

*Before Mr. Justice Sale.*

MUNGLA CHAND

*v.*

GOPAL RAM.\*

1906

August 6.

*Injunction—Jurisdiction—Jurisdiction of High Court in granting injunctions in personam—Injunction to restrain proceeding with suit in Bareilly Court—Civil Procedure Code (Act XIV of 1882) ss. 492, 493.*

The plaintiffs, in a suit instituted in the High Court for money due on a balance of account, sought for an injunction to restrain the defendants from proceeding with a suit previously instituted in the Court of the Subordinate Judge at Bareilly, in which the present defendants sought to recover from the present plaintiffs a sum of money as balance due to themselves on the same account.

*Held*, that the High Court was competent to grant the injunction. The powers of the High Court to grant temporary injunctions are not confined to the terms of ss. 492 and 493 of the Civil Procedure Code.

THE plaintiffs resided and carried on business in Calcutta: the defendants were resident and did business at Fatehgunge in Bareilly. In November 1903, it was agreed that the plaintiffs should act as commission agents for the defendants in Calcutta and, as such, sell goods sent to them by the defendants and from time to time advance such sums as the defendants might draw upon them for, and the defendants were to pay to the plaintiffs all monies which on adjustment of the account should be found due to them.

Pursuant to the agreement the defendants did business with the plaintiffs up to the 23rd October, 1905, on which date the plaintiffs made up their account with the defendants and sent it to the defendants for payment, showing a balance of Rs. 2,327-7-9 due to the plaintiffs.

The defendants thereafter filed a suit in the Court of the Subordinate Judge at Bareilly claiming a sum of Rs. 1,100 as due to them by the plaintiffs in respect of the same transactions, which formed the subject-matter of the present suit.

\* Application in Original Civil Suit No. 551 of 1906.

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Subsequent to the institution of the suit in the Bareilly Court the present suit was instituted here for the recovery by the plaintiffs of the above mentioned sum of Rs. 2,327-7-9 for balance of account together with interest: and the plaintiffs applied for and obtained a rule *nisi* upon the defendants to shew cause why an injunction should not be granted against them restraining them, until the final determination of this suit or until the further order of the High Court, from further proceeding with the suit then pending in the Bareilly Court.

It was further ordered that the rule should not be served on the defendants until the payment into Court by the plaintiffs of the Rs. 1,100, the amount of the claim against them in the Bareilly Court, which payment the plaintiffs in their petition for the rule had offered to make, and accordingly made.

The rule now came on for hearing.

*Mr. C. R. Dass* for the defendants showed cause. The effect of the order, if made absolute, would be to stay the proceedings in the Bareilly Court, and would amount to an interference with the jurisdiction of the Allahabad High Court, to which the Bareilly Court is subordinated. The proper course is for the plaintiffs to apply to the Bareilly Court, under s. 20 of the Code of Civil Procedure, for a stay of proceedings there. Further, this Court has no jurisdiction to grant this injunction, inasmuch as it does not come within the provisions of the Code of Civil Procedure, ss. 492 and 493: see *Jairamdas Ganeshdas v. Zamonal Kissorilal*(1).

*Mr. S. R. Das* for the plaintiffs in support of the rule. In the matter of granting temporary injunctions of this nature (*in personam*) this Court has never held its jurisdiction to be limited by the provisions of the Civil Procedure Code. It will involve great hardship on the plaintiffs, if they are to be compelled to go to Bareilly: all the witnesses and account books are in Calcutta, and all the dealings were had in Calcutta.

SALE J. I think there is no reasonable doubt as to the course I ought to pursue. The plaintiff undoubtedly instituted

(1) (1903) I. L. R. 27 Bom., 857.

the suit in this Court, subsequently to the suit filed by the defendant in Bareilly. On the other hand it is clear that very great hardship will accrue to the plaintiff, if this suit is tried at Bareilly. Practically all the accounts of the parties, the transactions in respect of which took place in Calcutta, would have to be taken in Bareilly. The plaintiff is a Commission agent, his books are here, his witnesses are here and it was intended that the goods sent by the defendant should be dealt with in Calcutta. Under these circumstances there is no doubt that the parties intended, and indeed justice requires, that the matters between them should be the subject-matter of a suit in this Court. The question is whether effect can be given to the requirements of justice by the stay of the suit in the Bareilly Court. I think the powers of this Court to grant temporary injunctions are not confined to the terms of sections 492 and 493 of the Civil Procedure Code. This Court has acted for a long series of years on the view that its powers of control over persons within its jurisdiction, by injunctions operating *in personam*, are not restricted by the provisions of the Civil Procedure Code, and I think it is too late to ask us to depart from its practice. Therefore I think this Court has power to restrain the defendant from proceeding with the suit at Bareilly, if justice requires the step. The question is whether I should adopt this course.

The Bareilly Court will doubtless stay the defendant's suit in the Bareilly Court, when that Court is informed that this Court has restrained the defendant from proceeding with that suit. I am not to assume that the Judge of the Bareilly Court will take any step unfair to the defendant, or compel him to act in any way inconsistent with his duty of obedience to this Court.

The result is that the Rule must be made absolute and the costs be costs in the cause.

Attorney for the plaintiff: *N. C. Bose.*

Attorney for the defendant: *J. N. Mookerjee.*

H. G. P.

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