

COURT OF DISTRICT JUDGE, BHOPAL

(Presided by Mr. G.S. Patel)

GAS CLAIM CASE NO.1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

ORDER

This order governs the maintenance of status-quo till interlocutory applications No. 6, 8 and 9, filed by the plaintiff are finally heard and decided.

2. The facts of this case are very briefly described as under :

On the night intervening between 2nd and 3rd December, 1984, the most tragic industrial disaster occurred in the city of Bhopal by the leakage of gas from the chemical plant of the Union Carbide India Ltd., which is stated to be a subsidiary concern or unit of the defendant Union Carbide Corporation.

2. This leakage resulted in the death of more than 2000 persons and over 2 lacs of people suffered injuries both of a permanent and temporary nature. The massive magnitude of the disaster be estimated from certain observations of Judge Keenan of the United States, District Judge who passed the order in the case which was filed by the Union of India against the Union Carbide Corporation New York. This judgment was passed on the ground of "forum-non conveniens" Judge Keenan has observed :

There can be no doubt that the Bhopal litigation will take its toll on any court which sits in judgement on it....

The substantial administrative weight of this case should be centered on a court with the most significant contacts with the event. Thus a court in Bhopal rather than in New York should bear the load....

In addition to the burden on the court system continuation of this litigation in this forum would tax the time and resources of the citizen....

The administrative burden of this immense litigation would unfairly tax this or any American tribunal....

The cost to American taxpayers of supporting the litigation in the United States would be excessive. When another adequate and more convenient forum so clearly exists there is no reason to press the United

States Judiciary to the limits of its capacity.

3. From the above observations of Judge Keenan it is quite clear that this case is of utmost importance and high stakes and complicated questions of industrial torts liability are involved. It also involves intricately and complicated questions of financial and industrial jurisprudence.

4. The death of more than 2000 innocent citizens and sufferings to lacs of people demand a legal answer from all concerned. This is perhaps the biggest tort case known to the history of the world and vital issues of tort liability in class suits are involved and there is a fair question of law of liability involved in this case.

5. On 30.10.1986, I.A. No. 6 was filed under section 94(a) and (c) read with section 151 and Order 39, rules 1 and 2, C.P.C. A request for suitable ad-interim injunction was granted on the ground that the defendant would not dispose of a substantial part of the properties by the next date.

6. The plaintiff has now again come up with applications supported by affidavits and photo-copies of newspaper reports which go to show that the defendant is proceeding to dispose of substantial properties and has also proposed some refinancing plan. The plaintiff feels that the transfers which the defendant wants to make and certain other liabilities which the defendant wants to incur may defeat the ultimate claim if any, that may be passed against the defendant and in favour of the plaintiff.

7. The learned Advocate for the defendant has stated that the defendant is not going to transfer any property or to incur any other liability till the next date and the learned Advocate for the defendant expressed before me that he is willing to give an undertaking that status-quo will be maintained till the next date (sic Illegible). But the plaintiff does not appear to be satisfied by any such undertakings.

8. I have carefully considered the facts and circumstances of this case. Vital issues of global importance are involved in this case. Applications and replies filed today contain more 300-400 pages and it is not possible to consider the injunction points strictly on merits today and this injunction-issue could be heard on at length on 26th November 1986, only.

9. The defendant has subjected to the jurisdiction of this court and hence this court has jurisdiction. There is a fair question to be tried between the parties. The Union of India had first approached the American courts to get justice and hence action on the part of the Union of India cannot be said to be mala fide. Thus this is a fit case in which the Court should interfere by way of an ad-interim injunction under section 151, CPC.

10. The learned Advocate for the defendant has argued before me that in fact the plaintiff wants to get an attachment order in the shape of this injunction but this point will be answered only after hearing both the parties on merits.

11. Looking to the complications involved in this case, and having given my serious and anxious consideration to the facts and circumstances of this case, I am of the opinion that mere issuance of an interim injunction will not affect the market reputation of the defendant as has been asserted by the learned advocate for the defendant. The civilized world very well understands the financial position of the defendant concern and any ad-interim injunction granted by this Court is not going to affect the opinion of the financial experts. I, therefore, hold that the

apprehension of the learned advocate for the defendant is not correct and market reputation of the defendant will not be affected. Reliance is also placed upon AIR 68 SC 587, 1975 MPLJ 57 and 1978 MPLJ 419, by the plaintiff and the defendant has placed reliance on AIR 1985 SC 1272 and AIR 1966 SC 1143. But all these points will be considered at length after arguments are heard on 29.11.86.

12. Presently there is 'prima facie' evidence to show that the Union Carbide is proceeding with its plan to sell a substantial part of the property.

13. The Bhopal catastrophe brings us very close to the doctrine of safety. The same safety is necessary in dealing with this case and if property is transferred there may be every possibility that satisfaction of the decree if any, may become difficult. Looking to magnitude of this catastrophe, it is preeminently necessary that this case may not be subjected the doctrine of frustration and an ad-interim injunction is therefore, just and proper in this case. The mere undertaking may create legal complications and hence in order to avoid any confusion an ad-interim injunction in the following terms is passed :-

- (1) The defendant is hereby restrained by means of this ad-interim injunction from creating any change in their financial status. In fact complete status-quo should be maintained as regards the legal character of the defendant and as regards their right, title and interest in the proportion as it exists today.
- (2) The defendant is restrained from repurchasing the Notes and Debentures issued in connection with the exchange offer until the application for interim injunction is decided.
- (3) The defendant is restrained from paying dividends to its share-holders until the application for interim injunction is decided. The defendant is also restrained from purchasing any shares or from taking any loans in order to defeat the decree which may be ultimately passed against it.

In short, the defendant is restrained from creating any change in their assets directly or indirectly till the application for ad-interim injunction is decided.

Copies of this order be given to both the parties free of costs in the interest of justice.

Sd/-
(G.S. Patel)
District Judge
Bhopal

Dated : 17.11.86