(1991) 01 MAD CK 0072

In the Madras High Court

Tamil Nadu Electricity Board and Another APPELLANT

Vs

V. Thiyagarajan and Brothers and Another RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (1991) 2 MLJ 138

Hon'ble Judges : Kanakaraj, J

Bench : Division Bench

Judgement

Kanakaraj, J.—The first respondent filed a suit, O.S. No. 1604 of 1990 in the District Munsif Court, Madurai Town against the second respondent herein viz., the Union Bank of India, without impleading the petitioner herein for the relief of a permanent injunction, restraining the bank from making any payment to the petitioner on the basis of the suit bank guarantees, pending adjudication of the dispute between the petitioner and the first respondent or till 31.3.1991. Even a Bare perusal of the reliefs sought for clearly shows that the petitioner was a necessary party to the suit. The suit was directly meant to prejudice the interests of the petitioner. Admittedly, there was a contract between the petitioner and the first respondent with respect to certain works the value of which is said to be Rs. 1,91,43,571. The first respondent had apparently furnished bank guarantees in accordance with the contract. Disputes had arisen between the petitioner and the first respondent in respect of the contract. The petitioner was apparently trying to encash the amounts under bank guarantee. To prevent such an action, the first respondent had filed the suit without impleading the petitioner. Pending disposal of the suit, Interlocutory Application, I.A. No. 1089 of 1990 was filed seeking an interim injunction. On this application, an ad-interim order was passed on 21.9.1990 in the following terms:

Heard the petitioner and perused the documents filed in support of the claim. The petitioner has brought out a case in prima facie, hence ad-interim injunction and notice by 23.10.1990.

2. Another suit, O.S. No. 8800 of 1990 had been filed in the City Civil Court, Madras in respect of the very same contract. In the suit, reliefs had been sought for with reference to the withdrawal of certain items of work, cancellation of the contract and to preserve the original agreement between the parties. Pending disposal of the suit, four Interlocutory Applications were filed, one of which is I.A. No. 19688 of 1990 to restrain the petitioner from encashing the bank guarantees given through the second respondent-bank. In this suit, however, the petitioner has been made as a party. All the four interlocutory applications were heard and finally disposed of on 28.11.1990 dismissing the applications.

3. Mr. Venkatapathy, learned Counsel for the petitioner argues that the order of injunction granted on 21.9.1990 is totally without jurisdiction and vitiated by non-application of mind with reference to Order 39, Rules 1 and 2, C.P.C. On the other hand, Mr. Srinivasan, learned Counsel for the first respondent, argues that it is open to the petitioner board to implead themselves in the suit and the Interlocutory Application and make out a case for vacating the injunction before the trial Court. According to Mr. Srinivasan, the petitioner cannot try to short-circuit the process by approaching this Court under Article 227 of the Constitution of India. The contention of the first respondent is that the petitioner has no locus standi to file this civil revision petition under Article 227 of the Constitution of India, as the petitioner-board is not a party to the order challenged. Dealing with this objection, Mr. Venkatapathy, learned Counsel for the petitioner, relies on the judgment of the Supreme Court in Bhikoba Shankar Dhumal (Dead) by Lrs. and Others Vs. Mohan Lal Punchand Tathed and Others, . It was pointed out in that case that whoever had an interest in the proceedings may question the order by invoking Article 227 of the Constitution of India. In Ramalinga Naicker Vs. Chennakrishna Konar and Others, , S. Ratnavel Pandiyan, J., (as he then was) has held that if a party has not availed of Order 39, Rule 4, C.P.C., it would be improper to file a revision u/s 115 of C.P.C. to question an ad-interim order. That is undoubtedly the normal rule, but there is always an exception to the rule. Further, we are concerned with a revision under Article 227 of the Constitution of India. The scope and contract of the power under Article 227 of the Constitution of India is certainly different from the scope and content of the power u/s 115, C.P.C. In AIR 1977 1718 (SC) , it has been held that a decree of a Civil Court which is totally without jurisdiction can be canvassed in proceedings under Articles 226 and 227 of the Constitution of India. In this case, I find though the trial court has purported to say that a prima facie case had been made out, it appears to me that the trial Judge has mechanically passed the order without a real application of mind. I have already pointed out that even a bare perusal of the prayer in the suit suggests that the petitioner is a necessary party to the suit. I do not think that the trial court was justified in passing an order of interim injunction without the petitioner having been made a party. Secondly, the law relating to Order 39, Rules 1 and 2, C.P.C. in respect of a bank guarantee as laid down by the Supreme Court should have been kept in mind. Setting aside a similar order of injunction granted by the Allahabad High

Court, the Supreme Court observed in U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., , as follows:

I am of the opinion that this is not a case in which injunction should be granted. An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with except in case of fraud or in case of question of apprehension of irretrievable injustice has been made out. This is the well settled principle of the law in England. This is also a well settled principle of law in India, as I shall presently notice from some of the decisions of the High Court and decisions of this Court.

Again, after analysing various decisions, the Supreme Court observed as follows:

This is not a case where irretrievable injustice would be done by enforcement of bank guarantee. This is also not a case where a strong prima facie case of a fraud in entering into a transaction was made out, if that is the position, then the High Court should not have interfered with the bank guarantee.

4. I am, therefore, convinced that the order of the trial court dated 21.9.1990 is totally without jurisdiction and is liable to be set aside and it is accordingly set aside. The Civil Revision Petition is allowed. There will be no order as to costs.

