

IN THE MADHYA PRADESH HIGH COURT AT JABALPUR

MISC CIVIL CASE NO. 704 OF 1987

In Re: UNION CARBIDE CORPORATION

And Others.

The Following Order of the Court was Delivered by C.P. Sen J:-

1. While hearing Civil Revision No. 224 of 1987, preferred by the Union Carbide Corporation (UCC) against the Union of India (UOI) and others, arising out of interlocutory application No. 19 in the Gas Claim Case No. 1113 of 1986, pending in the Court of District Judge, Bhopal, seeking to restrain the Union of India and others from interrogating S. Sundara Rajan, a Senior Instrumentation Engineer and subjecting him to the detector test, the learned single Judge suo motu issued a show cause notice to the parties under S. 24(1)(b)(i) of the Code of Civil Procedure, as to why the claim cases be not withdrawn from the file of the District Judge and tried in this Court.

2. On the night intervening 2nd and 3rd Dec. 1984, there was leakage of Methyl Isocyanate, a highly toxic gas, in the plant of the Union Carbide India Ltd. (UCIL), resulting in death of over 2500 persons creating permanent impairments to thousands of persons and affecting a large section of the population of the Bhopal city, said to be the worst industrial disaster in the world history. The police registered criminal case against the officials of the UCIL on 6-12-1984. Individual claimants filed large number of claim cases against the UCC in the U.S.A. between January and February 1985. On 20-2-1985, the Parliament enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. and on 8-4-1985, UOI pursuant to the Act filed a claim for recovery of damages against the UCC in the U.S.A. In the meanwhile, many individual claimants also filed claim cases before the District Judge, Bhopal and the UOI joined in those cases as co-claimant. The District Judge, Bhopal, stayed all these cases on 31-12-1985 on the application of the UOI. However, Judge Shri Keenan of the District Court of Southern New York, on 12-5-1986, upheld the objection of the UCC and dismissed the claim cases on the ground of 'forum non conveniens', but put the UCC to give consent to submit to the jurisdiction of the Courts of India and to satisfy the judgment rendered by any Court in India and to be subject to discovery under the rule of procedure in the U.S.A. Appeals were filed by the UCC, the UOI and the individual claimants before the U.S. Court of Appeals, the UCC's appeal being on the limited question of satisfying the judgment of Indian Court and discovery. On 5-9-1986, the UOI filed the present claim case before the District Judge, Bhopal, on behalf of all the claimants as *parens patriae* under the said Act. The UCC entered appearance in the case on 30-10-1986. The Court of appeals in U.S.A. allowed

the appeal of the UCC and rejected the appeals of the individual claimants and the UOI. The appeals Court held that in the absence of agreement, the parties will be limited by the applicable discovery rules of the Indian Court in which the claims will be pending. Further appeals were filed by the individual claimants and the UOI in the U.S. Supreme Court and those appeals were rejected on 5-10-1987.

3. The UCC filed counter-claim before the District Judge, Bhopal, on 17-11-1986 and filed its written statement in the present claim case on 16-12-1986. The UCC also filed I.A. Nos. 5 and 21 for election of forum by the UOI and I.A. No. 12 for better particulars. The UCC also filed I.A. No. 19 for restraining the C.B.I. from interrogating S. Sundarajan. The UOI also filed certain interlocutory applications to restrain the UCC from disposing of the assets. On 11-3-1987, the District Judge fixed schedule of hearing of the interlocutory applications. The UOI was directed to file a statement of its election by the next date and I.A. No. 19 was rejected on 3-4-1987. The Civil Revision No. 224 of 1987 was filed in this Court on 11-6-1987 during vacations. On 6-5-1987, I.A. No. 12 could not be heard due to strike by the Bhopal lawyers for the establishment of a Bench of the High Court at Bhopal. On 2-7-1987, the UOI was again directed to give a fresh categorical election of the forum, which was given on 7-7-1987. Arguments on I.A. No. 12 were heard on 21st and 22nd July 1987 and the UOI was directed to furnish particulars. Some particulars were furnished on 27-8-1987 and the UCC objected that required particulars have not been furnished. In the meanwhile, there were negotiations for settlement and on 27-11-1987, the parties informed the Court that talks of settlement have failed. The case is now fixed for 7-12-1987 for consideration of I.A. of the intervenors for payment of interim relief to the claimants, 21-12-1987 for further hearing on I.A. for better particulars and other I.As. on day to day basis from 11-1-1988. The District Judge has opined that the Court will have completed pleading and will be at the stage of hearing on framing of issues.

4. The learned single Judge, while issuing suo motu notices under S. 24(1)(b)(i) of the Code of Civil Procedure, remarked :-

Till date, the Union Carbide is busy in filing interlocutory applications with an obvious intention to protract the trial of the case for years together, notwithstanding that prima facie such applications are not maintainable.

This sort of tactics, it appears, is being adopted to linger on the trial of the suit so that it may not ripe up for hearing on merits.

The present revision also arises out of the order passed on one of such interlocutory applications, by the District Judge, Bhopal. It also gives glimpses of delaying tactics adopted by the Union Carbide. Under the circumstances, this court is constrained to issue notice under S. 24(1)(b)(i), C.P.C. to both the parties i.e. Union of India and others on one hand and the Union Carbide and others on the other, to show cause as to why the above suit be not withdrawn from the file of the District Judge, Bhopal, and be placed before the Hon'ble Chief Justice for its listing in accordance with the provisions of Chapter VII of High

Court Rules and Orders, for nominating appropriate bench for the trial of the suits in accordance with law so that the cases may proceed *de die diem* and by the sophisticated manner, parties to the litigation may not protract the proceedings or proceed with the case leisurely and allow the Court to proceed with the case in waddling manner, any more.

After issuing the show cause notices, the learned single Judge, on 27-11-1987, dismissed Civil Revision No. 224 of 1987, holding that I.A. No. 19 was not maintainable, as no such injunction can be granted restraining the investigating officers from interrogating suspects and the I.A. was filed just to protract the proceedings. He also directed that the order dated 19-11-1987, issuing show cause notices be registered as M.C.C. and be placed before the appropriate Bench. The Additional Registrar (Judicial) by his note dated 27-11-1987, mentioned that M.C.C has to be placed before the Civil D.B. II for hearing under Rule 4 of Chapter I, Section I, of the High Court Rules and Orders in M.P., since under Rule 1(g) and (m), single bench is only empowered to decide applications for transfer of suit from one subordinate Court to another and other applications, which are not otherwise expressly provided for. That is how the case came to be listed and heard by this bench.

5. Shri F.S. Nariman, learned counsel for the UCC refuted the remarks of the learned single Judge that the UCC is busy in filing untenable interlocutory applications to linger the trial so that it may not ripen for hearing and the Civil Revision No. 224 of 1987 gives glimpses of delaying tactics. According to him, the remarks are not borne out from the record of C.R. No. 224 of 1987. There was nothing on record to hold so, nor the respondents in that civil revision ever raised any objection that the UCC has adopted delaying tactics by filing frivolous interlocutory applications. The UCC never applied for adjournment in that revision nor applied for any stay of proceedings in the claim case, nor the District Judge ever found that the UCC was adopting delaying tactics. No other interlocutory order was challenged in this Court. The Civil Revision was filed to safeguard its own interest. A detailed written submission has been filed to show that the UCC did at no stage delay or protract the claim case, which was filed only in September, 1986. But the UOI itself got the proceedings stayed in view of pendency of claim cases in the District Court in U.S.A., their filing appeal to the Court of Appeals and further appeal to the Supreme Court of U.S.A. and the proceedings in U.S.A. terminated as late as 5-10-1987. The claim cases at Bhopal were taken up for hearing after Judge Shri Keenan dismissed the claim cases in the U.S.A. on 12-5-1986 and the order was affirmed in appeal on 14-1-1987. The UOI finally elected the forum on 7th July, 1987. Then there were negotiations for compromise. So effective hearings started from 27-11-1987, after negotiations failed and there was no question of any delay being cause by the UCC. The learned single Judge had no jurisdiction to issue the notice dated 19-11-1987, as this could only be done in law by a Division Bench of this Court. This Court in any event and as a matter of discretion also ought not to pass any order for the withdrawal of the claim case, since a large number of witnesses are in Bhopal and the transfer would cause great inconvenience and the trial delayed, right of a statutory appeal and

the Letters Patent Appeal will not be available, causing prejudice to the defendants. So the show cause notices be withdrawn and the remarks be expunged. Shri Vepa Sarthy, learned counsel for the UOI has no objection to the claim case being tried at Bhopal and he has no grievance to make, except that he felt the UCC unnecessarily filed applications requiring the UOI to elect the forum. However, the UOI will abide by whatever order is passed by this Court regarding transfer of the claim cases. Shri S.L. Saxena, the learned Additional Advocate-General adopted the views of the UOI. Shri Vibhuti Jha, the learned counsel for the interveners, i.e. the social organisations representing the victims of the gas tragedy, desired that the claim cases be tried at Bhopal, but proceedings should continue day to day, the legal rights of the victims are being compromised by the talks of compromise. The interveners are interested in exposing the misdeeds, negligence and lack of concern of the multinational UCC.

6. Under section 24(1)(b)(c) of the Code of Civil Procedure, this Court, can transfer the claim case from the Bhopal District Court to this High Court at Jabalpur Court for being tried here. Under the High Court Rules and Orders, the jurisdiction to transfer the claim cases for being tried in this High Court has to be exercised by the Division Bench. Single Bench is only empowered under Rule 1(g) and (m) of Chapter I, Section I, of the High Court Rules, to pass order under sections 22, 23 and 24(1)(a) of the Code. Suo motu power of withdrawal of a suit to itself from a subordinate Court can be exercised by a Division Bench only. The plaintiff or the claimant as the arbiter litis, has a right to select his own forum available under the law and this right is not to be interfered with except on very strong grounds. The jurisdiction under section 24 has to be exercised with extreme caution and the plaintiff could not be stopped from going with his suit in his chosen forum, where he has right of action against the defendant. As a general rule, the Courts should not interfere unless the expenses and the difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular Court for the purpose of causing injustice. This Court is not a Court of original civil jurisdiction, but under clause 9, of the Letters Patent, this Court has extraordinary original civil jurisdiction to try any suit, when this Court thinks proper to do so for the purpose of justice. Under Article 228 of the Constitution, if the High Court is satisfied that a case pending in a Court subordinate to it, involves a substantial question of law as to the interpretation of the Constitution, the determination which is necessary for the disposal of the case, then it shall withdraw the case to itself.

7. Here, the gas leak disaster took place at Bhopal, all the victims and most of the witnesses are at Bhopal, many of the claimants are of the weaker sections of the society and they would be handicapped and prejudiced, if the claim cases are transferred to this Court at Jabalpur. The trial would be further delayed and would be more expensive. The claimants and the UOI have rightly chosen the forum at Bhopal, where the cause of action arose and they do not want the transfer of the claim cases to Jabalpur. In fact, all the parties in the claim cases, desire the trial to continue at Bhopal. It is true the claim case is unique of its kind and the Indian Courts have not so far handled any case of its magnitude so far, but the Court of the District Judge at Bhopal is competent to handle it. The proceedings of the claim case show that the District Judge has a seisin over the case and he is proceeding in the right direction. It would not be correct to say that the UCC

has adopted delaying tactics and is preventing its trial. It does not appear that the UCC had taken any unnecessary adjournments or are obstructing the trial. In a trial of such dimensions, interlocutory applications are bound to be filed to pin point the opponent and to shorten the litigation. The UCC is asking the UOI to choose the forum became necessary, as simultaneously claim cases were pursued in the USA and at Bhopal. We do not find any justification or ground for withdrawing the claim cases from the Court of the District Judge, Bhopal, for trying them here. The learned single Judge was swayed by the sufferings of the victims of the tragedy at Bhopal and the fact that the claim cases have not yet been set for trial, although three years have passed. After finding that I.A. No. 19 was not maintainable, he inferred that this was to delay the proceedings. The delay in the proceedings is on account of various factors and causes, and the UCC cannot be singled out for the same. The UCC filed the Civil Revision in vacation and did not apply for stay of proceedings. As soon as the UOI was informed that the CBI no longer requires S. Sundarajan for interrogation, the UCC wanted to withdraw the revision as back as on 20-8-1987. But the learned single Judge decided to dispose of the Civil Revision on merits, in his anxiety that similar applications are not filed in future. Before parting, we must direct the parties to fully cooperate in the early disposal of the claim cases in order that the victims of the tragedy get justice without further delay. We also direct the District Judge to examine what interim relief can be granted to ameliorate the conditions of the victims and minimise the human sufferings, especially of the legal heirs of 2500 or so persons who died in the tragedy and those who have been permanently disabled and are not in a position to earn their livelihood and having nothing to fall back upon.

8. Therefore, the show cause notices issued on 19-11-1987 are discharged.

Dated : 3.12.1987

Sd/
C.P. Sen
P.C. Pathak