

(2001) 10 MP CK 0010
In the Madhya Pradesh High Court
Case No : C.R. No. 527 of 2001

Smt. Ajra Habib

APPELLANT

Vs

R.K. Gupta

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

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

Citation : AIR 2002 MP 95

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : R.S. Tiwari, for the Appellant; S.K. Mukherjee, for the Respondent

Judgement

S.P. Khare, J.—This is a revision by the plaintiff against the order by which the defendant's appeal under Order 43, Rule 1(r), CPC has been allowed and the order of temporary injunction issued in favour of the plaintiff by the trial Court has been set aside.

2. It is not in dispute that the plaintiff was granted licence by the defendant No. 1 to run a PCO at the Railway Station by order dated 3-12-1995. She was given 1-83 m.x 1.52 m. space adjacent to the traffic LS/CT/MP360/2001/SSA-VNP/USA/31169/2001 booth in front of the computerised reservation office at Jabalpur on certain terms and conditions. She has been running the booth for five years at that place. On 1-11-2000 the plaintiff received a letter from the Divisional Commercial Manager informing her that her licence has been cancelled because of certain complaints against her for overcharging the customers. She was informed that the contract has been terminated and the P.C.O. would be removed from the Railway premises.

3. The plaintiffs case is that she was not given any notice or opportunity of hearing before the proposed action and therefore it is in violation of the principles of natural justice. It is also her case that she cannot be removed from the spot by force without following due process of law in the plaint she claimed

the relief of permanent injunction for restraining the defendants from removing the P.C.O. booth installed in the Railway premises. As usual any other relief which the Court deems fit on the facts and circumstances of the case was also prayed. The suit was filed on 6-11-2000. An application under Order 39, Rules 1 and 2 CPC was also filed claiming the relief of temporary injunction restraining the defendants from dispossessing the plaintiff and removing the PCO booth. An application under S. 80(2) CPC was also filed for dispensing with the notice under S. 80, CPC.

4. Notices were issued to the defendants and served upon them on 7-11-2000 at 1-00 p.m. In reply to the application for temporary injunction the defendants stated that the possession of the PCO booth has been taken over by the Railways at 0-15 hours on 7-11-2000, before the service of the notice. It was not denied that no show cause notice was given to the plaintiff before taking the decision to terminate the contract and remove the PCO booth.

5. The plaintiff filed another application on 9-11 -2000 stating therein that a lock was put by the defendants over the lock of the plaintiff on the PCO booth after the service of notice on them and the electricity and telephone lines were disconnected. Therefore, the plaintiff claimed mandatory injunction for maintaining status quo as on the date of the institution of the suit. The defendants submitted a reply to this application also.

6. The trial Court after testing the plaintiffs case on the touchstone of three well known principles for grant of temporary injunction i.e. strong prima facie case, balance of convenience and irreparable injury allowed the plaintiffs application for temporary injunction. It was found that the defendants were prima facie not acting according to due process of law. On the facts and circumstances of the case the trial Court considered that it is a suitable case in which temporary mandatory injunction should be issued to bring the status existing on the date of the suit. Consequently a direction was given to the defendants to remove their lock from the PCO booth, deliver its possession to the plaintiff and restore the electricity and telephone connection. The trial Court gave the liberty to the defendant to proceed against the plaintiff according to law.

7. In appeal filed by the defendants the order passed by the trial Court has been set aside on the ground that in the plaint the relief of "mandatory injunction" has not been claimed.

8. After hearing the learned counsel for both the sides this Court is of the opinion that the order of the appellate Court must be set aside and that of the trial Court restored. The trial Court in a well considered order examined the plaintiffs case in light of the relevant legal principles and granted the relief of interim injunction. It is undisputed that no show cause notice or opportunity of hearing was given to the plaintiff before taking the action of putting a lock on the PCO booth. In case there was any complaint against the plaintiff it was necessary to hold some inquiry and give an opportunity of hearing to her so that she could put forward

her defence. No one should be condemned unheard. That is the salutary rule. Thereafter, that defence should have been objectively considered and a finding should have been recorded that the plaintiff has committed breach of the conditions of the licence. In the suit filed by the plaintiff the dispute could be settled after recording the evidence of both the sides and it could be decided whether there was breach of any condition of the licence by the plaintiff. If the trial Court in its discretion decided that the status quo existing on the date and time of filing of the suit should be maintained there was nothing arbitrary or capricious in doing so. The defendants should also in all fairness abide by the order of interim injunction. The plaintiff did make an application on 9-11-2000 to convert her prayer of interim prohibitory injunction into an interim mandatory injunction and that was duly considered by the trial Court. The appellate Court has not take note of this subsequent application of the plaintiff. The plaint could be amended subsequently to make a formal prayer for permanent mandatory injunction. Even otherwise the arms of law are strong enough to grant appropriate relief to any party. Order 39, Rule 1 CPC itself confers sufficient power upon the Court to grant interim mandatory injunction.

9. Order 39, Rule 1, CPC relevant for the present purposes provides that where in a suit it is proved that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit the Court may by order grant a temporary injunction to restrain such act, or "make such other order" for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit, as the Court thinks fit, until the disposal of the suit or until further orders. These words have been consistently interpreted as authorising the Court to grant a mandatory injunction on an interlocutory application if it is considered essential in the interest of justice. By such interim mandatory injunction the Court can restore the status-quo existing on the date of the suit in an appropriate case. Such a power can be exercised in cases of extreme hardship or compelling circumstances depending upon the facts of the case.

10. Even in the absence of the specific prayer in the plaint for mandatory injunction the Court has the power to issue such injunction in suitable cases. That power is derived from Order 7, Rule 7, CPC which provides : "...and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for". The Court must look at the substance and not mere form. Technicality should not triumph over the substance. The Court can always mould the relief in view of the subsequent developments. The Court has inherent power to grant either general relief or other relief which appears to it to be legitimate and proper in any case even though such reliefs have not been specifically asked for. The Court can always grant such relief as is available on the facts, even if no specific prayer for such relief is made in the plaint.

11. The observations of the Supreme Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, in this respect are very pertinent and instructive. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the hand-maid and not the mistress of the judicial process. If a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice.

12. In the present case the lock was admittedly put on the P.C.O. booth by the defendants after the institution of the suit. The discretion was properly exercised by the trial Court in issuing the temporary mandatory injunction on the facts and in the circumstances of the present case and there was no scope for interference by the appellate Court on technical and unsubstantial grounds.

13. The impugned order of the appellate Court is set aside and the Order passed by the trial Court in this case is restored.