

K. Patel Chemo Pharma P. Ltd. and ors. Vs. Laxmibai Ramchandra Iyer and ors.

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Court : Supreme Court of India

Decided On : Oct-07-1992

Reported in : 1993Supp(2)SCC174

Judge : M.N. Venkatachaliah and; A.S. Anand, JJ.

Acts : [Code Of Civil Procedure \(CPC\), 1908](#) - Order 17 Rule 1, 2, 3 Order 19 Rule 1

Appeal No. : Civil Appeal No. 4083 of 1992

Appellant : K. Patel Chemo Pharma P. Ltd. and ors.

Respondent : Laxmibai Ramchandra Iyer and ors.

Prior history : Arising out of SLP (C) No. 12000 of 1992

Judgement :

M.N. Venkatachaliah and; A.S. Anand, JJ.

1. The petitioners seek special leave to appeal to this Court from the order dated January 6, 1992 of the Division Bench of the High Court of Bombay in Appeal No. 1169 of 1991 in Notice of Motion No. 259 of 1989 in the pending Suit No. 3883 of 1989. We have heard learned counsel for petitioner 1 and the learned counsel for the caveator/respondents who have filed their counter. Leave granted.

2. The suit, from the interlocutory proceedings in which this appeal arises, is one for a setting aside of a decree for specific performance of an agreement to sell made on consent of parties. This consent decree is challenged in the suit. There was an interim order of injunction granted on December 22, 1989 at the instance and for the benefit of the respondent-plaintiff, restraining the present appellants who are the defendants from asserting any rights under the earlier consent decree. The matter then came up on October 25, 1991 and later on October 29, 1991 for confirmation of the interim injunction. On that day the court refused the first-appellants prayer for grant of an adjournment to file its counter-affidavit and proceeded to make the interim order absolute.

3. Appellants 2 and 3, who were the other defendants in the suit, though duly served remained unrepresented before the court both on October 25, 1991 and on October 29, 1991.

4. Appellants took up the matter in appeal before the Division Bench. The Division Bench dismissed the appeal on the ground that as appellants had not filed any counter-affidavit before the learned Single Judge no case for interference in appeal was made out.

5. Appellants' learned counsel submits that the adjournment on the notice of motion was at a very short interval of four days and the refusal of a further opportunity to file the counter-affidavit virtually operates to deny the appellants of a right to present their case, for whatever it is worth as, indeed, the suit itself would take its own time — perhaps, almost a decade — and that it would be a great pity if the appellants did not

have the satisfaction of having had an effective opportunity to present their case. Learned counsel said that respondent-plaintiffs would suffer no hardship by the adjournment as, indeed, the interim order dated December 22, 1989 was operating in their favour. Learned counsel submitted that in these circumstances it was proper to afford an opportunity to the appellants to file their counter-affidavit and place their case before the Court. There is no procedural ill, says counsel, which cannot adequately be compensated in costs.

6. We are persuaded to the view that the first appellant is entitled to such an opportunity, but on payment of costs, though, however, we hold that appellants 2 and 3 are not, in view of their non-appearance in court on the dates of hearing, entitled to such further opportunity. Respondents would suffer no irreversible disadvantage by adopting this course as the interim order would continue to operate till it is vacated if the court ultimately decides so to do.

7. We, accordingly, set aside the order dated October 29, 1991, made by the learned Single Judge on the notice of motion as well as the order dated January 6, 1992, made by the Division Bench in appeal insofar as the appellant 1 is concerned. However, the interim order dated December 22, 1989 would remain undisturbed till it is either confirmed or vacated. There will now be a remit of the matter to the learned Single Judge to consider and dispose of the notice of motion afresh after affording to appellant 1 an opportunity of filing its counter-affidavit. This will be subject to the appellant paying to the respondents a sum of Rs 5,000 as costs. The costs shall be deposited within four weeks in the High Court and the counter-affidavit shall also be filed within four weeks from today. The appeal is disposed of accordingly.

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