

REVISIONAL CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

1939
December, 19

BECHARAM BABURAM (DEFENDANT) v. BALDEOSAHAI
SURAJMAL (PLAINTIFF)*

Civil Procedure Code, section 151—Inherent jurisdiction—Injunction—Stay of suit inter partes in another court instituted contrary to agreement—Power to act ex debito justitiae apart from any express provision of the Code.

The Civil Procedure Code is not exhaustive, and apart from it the courts have the power to act *ex debito justitiae* in order to do that real and substantial justice for the administration of which alone they exist.

So, where the parties entered into certain commercial transactions and agreed that any suit relating to them would be brought in Meerut where the plaintiff resided, and the plaintiff brought a suit in Meerut but the defendant had, in contravention of the agreement, already brought a suit in another place, it was held that although section 10 or order XXXIX of the Civil Procedure Code might not in terms apply to the case, the Meerut court had inherent jurisdiction, which it could properly exercise in this case, to issue an injunction to the defendant restraining him from proceeding with his suit in the other court.

Mr. L. M. Roy, for the applicant.

Mr. C. B. Agarwala, for the opposite party.

BENNET and VERMA, JJ.:—This is an application for revision by the defendant, Firm Becharam Baburam, which carries on business at Shahabad in the district of Karnal in the Punjab. The plaintiff, Firm Baldeosahai Surajmal, carries on business as *pakka arhatia* at Hapur in the district of Meerut in these provinces. The defendant entered into certain transactions with the plaintiff, which were in the nature of forward contracts in respect of grain. The suit is for the recovery of a sum of money alleged to be payable by the defendant to the plaintiff. It appears that the defendant also has filed a suit in respect of the same transactions in the court of the Subordinate Judge of Ambala. That suit

was filed earlier than the suit filed by the present plaintiff in the court at Meerut. The defendant applied to the court below that the suit be stayed under section 10 of the Code of Civil Procedure. The court below, for certain reasons which it is not necessary to mention for the purposes of this revision, has held that the suit should not be stayed. It has also at the request of the present plaintiff issued an injunction to the defendant, applicant before us, restraining it from proceeding with the suit filed by it at Ambala. This application for revision is directed against this order of injunction.

The main reason for the injunction given by the court below is that the parties had expressly agreed that any disputes arising between them with regard to these transactions shall be decided by the court at Meerut. The court below, holding that the suit filed by the defendant at Ambala was in flagrant violation of this agreement between the parties, has in the exercise of its discretion issued the injunction mentioned above.

The contention raised by the learned counsel appearing for the defendant applicant is that the court below had no jurisdiction to grant this injunction because the provisions of order XXXIX read with section 94 of the Code of Civil Procedure do not embrace an injunction of this character. It is urged, on the other hand, by the learned counsel appearing for the plaintiff respondent that even though an injunction like the one in question does not come within the four corners of order XXXIX, yet the courts have an inherent jurisdiction to issue an injunction in a proper case to prevent an abuse of the process of the court and to further the ends of justice. It is urged that this is such a case and that the court below was justified in issuing the injunction in question.

In our opinion the contention of the learned counsel for the plaintiff respondent is correct. It has been held that the Code of Civil Procedure is not exhaustive:

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Durga Dihal Das v. Anoraji (1). This view has been followed in the other High Courts. It has also been held that where the circumstances require it, the courts have the power to act *ex debito justitiae* in order to do that real and substantial justice for the administration of which alone they exist. We had occasion recently to deal with this matter in *Dhaneshwar Nath Tewari v. Ghanshyam Dhar Misra* (2). The court below has also relied on the observations made in the cases of *Milton & Co. v. Ojha Automobile Engineering Co.* (3) and *Tilakram Chaudhuri v. Kodumal* (4).

We have examined the record and have looked into the order forms to which the court below refers. There is a clause providing that any dispute between the parties shall be decided either by the panchayat at Hapur or by the courts at Meerut. The defendant alleged in the court below that he had not read this clause when he signed the order forms. The court below had disbelieved this allegation. In our opinion the finding of the court below is not only one of fact with which we cannot interfere in revision, but is perfectly correct. The clause mentioned above is prominently printed and is just above the space provided for the signature of the constituent, that is, the place where the defendant signed. There are several of these order forms, and it is impossible to believe that the defendant did not read this clause before he signed them. That being so, the view of the court below that the suit filed by the defendant in the Ambala court was flagrantly in breach of the contract into which he had entered is perfectly correct. In these circumstances the court below was in our opinion entitled as well as justified in issuing the injunction in question. No grounds for interference with the order of the court below have been shown. Accordingly we dismiss this application for revision with costs.

(1) (1894) I.L.R. 17 A.L. 29 (31). (2) I.L.R. [1940] All. 201.

(3) (1930) I.L.R. 57 Cal. 1280.

(4) A.I.R. 1928 Bom. 175.