirely at the discretion of the Ct & in exercising that discretion the Ct. should have regard to the needs of the administration & may bear in mind the fact that under the Bengal Municipal Act there are provisions such as those in Section 49 or Section 548 by which such squabbles as the present can be dealt with by the Executive Authority.

12. Cri. Misc. Case 31/49.--Cri. Misc Case No. 31 of 1949 arises out of a temporary injunction issued by this Ct. when the above Civ. Revn. case No. 1408 of 1948 was granted. The Rule was in the following terms :

"Opposite parties 1 to 6 are restrained from interfering with the affairs of the Municipality as referred to in the appln. (copy whereof annexed hereto), till the hearing of this Rule or until further order or orders of this Ct."

13. The prayer in the appln. was in the following terms :

"And pending the hearing of the Rule it is further prayed that the opposite parties 1 to 5 may be restrained from interfering with the exercise of your petnr. as Chairman of the said Municipality." (The word "of the functions" after the word "exercise" have clearly been omitted by oversight.)

14. The pltf. has now moved this Ct. for action against the opposite parties for an alleged contempt in respect of this Rule. In their affidavit in reply, they have admitted most of the acts alleged in the petn. at the same time. Explaining the nature of those acts which were normal acts for carrying on the affairs of the Municipality done by the Vice-Chairman in exercise of the powers delegated to him u/s 52 of the Act in the meeting already referred to. As regards other items, the explanation offered is that the parties did nothing, or did not intend to do anything to violate the order, or interfere with the petnr. as Chairman.

15. The actual position at present is that there are three persons having powers of claiming to have power to exercise all or some of the powers of the Chairman. The injunction is not in the form that the two persons other than the pltf. who have such power shall not themselves exercise any power that they may have, but merely that they shall not interfere with the pltf's. exercise of his powers. The pltf. would urge that merely by the opposite parties themselves exercising the powers they were interfering with his exercise thereof. In our opinion, the explanation offered by the opposite parties, in the circumstances of the case, must be accepted & no action is called for by us in the contempt proceeding.

16. Both the Rules are accordingly discharged.

17. Each side would bear its own costs.

18. Let the records be sent down as early as possible.

Chunder, J.

19. I agree.