
(1911) 02 BOM CK 0003
In the Bombay High Court
Case No : First Appeal No.115 of 1906

The Secretary of State

APPELLANT

Vs

Gajanan Krishna Mavlankar

RESPONDENT

Date of Decision : 18-02-1911

Acts Referred:

Citation : (1911) 13 BOMLR 273

Hon'ble Judges : N.G. Chandavarkar, J;Heaton, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.G. Chandavarkar, J.—In my opinion, on a proper construction of Section 424 of the CPC of 1882, notice was necessary in this case, as a condition precedent to suit. The words in the section are: "No suit shall be instituted against the Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity." From the repetition of the word "against", I think the "act," described in the section, was meant to relate only to the public officer, not to the Secretary of State. It shows that the Legislature intended to differentiate between the Secretary of State and other public officers. Further, if the words "in respect of an act" & c., had been intended by the Legislature to apply to the Secretary of State also, it would have been more appropriate to use the words "done by either" instead of the words "done by him."

2. The question is not quite free from difficulty. In *The Secretary of State for India in Council v. Rajluchi Debi* ILR (1897) Cal. 239, Ameer Ali J. construed the section in a different way. In appeal from his decision MacLean C. J. was inclined to differ from that construction; but the appeal was decided on other grounds and so the learned Chief Justice's opinion was a mere obiter dictum.

3. The considerations in support of the construction contended for by the learned Advocate-General in support of the present appeal seem to me to be stronger

than those urged for the other construction.

4. But it is urged by Mr. Lowndes for the respondent that, at all events, a notice is not necessary in a suit for an injunction against the Secretary of State; and in support of that the learned counsel relies on the principle of the decision in *Flower v. Local Board of Low Leyton* (1877) 5 Ch.D. 347, as controlling the interpretation of Section 424 of the Code of Civil Procedure. No doubt in that English case it was held that in suits for an injunction no notice is necessary; but that was on the construction of the particular section of the Act there concerned. The words of the section which had to be construed there were, "an act done or intended to be done or omitted to be done" and the learned Judges held that upon a proper construction of the language of the section there, what the Legislature had in view was an act done, not an act threatened. An injunction, it was said there, is sought in respect of an act threatened; and, therefore, the words in question were held not to apply to a suit for an injunction. But that is not the case before us.

5. If I am right in my construction of Section 424, the words "no suit shall be instituted against the Secretary of State in Council" are wide enough to include suits of every kind, whether for injunction or otherwise. It may be that in any particular case the circumstances might be such as to satisfy the Court that it was practically impossible to give a notice, because the act threatened was so imminent that the plaintiff was driven to a suit by the conduct of Government. In such a case it might be that the Court would hold that no notice as a condition precedent to suit was necessary. But that would be, not because of the law in Section 424 of the CPC but because of the introduction into the suit of another law, viz. that the defendant by his conduct had brought about a state of things which prevented the plaintiff from complying with the provisions of the section in question.

6. No such case arises here. On the ground, therefore, that no notice was given by the plaintiff as required by Section 424, the suit must be held bad. The decree of the Court below must be reversed and the suit dismissed with costs throughout upon the respondent.

Heaton, J.

7. I am of the same opinion as to the construction of Section 424. I am unable to understand how *Flower's* case (1877) 5 Ch.D. 347 is an authority for saying that a suit is excluded from the operation of Section 424 of the CPC because it is a suit for an injunction. On this point the observations of the Chief Justice of Bengal reported in the case of *The Secretary of State for India in Council v. Rajluchi Debi* ILR (1897) Cal. 239 are very pertinent. We cannot take *Flower's* case as an authority for the construction of a section in an entirely different Act, in different terms, and for a different purpose. We can at best only look to the principle underlying the decision there. The principle of that case is not, as I understand it, that the words of such a section as that under consideration,

though in terms covering such a suit, cannot apply to any suit for an injunction. Its meaning, so far as it is general, is, I think, this: where there is i a serious injury so imminent that it can only be prevented by an immediate injunction, a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice; if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice. The reason is that to wait until the due notice had been given would be to allow the injury which it is the object of the suit to prevent, so there would be a clear denial of justice. The principle is that in construing an Act we are to read the words in the light of the object of the Act and are to presume that a consistent purpose underlies those words. The purpose of the CPC broadly put, is to regularize and facilitate the work of the Courts-; so that they may be best able to do justice. That purpose would no doubt be defeated if an injunction were immediately required and absolutely necessary in order to prevent serious injury and yet the Court could not issue it. It must be presumed that this is not intended unless it is specifically expressed. To that extent, speaking for myself, I would follow the principle of Flower's case. But of course one would have to be very clearly satisfied that an immediate injunction was absolutely essential. There is no indication here that serious and irreparable injury would follow from failure to obtain an immediate injunction: or that any injury whatever, which could not be amply and appropriately recompensed by damages, would ensue from delay in issuing an injunction.