

S. Radhakrishna Murthy Vs. K. Narayanadas and anr.

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Court : Andhra Pradesh

Decided On : Mar-18-1982

Reported in : AIR1982AP384

Judge : Chennakesav Reddi and ;Seetharama Reddy, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 2

Appeal No. : Letter Patent Appeal No. 17 of 1982

Appellant : S. Radhakrishna Murthy

Respondent : K. Narayanadas and anr.

Advocate for Def. : J. Eswaraprasad, Adv. and ;Advocate General

Advocate for Pet/Ap. : Challa Sitaramayya, Adv.

Judgement :

Seetharama Reddy, J.

1. This interlocutory Letters Patent Appeal by the plaintiff-appellant arises out of an order of the learned Judge of this court, dismissing the appeal in A.A.O. No. 597 of 1981 preferred against an order made in I. A. No.754/1981 in O. S. No. 160/81 on the file of the Subordinate Judge, Khammam. Defendant 1 who is respondent 1 herein, while constructing the cinema theatre, Nartaki, in Khammam town required

a sum of Rs. 2,50,000/- which the appellant advanced in terms of Ex. A-1 agreement dated 6-12-1977. As per the terms, the appellant was given the right to screen three pictures per day for a period of 156 weeks on completion of the construction of the theatre (Scheduled date being 31-5-1978) and on conditions detailed therein. According to the appellant, respondent 1 required a further sum of Rs. 1,75,000/- and so, a supplementary agreement Ex. A-2 dated 2-5-1978 was entered into, according to which the appellant advanced the said sum and was given the right to screen pictures for a further period of 156 weeks. Respondent 1 unilaterally put an end to the contract soon after the completion of the 1st 156 weeks on 14-5-1981 as alleged by the appellant herein which resulted in breach of the contract. Therefore, the appellant filed the suit for a declaration that he is entitled to screen pictures for a further period of 156 weeks from 15-7-1981 and for an injunction restraining respondent 1 and his agents from interfering with the exercise of the appellant's right. The appellant filed 1. A. No. 754/1981 for temporary injunction, which was, though granted ex parte initially, but later on the application filed by the respondent was vacated. Aggrieved against a civil miscellaneous appeal was preferred in this court and learned single Judge of this court dismissed the same. Hence, this Letters Patent Appeal.

2. The case of respondent 1 in the main is that he never executed Ex. A-2 agreement and that the appellant has contracted the same on stamp papers containing the signature of respondent 1 and left in the custody of the appellant. He also pleaded that the appellant has an adequate remedy of damages and inasmuch as respondent 1 already entered into an agreement dated 30-6-81 with respondent 2 herein enabling respondent 2 to screen the movies on certain terms and conditions with effect from 15-7-1981, the balance of convenience, therefore, lies more in favour of refusing the grant of injunction.

3. The learned subordinate judge held that the plaintiff has not made out any prima facie case and that even otherwise the balance of convenience is in favour of refusing the temporary injunction.

4. The learned single Judge of this court in the said civil miscellaneous appeal though observed that the appellant has prima facie established the case,

nevertheless, it did not entitle the appellant to the grant of temporary injunction on the ground that the balance of convenience is not in favour of the appellant and also held that he can be adequately compensated by awarding damages.

5. Sri Seetharamaiah, the learned counsel for the appellant contends that (1) when once the prima facie case is established, the Court will have to grant temporary injunction pending the final adjudication of the suit. (2) The Party cannot be allowed to create conditions on its own and then resist the injunction. (3) In this case damages cannot be ascertained and there, it is not an adequate remedy, and in such circumstances, interim injunction will have to be granted.

6. The counter contention of the learned Advocate General is that the mere establishment of prima facie case does not ipso facto clothe the party with a right of temporary injunction to be granted in his favour. Balance of convenience and also irreparable hardship are sine qua non for the issue of injunction.

7. The case law cited by the learned counsel at the bar may be noticed. *Meux's Brewery Company v. City of London Electric Lighting Company* (1895-72 LT 34). This case was concerned with the issue of an injunction to prevent the continuance of the nuisance. The court of appeal held:

But assuming that there is a nuisance, and that there is no authority justifying it, the question still remains, what is the relief to which the plaintiffs are entitled But for the provision of Lord Cairnst Act, I suppose no one would have doubted that, in the state of facts I have now assumed to exist, the Plaintiff shelfer would have been entitled to an injunction to prevent the continuance of the nuisance. Lord Kingsdown , in the House of Lords (*Imperial Gas Light and Coke Company v. Broadbent*) (1859-7 HL Cas 600), has laid down the principle in words which comprehend such a case as this; he says: 'The Rule I take to be clearly this; If a plaintiff applies for an injunction to restrain a violation of a common law right, if either the existence of the right or the fact of its violation be disputed, he must establish that right at law,' (and, I presume, its violation): 'but when he has established his right at law, I apprehend that unless there be something special in the case, he is entitled as of course to an injunction to prevent the recurrence of that violation.'

The court of appeal further held:

'The language, of course, is general; the discretion given is necessarily wide enough, in terms to authorise a Judge to award damages where formerly he would have given an injunction. But there is nothing in this case which to my mind can justify the court in refusing to aid the legal rights established, by an injunction preventing the continuance of the nuisance.'

The court of appeal also held:

'Many judges have stated, and I emphatically agree with them, that a person by committing a wrongful act (whether it be a public company for public purposes or a private individual) is not thereby entitled to ask the Court to sanction his doing so by purchasing his neighbours rights, by assessing damages in that behalf, leaving his neighbour with the nuisance or his lights dimmed, as the case may be. In my opinion, it may be stated as a good working rule that (1) If the injury to the plaintiffs legal rights is small. (2) And is one which is capable of being estimated in money; (3) And is one which can be adequately compensated by a small money payment; (4) And the case is one in which it would be oppressive to the defendant to grant an injunction; then damages in substitution for an injunction ,may be given'.

See *Faiyaz Husain v. Amroha Municipality*, AIR 1939 All 280 (at p. 287). It is held:

'There is nothing in the Electricity Act to relieve the licensee from the liability to an action for an injunction restraining him from infringing the rights of others and, in my judgment, the plaintiffs are entitled to a decree for mandatory injunction prayed for by them. Lord Kingsdown in the House of Lords (*Imperial Gas Light and Coke Co v. Broadbent* 1859-7 HL Cas 600) is reported to have observed that the Rule I take to be clearly this: if a plaintiff applied for an injunction to restrain a violation of a common law right if either the existence of the right or the fact of its violation be disputed, he must establish that right at law.....but when he has established his right at law, I apprehend that unless there be something special in the case, he is entitled as of course to an injunction to prevent the recurrence of that violation.'

In *Hampstead & Suburban Properties v. Diomedous*, (1968) 3 All ER 545, it is held:

'Finally, there is the balance of convenience, To say that the inconvenience to the plaintiffs is 'nil' and that to them the case is 'essentially trivial', seems to me as such an exaggeration as to say that the loss to the defendant will be incalculable'. I have already dealt with the injury to the plaintiffs, and I need say no more about it. The defendant's claim is, in essence, that he will suffer an 'incalculable loss' if he is not permitted to continue his plain breach of the obligations which he so recently entered into and voluntarily undertook when he becomes an assignee of the lease. Stripped of the persuasions of counsel for the defendants advocacy the proposition is: 'I am making handsome profits by doing what I covenanted and undertook not to do: therefore it would be wrong for the court to stop me.' I can conceive of few propositions calculated to appeal loss to equity.'

In *Chand Sultana v. Kursheed Begum*, : AIR 1963 AP365 , a Division Bench of this court held:

'In our considered judgment the plaintiff could succeed in getting an interlocutory injunction only when a *prima facie* case is made out, in other words, when on the evidence as it remains there is a probability that the plaintiff is entitled to relief. Unless this condition is satisfied, O. 39, R. 2 C.P.C. would not be successfully invoked. It would be wrong for a Court to grant an injunction merely on the ground that the plaintiff had filed the suit claiming relief.'

In *Preston v. Luck*, (1884) 27 Ch D 497 it is held:

'This is an application only for an interlocutory injunction, the object of which is to keep things in status quo, so that if at the hearing the plaintiffs obtain a judgment in their favour, the defendants will have been prevented from dealing in the meantime with the property in such a way as to make judgment ineffectual. Of course, in order to entitle the plaintiffs to an interlocutory injunction though the court is not called upon to decide finally on the right of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiffs are

entitled to relief. I shall express no final opinion on the question whether there was a concluded contract between the plaintiffs and Luck.' In *Subba Naidu v. Haji Badsha Sahib*, (1903) ILR 26 Mad 168, it is held: 'The law with regard to the granting of permanent injunction is regulated by the provisions of the Specific Relief Act. Section 56 says an injunction cannot be granted in certain specified cases, including an injunction to prevent the breach of a contract, the performance of which would not be specifically enforced but a temporary injunction, the law with regard to which is regulated by the provisions of the Civil Procedure Code. The granting of a temporary injunction under the powers conferred by this section (Section 493, C.P.C.) is a matter of discretion. True it is a matter of judicial discretion. But if the court which grants the injunction rightly appreciates the facts and applies to those facts the true principles, then that is a sound exercise of judicial discretion.'

In *Madras Railway Company v. Thomas Rust*, (1891) ILR 14 Mad 18, the court held that :

'That the defendant had no right to rescind the agreement and the plaintiff company was entitled to an interlocutory injunction restraining defendant from serving others on the terms that the plaintiff company should consent to retain him in its employ.'

In a Treatise on the law relating to injunctions by Howard C. Joyan observed:-

'Where parties enter into a contract by which exclusive rights and privileges are granted a court of equity will entertain jurisdiction of a proceeding to enjoin a breach thereof. Where the supervisors of a city made a contract with an individual for the period of twenty years for the removal of all dead animals not slain for human food, it was decided that an injunction against the delivery of the carcasses of any such animals to any other person except the plaintiff or his assignee would be granted. And where a hotel proprietor has granted one telegraph company the exclusive privilege of establishing and operating an office upon his premises, equity will interfere by injunction to prevent a breach of the contract in the form of an extension of the same facilities to another and a rival company; the remedy at law of the party having the first and unquestioned right being inadequate.'

In *American Cyanamid Co v. Ethicon*, (1975) 1 All ER 504 the House of Lords while considering the circumstances under which an interlocutory injunction granted held:

'When an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction but since the middle of the 19th century this has been made subject to his undertaking to pay damages to the defendant for any loss sustained by reason of the injunction if it should be held at the trial that the plaintiff had not been entitled to restrain the defendant from doing what he was threatening to do. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial, but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies. As to that, the governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.'

The cases relied on by the learned Advocate General are as follows:-

8. In *Barkat Ali v. Gulfiquar*, : AIR 1975 AP187 a Division Bench of this court evolved the circumstances under which the Court will grant or refuse a temporary injunction. The court held (para 15):

'The grant or refusal of a temporary injunction is covered by three well established principles viz. (1) whether the petitioners have made out a prima facie case; (2) whether the balance of convenience is in their favour i.e. whether it would cause greater inconvenience to them if the injunction is not granted than the inconvenience which the opposite party would be put to if the temporary injunction is granted; and (3) whether the petitioners would suffer irreparable injury. With the first condition as sine qua non, at least two conditions should be satisfied by the petitioners conjunctively and a mere proof of one of the three conditions does not entitle them to obtain a temporary injunction in their favour.'

In *Delhi Municipality v. Suresh Chandra*, : [1977]2SCR10 the Supreme Court held (paras 5 & 9):

'The High Court, while agreeing with the view of the Appellate Court that the balance of convenience was in favour of discharging the interim injunction held that as there was a prima facie case that the assessment had been erroneously made. The principle of balance of convenience did not apply here. Mr. Nariman, learned counsel for the Corporation is, we think, on very firm ground in contending that balance of convenience could not be ignored in such cases and that the learned Judge of the High Court erred in holding that it could be.'

In a Treatise on the Law and Practice of Injunctions (6th Edn.) by William Williamson Kerr, it is observed:-

'The jurisdiction of the High Court of justice by injunction is not confined to the protection of equitable rights, but extent to the protection of legal rights to property from damage pending litigation. The protection of legal rights to property from irreparable or at least from serious damage pending the trial of the legal right was part of the original and proper office of the court of chancery. In exercising the

jurisdiction the court does not pretend to determine legal rights to property, but merely keeps the property in its actual condition until the legal title can be established. The court interferes on the assumption that the party who seeks its interference has the legal right which he asserts, but needs the aid of the court for the protection of the property in question until the legal right can be ascertained. The office of the court to interfere being founded on the existence of the legal right, a man who seeks the aid of the court must be able to show a fair prima facie case in support of the title which he asserts. The jurisdiction to grant an injunction being discretionary, the court in exercising it will have regard to the way in which the granting relief will affect the rights of other persons.'

In one of the recent cases, *Mrs. Angela John S. Rao v. N. Lakshminarayana*, (1978) 2 Andh WR 340 : (1978 Lab IC 1139) to which one of us (Chennakasav Reddy J.) was a party, it has been held (at p. 1140 of Lab IC):-

'The very first principle of injunction law and a principle of universal application, is that the Court should decline to grant temporary injunction unless prima facie case is shown in the plaint and the affidavit filed by the parties. The second rule is that to justify the grant of temporary injunction, there must be a further, ingredient to be made out and that is that unless the defendant is restrained by a temporary injunction, irreparable injury or inconvenience may result to the plaintiff before the suit is heard and decided upon its merits.'

9. What emerges from the above conspectus is that the grant of interlocutory injunction is a discretionary remedy and in the exercise of judicial discretion, in granting or refusing to grant, the court will take into reckoning the following as guidelines: (1) Whether the persons seeking temporary injunction has made out a prima facie case. This is sine qua non. (2) Whether the balance of convenience is in his favour that is whether it could cause greater inconvenience to him if the injunction is not granted than the inconvenience which the other side would be put to if the injunction is granted. As to that the governing principle is whether the party seeking injunction could be adequately compensated by awarding damages and the defendant would be in a financial position to pay them : (3) whether the person seeking temporary injunction would suffer irreparable injury. It is , however, not

necessary that all the three conditions must obtain. 'With the first condition as sine qua non, at least two conditions should be satisfied by the petitioner conjunctively and a mere proof of one of the three conditions does not entitle a person to obtain temporary injunction.'

10. To sum up, the grant of interlocutory injunction is a remedy which is discretionary. To grant it one must establish and this is sine qua non, a prima facie case and secondly, the balance of convenience should be in his favour viz., the remedy of being recompensated by damages is inadequate or irreparable injury will, ensue, if the injunction is not granted to the person who prays for it. With this in mind, we will now examine the material circumstances of the case.

11. Though the court of first instance has, in its elaborate consideration with reference to various materials on record, concluded that no prima facie case has been established by the appellant, the learned single Judge of this court held, on material, that the plaintiff has prima facie proved Ex. A-2 agreement. We are not very much inclined to disturb the latter finding of the learned single Judge.

12. However, both the Courts below rejected to accord interlocutory injunction, though on different grounds. The court of first instance founded on the ground that no irreparable loss will be sustained by the appellant and the learned single Judge, on the contrary, held that the appellant can be adequately compensated by awarding damages and the balance of convenience does not lie in his favour. We too, in our undoubted view, are inclined to agree with the view that the appellant will not be allowed to have injunction in his favour on the balance of convenience bars it.

13. The submission of the learned counsel for the appellant that the damages cannot be ascertained and even otherwise they cannot be adequate remedy, is too feeble to sustain.

14. Admittedly, the agreement has been entered into between respondent 1 and respondent 2 on 30-6-1981 under which a sum of Rs. 3,12,000/- was advanced by respondent 2 and as per its terms respondent 2 has been enabled to screen three pictures per day with effect from 15-7-1981 for a period of 104 weeks.

15. The next circumstance is that respondent 1 addressed a communication to the appellant on 7-7-1981 by which he intimated that the agreement expires on 14-7-1981 while, at the same time, enclosing a demand draft for a sum of Rs. 86,250/- being the refund of deposit amount as per the terms of the agreement.

16. Next, the circumstance which is rather peculiar and so incomprehensible to us is that Exs. B-14 to B-17 which are blank promissory notes in English, duly stamped, bear the signatures of respondent 1 across the stamps and that of the petitioner in all the said exhibits and the same were kept in possession of the appellant, go to show that the appellant and respondent 1, for their own reasons, were in the habit of keeping such blank papers which can be used to prepare a valuable document.

17. There is yet another circumstance. The appellant is said to have advanced the second sum, though the execution of second agreement is denied by respondent 1, which was to be paid back soon on completion of the construction of theatre.

18. The cumulative effect of these circumstances, in our judgment, certainly tilts the balance of convenience in favours of respondent 1 as the resultant inconvenience to respondent 1 will certainly be greater than the one to the appellant.

19. We are equally positive that the award of damages in case of eventual success to the appellant will be adequate remedy. It is not difficult to ascertain the damages either, inasmuch as the picture screened and exhibited in the theatre are by sale of tickets which are all a matter of record and so the gross realisation in each shift can easily be ascertained. Since respondent 1 has got a valuable asset in the theatre, the financial ability to pay is secured.

20. If, on the contrary, the temporary injunction is granted, it will be undoing the rental agreement entered into between respondent 1 and respondent 2 and the rights accrued thereto. Hence, no greater inconvenience will be caused to the appellant in juxtaposition to respondent 1. We are equally emphatic that no irreparable injury will be sustained by the appellant if the interlocutory injunction is refused.

21. In the result, the Letters Patent Appeal is dismissed. The parties will bear their respective costs in the L. P. A. No leave.

Appeal dismissed.

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