

APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee and Fletcher JJ.

RAM KISSEN JOYDOYAL

v.

POORAN MULL AND OTHERS.*

1920

Feb. 9.

Injunction—Arbitration proceedings—Declaratory suit—Contract, the subject-matter of the arbitration, denied—Competency of the Court to grant injunction—Question of competency raised for the first time on appeal—Specific Relief Act (I of 1877), ss. 52, 53, 54 and 56.

The Court of Appeal cannot avoid the decision of a pure question of law, which does not depend on the determination of a question of fact, and which goes to the root of the matter and raises the question whether the Court was competent to grant the injunction sought for by the plaintiffs.

Meenakshi Naidoo v. Subramaniya Sastri (1) and *Connecticut Fire Insurance Company v. Kavanagh* (2) referred to.

Where there is a breach of an existing legal right which is vested in the applicants, the breach thereof may be restrained by injunction.

Imperial Gas Light and Coke Company v. Broadbent (3) referred to.

In a suit for declaration that a certain contract entered into between the plaintiffs and the defendants was not binding on the plaintiffs, inasmuch as they did not enter into such a contract, and that they were accordingly entitled to an injunction to restrain arbitration :

Held, that no injunction could be claimed under section 54 of the Specific Relief Act.

Held, also, that the injunction claimed should not be granted in view of the provisions of clause (1) of section 56, which laid down that an injunction could not be granted when equally efficacious relief could certainly be obtained by any other usual mode of proceeding (except in case of breach of trust).

Held, also, that if the plaintiffs' case that they did not enter into the alleged contract were well-founded, the arbitration proceedings before the Bengal Chamber of Commerce, even if they resulted in an award, could

* Appeal from Original Civil No. 39 of 1919 in Suit No. 740 of 1917.

(1) (1887) I. L. R. 11 Mad. 26 ; (2) [1892] A. C. 473.

L. R. 14 I. A. 160.

(3) (1859) 7 H. L. C. 600.

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only terminate in an award which would be a nullity and could not possibly affect the rights of the plaintiffs; if the arbitrators made an award in favour of the defendants (which itself was doubtful), the plaintiffs would have ample opportunity to protect themselves by an appropriate proceeding.

He/d, also, that sections 54 and 56 must be read together as supplementing each other, and it would be an erroneous construction of the statute to hold that the right to an injunction should be determined independently of the provision of sections 54 and 56 by reference to the terms of section 53.

APPEAL by Ram Kissen Joydoyal, the defendants, from the judgment of Greaves J.

On the 31st May, 1917, Pooran Mull Haribux and Chotey Lal, who were partners of the firm of Chooni Lal Gobordhone, carrying on business as merchants, shroffs and commission agents in Calcutta, received a letter from the Registrar, Bengal Chamber of Commerce, informing them that the firm of Ram Kissen Joydoyal had applied for arbitration in accordance with the provisions of a contract, in a dispute with them regarding a claim for difference on 20,000 Hessian C Bags (April portion) delivered under Messrs. Tansookrai's contract No. 128 of 13th December, 1916, and asking them for a statement of their case together with a deposit of Rs. 298 on account of fees and the original bought note. On the 1st June, 1917, Messrs. Chooni Lal Gobordhone wrote to the Registrar informing him that they never entered into the alleged contract and that, consequently, there was no valid submission to arbitration and the Tribunal had no jurisdiction. On the 14th June, 1917, the Registrar called upon Messrs. Chooni Lal Gobordhone to send in their statement and papers on or before the 20th June, 1917, and in default the arbitration would be proceeded with in their absence. Messrs. Chooni Lal Gobordhone again wrote denying having entered into the alleged contract and submitted that the Tribunal had no

jurisdiction. On the 22nd June, 1917, the Registrar informed Messrs. Chooni Lal Gobordhone that the arbitration would proceed. On the 27th June, 1917, Messrs. Chooni Lal Gobordhone filed a suit against Messrs. Ram Kissen Joydoyal praying for a declaration that the plaintiffs did not enter into the said alleged Messrs. Tansookrai's contract No. 128, dated the 13th December, 1916, and the same was not binding, for a declaration that there was no submission to arbitration by the plaintiffs, and for an injunction restraining the defendant firm, its servants and agents from proceeding with the said arbitration before the Bengal Chamber of Commerce Tribunal of Arbitration. Upon the case coming on for hearing Mr. Justice Greaves decreed the suit. The defendants, thereupon, appealed.

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Mr. S. N. Bannerjee and *Mr. R. N. Mitter*, for the appellants.

Mr. S. C. Bose, for the respondents.

MOOKERJEE J. This is an appeal by the defendants in a suit for a perpetual injunction to restrain arbitration proceedings before the Bengal Chamber of Commerce Tribunal of Arbitration. The plaintiffs instituted this suit for declaration that they did not enter into the Contract No. 128 with the defendants dated the 13th December, 1916, that the contract is not binding on them and that they are accordingly entitled to an injunction to restrain the defendants from proceeding to arbitration pursuant to the usual arbitration clause contained in the contract. The defendants traversed all the material allegations in their written statement. The only issue raised in the Court below was, whether the plaintiffs were liable on the contract. Mr. Justice Greaves, on the evidence adduced, came to the conclusion that the plaintiffs did not enter into

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the contract and that the same was not binding on them; he accordingly granted an injunction restraining the defendants from proceeding with the arbitration before the Bengal Chamber of Commerce.

On the present appeal, it has been argued that the plaintiffs, on the face of the plaint, were not entitled to the relief claimed by them. This point was not taken in the Court below and does not appear to have been raised in the Memorandum of Appeal presented to this Court. On behalf of the respondents, it has been argued that this point should not be allowed to be raised for the first time here. We cannot accede to this contention, because although the question cannot strictly be deemed as one of jurisdiction in the sense of competency of the Court to entertain the suit, still the objection goes to the root of the matter and raises the question whether the Court was competent to grant the relief claimed by the plaintiffs. If the Court was not competent to grant the injunction claimed by the plaintiffs, it is manifest that the decree for injunction should not be allowed to stand, merely because the point was overlooked and neither raised in the Court below nor mentioned in the Memorandum of Appeal presented to this Court. That the Court of Appeal cannot avoid the decision of a pure question of law, of this character, which does not depend on the determination of a question of fact, and which, besides, disputes the authority of the Court to make an order of a certain description, is clear from the decisions of the Judicial Committee in *Meenakshi Naidoo v. Subramniya Sastri* (1) and *Connecticut Fire Insurance Co. v. Kavanagh* (2).

In the plaint the plaintiffs asked for the following reliefs:—“For a declaration that the plaintiffs did not

(1) (1887) I. L. R. 11 Mad. 26; (2) [1892] A. C. 473, 480.

“enter into the said alleged contract, and the same is
 “not binding on them, and for a declaration that there
 “was no submission to arbitration by the plaintiffs,
 “and for an injunction restraining the defendant firm,
 “its servants and agents from proceeding with the
 “said arbitration before the Bengal Chamber of Com-
 “merce Tribunal of Arbitration.” It is plain that this
 is not a suit for a mere declaration of title without
 consequential relief, within the meaning of section 42
 of the Specific Relief Act. Consequently, no question
 arises as to the scope of that section, as explained in
 the judgment of Sir Lawrence Jenkins C.J. in the case
 of *Deokali Koer v. Kedar Nath* (1). The suit is in
 essence one for a perpetual injunction and the prayers
 for declaration are merely ancillary thereto. Thus
 the fundamental question for determination is,
 whether the Court was competent to grant the injunc-
 tion sought for by the plaintiffs.

Now, as was pointed out by Sir Arthur Wilson in
 the case of *Tituram Mukerji v. Cohen* (2), “the right
 “to an injunction depends, in India, upon statute and
 “is governed by the provisions of the Specific Relief
 “Act.” We must therefore examine the provisions of
 Chapters IX and X of the Act. Chapter IX is headed
 ‘Of Injunctions generally.’ Section 52, the first of the
 sections contained in Chapter IX, states that preven-
 tive relief is granted at the discretion of the Court by
 injunction, temporary or perpetual. Section 53 next
 defines the injunctions as of two classes. The second
 paragraph, which is devoted to perpetual injunctions,
 lays down that a perpetual injunction can only be
 granted by the decree made at the hearing and upon
 the merits of the suit. The defendant is thereby
 perpetually enjoined from the assertion of a right or

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(1) (1912) I. L. R. 39 Calc. 704.

(2) (1905) I. L. R. 33 Calc. 203.

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from the commission of an act, which would be contrary to the rights of the plaintiff. This provision consequently defines the mode in which a perpetual injunction can be granted and its restraining effect on the defendant when it has been granted. The next chapter is headed 'Of Perpetual Injunction,' and opens with section 54, which defines when perpetual injunctions can be granted. The first paragraph of the section lays down that, subject to the other provisions contained in, or referred to by this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. The next two paragraphs deal with two distinct classes of cases, namely, *first*, the case when the obligation arises from contract, and, *secondly*, the case where the defendant invades or threatens to invade the plaintiffs' right to, or enjoyment of, property. In the former class of cases, the principle is formulated that the Court shall be guided by the rules and provisions contained in the second chapter of the statute. In the latter class of cases, it is stated that the Court may grant a perpetual injunction in five specific categories of events. Mr. Bose, for the respondents, has not seriously contended that the prayer for injunction in the present litigation can be brought within the scope of section 54. This is fairly clear from the opening and controlling paragraph of the section, which provides that in order to entitle a litigant to a perpetual injunction, he must establish that the injunction is required to prevent a breach of an obligation. The term 'obligation' is defined in section 3 to include every duty enforceable by law so that when a legal duty is imposed on one person in respect to another, that other is invested with the corresponding legal right. The first paragraph of the section thus

establishes the broad and general rule that given the breach of an existing legal right which is vested in the applicant, the breach thereof may be restrained by injunction. This is an elementary principle, for as Lord Kingsdown said in *Imperial Gas Light & Coke Company v. Broadbent* (1), when a plaintiff applies for an injunction to restrain a violation of an alleged right, if the existence of the right be disputed, he must establish that right before he gets the injunction to prevent the recurrence of its violation. We accordingly invited the learned counsel for the respondents to formulate the precise obligation of which there had been a breach in the case before us. But he was unable to show that there was any legal right in the plaintiffs which had been violated or had been threatened with violation by the defendants. Consequently, it is plain that no injunction can be claimed under section 54. Mr. Bose was, thereupon, constrained to invoke the aid of the second paragraph of section 53; he argued in substance that the right to an injunction must be determined by reference to the provisions of section 53 and that the provisions of section 54 should be treated as merely illustrative. We are of opinion that there is no foundation for this contention. Sections 54 and 56 must be read together, as supplementing each other. The former defines the circumstances under which perpetual injunctions may be granted; the latter enumerates the cases where an injunction must not be granted. It would, in our opinion, be an erroneous construction of the statute to hold that the right to an injunction should be determined independently of the provisions of sections 53 and 56 by reference to the terms of section 53. As we have already stated, the injunction in this case cannot be claimed under

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(1) (1859) 7 H. L. C. 600, 612.

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the provision of section 54. We are further of opinion that the injunction claimed should not be granted in view of the provisions of clause (i) of section 56, which lays down that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding (except in case of breach of trust). In the case before us, the respondents allege that they did not enter into the alleged contract. If that case is well-founded, the arbitration proceedings before the Bengal Chamber of Commerce, even if they result in an award, can only terminate in an award which would be a nullity and could not possibly affect the rights of the plaintiffs; if the arbitrators make an award in favour of the defendants (which itself is doubtful), the plaintiffs will have ample opportunity to protect themselves by an appropriate proceeding. We are clearly of opinion, on all these grounds, that the injunction claimed cannot be granted.

Reference was made on behalf of the appellants to the decision in the *North London Railway Co. v. The Great Northern Railway Co.* (1) which was followed by Rankin J. in *Sardarmull Jessraj v. Agar Chand Mehata* (2) in support of the view that when the contract is denied, the Court will not grant an interlocutory injunction to restrain arbitration proceedings which, according to the applicant, would be null and futile. On behalf of the respondents, reliance was placed on the earlier decisions of Sir George Jessel in the case of *Beddow v. Beddow* (3), *Malmesbury Railway Co. v. Budd* (4), and *Aslatt v. Corporation of Southampton* (5), which were all reviewed in the case of *The Northern London Railway Co. v. The Great Northern*

(1) (1883) 11 Q. B. D. 30

(3) (1878) 9 Ch. D. 89.

(2) (1919) 23 C. W. N. 811.

(4) (1876) 2 Ch. D. 113.

(5) (1880) 16 Ch. D. 143.

Railway Co. (1). It is not necessary for us to deal with these cases, because, as we have already pointed out, the authority of the Court to grant an injunction in the present case depends on the true construction of the provisions of the Specific Relief Act.

The result is that this appeal must be allowed and the suit dismissed. We direct that the plaintiffs respondents do pay to the defendants appellants the costs of this appeal as also the costs of hearing for two days in the trial Court.

FLETCHER J. I agree.

O M.

Appeal allowed.

Attorneys for the appellants : *Pugh & Co.*

Attorneys for the respondents : *Fox & Mandal.*

(1) (1883) 11 Q. B. D. 30.

CIVIL RULE.

Before Sanderson C. J. and Walmsley J.

MAKHAN LAL SAHA

v.

SAROJENDRA NATH SAHA.*

Sanction for Prosecution—Grant of sanction to prosecute for resistance to attachment of movables on evidence only of the executing peon—Other evidence called for by the Court but not heard when produced, notwithstanding previous summonses on witnesses and adjournments for their appearance—Delay in granting sanction—Criminal Procedure Code (Act V of 1898), s. 195.

The Court executing a decree has jurisdiction, if satisfied on the evidence, without cross-examination, solely of the peon, who was alleged to have been resisted in the attachment of moveables, that a *primâ facie* case had been made out, to sanction the prosecution of the persons

*Civil Rule No. 3 of 1920 against the order of J. Macnair, District Judge, Faridpur, dated Dec. 4, 1919.

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