

(1981) 08 MAD CK 0054
In the Madras High Court
Case No : C.R.P. No. 2244 of 1981

State Bank of India, Tiruchirapalli

APPELLANT

Vs

J.S. Ramamoorthy

RESPONDENT

Date of Decision : 13-08-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 39, 41

Citation : AIR 1982 Mad 197 : (1982) 95 LW 30

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : K.N. Balasubramaniam and K. Kusurn Kumari, for the Appellant; S. Kalyanam, for G. Subramaniarn, for the Respondent

Judgement

Suryamurthy , J.—This is a revision petition against the order of Thiru S. Thangaraj, B. Sc. LL. B. Second Additional Subordinate Judge, Tiruchirapalli, allowing I. A. No. 206 of 1981 in O. S. 345 of 1981 and making absolute an interim injunction granted by the learned Subordinate Judge.

2. The petition in I. A. No. 206 of 1981 was filed by the plaintiff praying for an order directing the respondent defendant to render all help and assistance to the petitioner plaintiff for keeping his unit Kamala industries, Ariyamangalam Trichi, running pending disposal of the suit and also to grant an ad interim ex parte order to the effect pending disposal of the petition under Nursing Programme and thus render justice,

3. I.A No. 205 of 1931 was filed for granting an order of interim injunction restraining the respondent defendant pending disposal of the suit and also to grant an ad interim ex parte order to the said effect pending disposal of this petition restraining the respondent defendant from giving effect to the call off notice in respect of Kamala Industries, Ariyamangalam. Tiruchi.

4. The respondent herein is the plaintiff in O. S. 345 of 1981 on the file of the

Sub Court, Tiruchirapalli. He is the proprietor of an Industrial Unit called Kamala Industries for which he obtained a loan from the State Bank of India, Main Branch, SIB Division, who is the defendant in the suit. A loan of Rs. 8000 for

pre-operative expenses, a loan of Rs. 1,42,000 for purchase of machinery and a sum of Rs. 24,000 by way of overdraft against bills were granted by the defendant. The loan of Rs, 8000/- to cover the pre-operative expenses is said to have been repaid by about 4th Oct. 1975. The unit did not function satisfactorily for the first three years.

According to the plaintiff, the unit did not function satisfactorily for the first three years, because of the delay in the disbursement of the loan by the defendant, implying thereby that the plaintiff depended entirely on the loans for the purpose of running the Industry. The Unit has been subsequently declared sick and the administrative control of the Unit was vested in Sri R. Palaniappan Managing Director of Messrs Jothi Malieavles Pvt. Ltd., on the understanding that "all the powers for running the Industry vested in him absolutely and the Unit was to be brought to a viable level within a year from 14-6-1973. This arrangement did not work and the Unit was handed back to the plaintiff on 8-6-1974. In Sept. 1976 a team of officials appointed by the Chief General Manager of the Madras Circle of the defendant called "Rohira Committee, visited the plaintiff's Unit and studied the reasons for the sickness of the Unit and "recommended a help of Rs. 30,000 towards loan. The defendant failed to implement the recommendation. The Manager of the defendant Bank cut off the credit with effect from 1-12-1978, According to the plaintiff, he was not provided "with finance in critical hours of needs and consequently the working of the unit has been considerably affected." It is further contended by the plaintiff that-

"On account of the negligence on the part of the defendant though he has been very lavish in correspondence in not providing finance required in times of needs the plaintiff could not get the unit rejuvenated. The plaintiff had been requesting the defendant to help) with the assistance as directed by the authorities superior to him and also by the said Rohira Committee. Though the demands of the plaintiff which were neither out of way nor opposed to any natural law, the defendant had been defiant in pursuing his negligent attitude by not helping the plaintiff. instead of rescuing the plaintiff from his decaying the business, and the industries the defendant had pursued his attitude with a firm determination in not helping the plaintiff (sic)".

5. It is further alleged as follows in the plaint-

"The plaintiff at this point submits that he is a B. E. Engineer. He has spent most part of his life in this Industry with the bona fide hopes of getting a decent return for his efforts. But his hopes could not be materialised purely on account of the paucity of funds

6. The plaintiff further contends that he "still has confidence to regain the lost glory in the running of the industry" The defendant has issued a notice directing

the plaintiff to refund the advance made to the industry. Therefore, the plaintiff has filed the suit for declaration that the Impugned calling off notice served on the plaintiff dated 21-4-1981 in respect of Kamala Industries, Ariyamanagalarn, Trichi is illegal, unjust, ultra vires and unenforceable and for consequential relief of permanent injunction restraining the defendant, his men, agents and others from giving effect to the impugned notice, and for a mandatory injunction directing the defendant to render all possible assistance and helps to the plaintiff to get his Kamala Industries Unit keep running under nursing programme".

7. Along with the plaint, a petition for the issue of a similar temporary injunction was filed.

8. The defendant contended inter alia also that the suit is not maintainable, that in this particular case, the Bank has gone a very long way to help the plaintiff because the plaintiff is the son-in-law of one H. K. Ramaswami, who is the Managing Director of "Seshasayee group", that according to the audited balance sheet as on 31-3-1977, produced by the plaintiff himself, the plaintiff had drawn a sum of Rs. 71,567,97 from the plaintiff firm. that the accumulated losses of the firm stood at Rs. 2,81,900 by Sept. 1980. that the contribution of the entrepreneur viz, the plaintiff is only a paltry sum of Rs. 20,000, that the plaintiff's suit is incompetent, that there is no contractual liability or any other liability imposed by statute on the defendant to sustain the venture of the plaintiff and that therefore, the suit may be dismissed with costs. The defendant contested the application for injunction on similar grounds.

9. In addition. the plaintiff demanded a sum of Rs. 1000 per mensem for his living expenses in the affidavit filed in I. A. No. 206 of 1981. The learned Second Additional Subordinate Judge granted the injunction prayed for. but refused to grant the allowance of Rs. 1000, per mensem prayed for by the plaintiff to defray the family expenses. Against the order of the learned Second Additional Subordinate Judge of Tiruchirapalli, the civil revision petition has been preferred.

10. I may preface my order with the observation that the order of the learned Subordinate Judge is as fantastic as the claim of the Petitioner order 39 C. P. C., Provides for the issue of temporary injunction and interlocutory orders and lays down cases in which temporary injunction may be granted. it is laid down in Order 39, R. I that-

"Where in any suit it is proved by affidavit or otherwise - (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors: (c) 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."

11. Rule 2 reads as follows -

"Injunction to restrain repetition or continuance of breach - (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury Of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account giving security or otherwise as the court thinks fit."

This is not a case wherein it is alleged that any property in dispute is in danger of being wasted, damaged, or alienated by the defendant or wrongfully sold in execution of the decree by the defendant. In fact, no property is the subject matter of the suit. The defendant has not threatened or intended to remove or dispose of any property with a view to defrauding any creditor, and therefore, O. 39, R. 1(b) has no application to the facts of the instant case. Cl. (c) of R. 1 of Order 3j) has no application because there is no threat by the defendant to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. Hence, no temporary injunction can be issued by virtue of any of the provisions incorporated in Rr. 11 and 2 of Order 39 of the Civil P. C.

12. Now I may consider the implications of granting the prayer in the plaint. The first prayer is for a declaration that the notice served on the plaintiff dated 21-4-1981 in respect of Kamala Industries, Ariyamangalam, Trichi, is illegal, unjust. ultra vires and unenforceable and for consequential relief of permanent injunction restraining the defendant, his men agents and others from giving effect to the impugned notice. What is the implication of this prayer and what would be the effect of granting this prayer? The defendant bank can never demand repayment of the loans granted to the plaintiff. The injunction sought for is not even restricted to any particular amount or any particular period and nevertheless this fantastic prayer has been granted by the learned Sub-Judge.

13. The second relief sought for in the plaint is a mandatory injunction directing the defendant to render all possible assistance and helps to the plaintiff to get his Kamala Industries Unit keep running under nursing programme. This relief is not limited to merely the defendant bank granting such loans as the plaintiff wants and as often as he wants, but extends to rendering all possible assistance and help to the plaintiff. If this prayer is granted, the defendant will have to find raw

materials for the industry of the plaintiff if there is any shortage in the supply of iron, etc. persuade the Chairman of the Electricity Board to supply electricity to the industry of the plaintiff even during the times of shortage and dissuade the workers from going on strike if they have any intention to do so or persuade them to go to the factory and work if they had already gone on strike.

Similarly, if the products Of the plaintiff's factory are not purchased by the Heavy Electricals Ltd., or other customers, the agent of the defendant bank will have to persuade the customer or find customers to buy them. Thus the defendant and the officers of the defendant bank will have to render all possible assistance and help to the plaintiff, -to get his Kamala Industries Unit keep running under the nursing programme. Even the plaintiff would not have contemplated such help and might have instructed his counsel merely to obtain an order directing the bank to lend him money to keep his industry running. This omnibus prayer in the plaint, reiterated in the petition for a temporary injunction has been readily granted by the learned Subordinate Judge. This injunction cannot possibly be implemented. Similarly, the injunction sought in the prayer would be to prevent the defendant from enforcing its -legal right to get repayment.

14. An injunction can be claimed only on the basis of a legal right. S. 38 of the Specific Relief Act lays down that subject to the other provisions contained in or referred to by Chapter VIII, a perpetual injunction may be granted to the plaintiff to prevent the breach of any obligation existing in his favour, whether expressly or by implication, and that when any obligation arises from contract, the court shall be guided by the rules and provisions contained i Chapter II. There is no obligation on the part of the defendant either to lend money or to keep the industry of the plaintiff running. Therefore, sub sec. (1) of S. 38 has no application. As an obligation does not arise from any contract sub-sec. (2) has also no application. Sub-sec. (3) lays down that

"When the defendant invades or threatens to invade the plaintiff's right to or enjoyment of , property, the court may grant a perpetual injunction in the following cases. namely-

- (a) where the defendant is trustee of the property for the plaintiff-,
- (b) where there exists no standard for ascertaining the actual damage caused or likely to be caused by the invasion..
- (c) where the invasion is such that compensation in money would not afford adequate relief:
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings."

None of these provisions is to the instant case.

15. On the other hand, S. 41 of the S. R. Act lays down that "An injunction cannot be granted

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the, suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought":

The defendant is entitled to file a suit in the sub-court for recovery of the amount due from the plaintiff. Therefore, the provisions of S. 41(b) would be a bar to the grant of an injunction. restraining the defendant from filing a suit in the sub-court. Sec. 41(i) of the S. R. Act lays down that an injunction cannot be granted "when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of" the court". It is seen from the written statement that the plaintiff has withdrawn a sum of Rs. 71567-97 from the firm, if it is a firm, and had thereby rendered the industry more sick than ever before. Having invested a sum of Rs. 20,000 only, he has accumulated losses to the tune of Rs. 2,81,900 by Sept. 1980. He has not repaid at any time the loans borrowed by him. He has not given any valid reason to justify the losses sustained by him during the past few years since the industry was started.

16. A right to injunction can be claimed only under the appropriate section of the S. R. Act. The general principles which should govern the issue of injunctions have been laid down and are incorporated in S. 38 of the S. R. Act. They are well settled and well recognized principles applied by courts in India before they were incorporated in the S. R. Act, 1963, and the earlier Act preceding the same. They are based on principles of justice, equity and good conscience. The injunction sought by the plaintiff is an injunction to help him to commit the breach of an agreement viz., the liability to repay the amount borrowed by him from the defendant.

The purpose of granting an injunction should be to prevent the breach of an obligation existing in favour of the plaintiff. There is no obligation cast on the defendant to lend the plaintiff as much money as he wants or to keep his industry in a running condition nursing it to run notwithstanding any act of mismanagement, misfeasance or malfeasance that might be committed. It is open to the defendant and the agent of the defendant Bank to refuse to lend any further sums to the plaintiff if they are not satisfied with his skill, character or antecedents or any of them. It is the duty of the agent of the State Bank of India, to recover the loans already granted if he finds that the financial condition of the plaintiff is deteriorating, that he is in doldrums, and that the amount lent may not be realized if the defendant waits till there is a complete crash in the affairs of the plaintiff. A promisee is entitled to recover the money lent on a promissory note, and the money is payable on demand. In these circumstances, to ask for an injunction permanently interdicting the defendant from recalling the

loan granted is possibly the most sanguine of all prayers that debtors can dream of, but nevertheless highly fantastic. against orders. Judicial country such are learned As observed in my earlier order, the order of the Sub.-Judge is a startling performance by giving effect to which the State Bank of India will deplete itself of all its finances. If such orders can be obtained by parties, every one would be very eager to file suits every Bank and obtain such only it may be that no other Officer would be found in this who would be willing to pass order as that passed by the Sub Judge directing the State Bank of India to nurse the industry of the plaintiff by continuing to advance loans,

17. Therefore this civil revision petition is allowed and the order of the learned Second Additional Sub Judge granting the injunction as prayed for is set aside. There will be no order as to costs.

18. However, any application by plaintiff for further loans may be considered by the officers concerned and may be granted if they are satisfied that the industry is not likely to continue to go down the hill and the money go down the drain and the management go down in the scale of values.

19. Petition allowed.