

ORIGINAL CIVIL.

Before Lord-Williams J.

A. MILTON & CO.

v.

OJHA AUTOMOBILE ENGINEERING CO.*

1930

Jan. 9, 13.

Injunction—Jurisdiction—Agreements in restraint of proceedings in court outside jurisdiction—Injunction in personam—Court's inherent right to protect suitors resorting to it—Position of courts in India inter se,—Indian Contract Act (IX of 1872), s. 28—Specific Relief Act (I of 1877), s. 56—Code of Civil Procedure (Act V of 1908), O. XXXIX ; s. 136(1).

Section 56 of the Specific Relief Act contemplates injunctions directed to the court itself and does not prevent any court from making an order *in personam* forbidding an individual from proceeding in another court.

The case of the *Carron Iron Company v. Maclaren* (1) is not an authority for the proposition that a court will not grant an injunction against a person who is not within its jurisdiction, so that he would be subject to process of contempt.

The position of courts in India *inter se* is quite different from that of English courts as regards foreign courts.

The Calcutta High Court has an inherent right to protect suitors resorting to it and to prevent interference with suits instituted in it.

Achratlal Kesavlal Mehta & Co. v. Vijayam & Co. (2) and *Mungle Chand v. Gopal Ram* (3) followed.

Cohen v. Rothfield (4) and *Amir Dulhin v. Administrator-General of Bengal* (5) referred to.

The Carron Iron Co. v. Maclaren (1), *Vulcan Iron Works v. Bishumbhur Prosad* (6), *Jumna Dass v. Harcharan Dass* (7) and *Mulchand Raichand v. Gill & Co.* (8) considered.

APPLICATION by the plaintiffs.

The plaintiff company entered into an agreement with the defendant firm, one of the terms of such agreement being—"That any litigation out of the agreement shall be settled in the High Court of Judicature, Calcutta, or in the Court of Small Causes, Calcutta, and in no other courts.

*Application.

- | | |
|--|-----------------------------------|
| (1) (1855) 5 H. L. 416 ; 10 E. R. 961. | (5) (1895) I. L. R. 23 Calc. 351. |
| (2) (1925) 49 Mad. L. J. 189. | (6) (1908) I. L. R. 36 Calc. 233. |
| (3) (1906) I. L. R. 34 Calc. 101. | (7) (1911) I. L. R. 38 Calc. 405. |
| (4) [1919] I. K. B. 410. | (8) (1919) I. L. R. 44 Bom. 283. |

“whatsoever.” Under the said agreement the plaintiffs supplied cars, lorries and accessories to the defendants, for which the latter made payments from time to time on account. The plaintiffs filed the present suit for the recovery of the sum of Rs. 14,092 being the amount of the balance due to them from the defendant firm, for an account and for an injunction restraining the defendant firm from proceeding with their suit against the plaintiffs filed in the Sub-Judge’s Court at Agra. The point, therefore, arose for adjudication in the present application for an *interim* injunction, whether the Calcutta High Court could issue an injunction to restrain the defendant firm from proceeding with the suit in the Agra court.

Mr. B. C. Ghose and *Mr. N. C. Chatterjee*, for the plaintiff applicants.

Mr. K. P. Khaitan, for the defendant respondents.

LORT-WILLIAMS J. The facts of this case are peculiar. The plaintiffs and defendants entered into an agency agreement for the sale of motor cars in Agra and elsewhere.

By clause 18 thereof it was agreed that “any litigation arising out of this agreement shall be settled in the High Court of Judicature, Calcutta, or in the Small Causes Court, Calcutta, and in no other court whatsoever.”

Disputes having arisen, the defendants brought a suit in Agra. Subsequently, the plaintiffs brought a suit in Calcutta claiming *inter alia* an injunction to restrain the defendants from proceeding with the Agra suit.

Then they applied to the Agra court for a stay, upon the contention that the Agra court had no jurisdiction, owing to the above clause. This application was refused, but a temporary stay was granted pending an application to the High Court at Calcutta.

1930
A. MILTON
& Co.
v.
OJHA
AUTOMOBILE
ENGINEERING
Co.

1930
 ———
 A. MILTON
 & Co.
 v.
 OJHA
 AUTOMOBILE
 ENGINEERING
 Co.
 ———
 LORT-
 WILLIAMS J.

The plaintiffs now ask for an order restraining the defendants from proceeding with the suit at Agra until the final determination of this suit.

They base their contention on the above clause, and in addition say that this suit is more comprehensive than the Agra suit, that the contract was made in goods supplied from and other incidents of the contract arose in Calcutta; that from every point of view, it will be more convenient to litigate in Calcutta, and that the defendants commenced their suit in Agra with the sole object of harassing and delaying the plaintiffs.

So far as it is necessary for me to find facts, I am satisfied from the affidavits that plaintiffs' contentions are correct.

But defendants' counsel has raised various points of law.

He contends, in the first place, that the clause itself is *ultra vires* and illegal, being in conflict with section 28 of the Indian Contract Act. This contention, in my opinion, is unsound, for the reasons given in *Ahratlal Kesavlal Mehta & Co. v. Vijayam & Co.* (1).

Secondly, he says that section 56 (b) of the Specific Relief Act prohibits an injunction to stay proceedings in a court not subordinate to that from which the injunction is sought. In my opinion, this section contemplates injunctions directed to the court itself and does not prevent any court from making an order *in personam*, forbidding an individual from prosecuting proceedings in another court. *Cohen v. Rothfield* (2): Scrutton L. J. at p. 413. Moreover, section 56 refers only to perpetual injunctions. Temporary injunctions are regulated by the Code of Civil Procedure (Order XXXIX): see section 53, Specific Relief Act and *Amir Dulhin v. Administrator-General of Bengal* (3). But defendants' counsel next contends that the court will not grant any injunction,

(1) (1925) 49 Mad. L. J. 189.

(2) [1919] 1 K. B. 410.

(3) (1895) I. L. R. 23 Calc. 351.

when, as in the present case, the defendant is not within the jurisdiction, because any such order *in personam* cannot be enforced. The answer to that contention is that Order XXXIX, rule 2 (1) provides that, in any suit for restraining the defendant from committing a breach of contract, a temporary injunction may be granted to restrain the defendant from committing the breach complained of, and under section 136 (1) of the Code of Civil Procedure such orders may be enforced outside the local limits of the jurisdiction of the court to which the application is made. Even if such specific provision had not been made, I am satisfied that the court is not powerless in such circumstances, and can, if necessary, resort to its inherent jurisdiction for the remedy.

It is contended for the defendants, however, that the jurisdiction of this Court to restrain a person from proceeding in courts outside its jurisdiction is governed by the same principles as those which governed courts of equity in England, and that no injunction will be granted where such person is not within the limits of the jurisdiction of this Court, so that he would be subject to process for contempt, and reliance in support of this contention is placed upon the judgments in the well-known case of the *Carron Iron Company v. Maclaren* (1), and the Indian cases *Vulcan Iron Works v. Bishumbhur Prosad* (2) and *Jumna Dass v. Harcharan Dass* (3), in which Fletcher J. and Stephen J., respectively, purported to follow that decision.

In my opinion, that case is not an authority for any such proposition. It decided that circumstances which would justify a restraint from proceeding in another court within the jurisdiction would warrant the imposition of a similar restraint with regard to proceedings in a foreign court, that such an order will not be made unless plain equity is in favour of it, and that it will be made only in such circumstances that it can be made effectual. The position of courts in

. 1930
 A. MILTON
 & Co.
 v.
 OJHA
 AUTOMOBILE
 ENGINEERING
 Co.
 —
 LORT-
 WILLIAMS J.

(1) (1855) 5. H. L. 416; 10 E. R. 961.

(2) (1908) I. L. R. 36 Calc. 233.

(3) (1911) I. L. R. 38 Calc. 405.

1930
 A. MILTON
 & Co.
 v.
 OJHA
 AUTOMOBILE
 ENGINEERING
 Co.
 LOBT-
 WILLIAMS J.

India *inter se* is quite different from that of English courts as regards foreign courts—there is no analogy between them.

The order of one Indian court may be effective against a person within the jurisdiction of another Indian court, when a similar order by an English court would be of no avail against a person within a foreign jurisdiction.

I agree with the opinion expressed by Sale J. in *Mungle Chand v. Gopal Ram* (1). The spirit of co-operation existing between the courts in India will often be sufficient alone to make such orders effectual, where otherwise they might not be apart altogether from reciprocatory rules, such as those relating to the transfer of decrees for execution. I have little doubt that the learned Judge at Agra will assist in making the order of this Court effectual, when it is brought to his notice.

Even if this were not so, I am satisfied that the order sought by the plaintiff can be made effectual.

The circumstances of trade between Agra and the port of Calcutta, the necessity for obtaining from Calcutta the supplies necessary for their business, and the arrangements incidental thereto, will necessitate the presence of the defendants within the jurisdiction of this Court, as heretofore, apart from the necessity of appearing to defend this suit, or of becoming liable to arrest, imprisonment and attachment, if and when the decree is transferred for execution.

On the merits, I have no doubt whatever that I ought to make this order—plain equity demands it. The defendants have instituted proceedings in the Agra court, in defiance of the specific terms of their contract, apart from the other considerations to which I have referred already. In such circumstances, the principles upon which the Court ought to proceed are clearly stated in the case of *Cohen v. Rothfield* (2). I have no doubt, in the circumstances of this case, that the continued prosecution of the Agra suit would be

(1) (1906) I. L. R. 34 Calc. 101.

(2) [1919] 1 K. B. 410.

oppressive and vexatious, and that the defendants can gain no advantage therefrom, which is not equally open to them in this Court. Finally, in my opinion, this Court has an inherent right to protect suitors resorting to it, and to prevent interference with suits instituted in it—see the judgment of Heaton J. in *Mulchand Raichand v. Gill & Co.* (1). If the Agra suit is allowed to proceed, I have no doubt that the plaintiffs in this suit will be hampered, embarrassed and delayed. For these reasons, an injunction will be granted restraining the defendants from prosecuting their Suit No. 138 of 1929 in the Sub-Judge's Court at Agra until the final determination of this suit, with liberty to the defendants to apply in case this suit be not prosecuted by the plaintiffs with diligence and expedition.

Application allowed.

Attorneys for the applicants: *Leslie & Hinds.*

Attorneys for the respondents: *Khaitan & Co.*

O. U. A.

(1) (1919) I. L. R. 44 Bom. 283, 292.

1930
 A. MILTON
 & Co.
 v.
 OJHA
 AUTOMOBILE
 ENGINEERING
 Co.
 ———
 LORT-
 WILLIAMS J.