

Tamilselvi and 5 ors. Vs. Pandiyan Educational Board and ors.

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Court : Chennai

Decided On : Nov-01-1995

Reported in : 1996(1)CTC73

Judge : Abdul Hadi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1, 3 and 3A;
[Constitution of India](#) - Article 227

Appeal No. : C.R.P. No. 1716 of 1995 and C.M.P. No. 9575 of 1995

Appellant : Tamilselvi and 5 ors.

Respondent : Pandiyan Educational Board and ors.

Advocate for Def. : P. Devadose, Adv.

Advocate for Pet/Ap. : V. Ayyadurai, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Abdul Hadi, J.

1. Defendants 1 to 6 in O.S. No. 9384 of 1994 on the file of the I Assistant City Civil Judge, Madras have filed this revision under Article 227 of the [Constitution of](#)

[India](#) against the order in I.A. No. 7168 of 1995 in the said suit, 'extending the exparte injunction and adjourning the case to 21-7-1995'. The said suit filed by the respondents herein, who are Pandian Educational Board and its alleged office bearers, is for a permanent injunction, restraining the defendants in the suit (strangely including defendants 7 and 8 who are Director of Technical Education and State Bank of India respectively and who are not parties herein) from causing any disturbance to the plaintiffs in the management of the said Pandian Educational Board of Tirupattur which runs Pandian Polytechnic Institute at Tirupattur. The plaint in the said suit is dated 21-10-1994. The above said I.A. No. 7168 of 1995 sought for a temporary injunction under Order 39 Rules 1 and 2, C.P.C., pending disposal of the suit, against defendants 1 to 6, restraining them from functioning arbitrarily, and independently without concurrence and participation of the plaintiffs, in the administrative affairs of the said Board or restraining them from preventing the plaintiffs from participating in the said administrative affairs.

2. Learned Counsel for the petitioners mainly made two submissions. The first submission is, the Court below has grossly erred in not following Order 39 Rule 3 and 3-A, C.P.C. in passing the ex-parte order of injunction originally on 28-4-1995 and extending it a number of times till July, 1995 despite the fact that the respondents herein had not even served notice of the I.A. and its abovesaid order dated 28-4-1995 on the petitioners herein and despite the fact that the petitioners herein had filed their counter on 9-6-1995 together with I.A. No. 8268 of 1995 for vacating the said ex-parte injunction.

3. The second submission is about the reprehensible conduct of the respondents herein exhibited in so many ways, which are detailed in my discussion that follows. (According to learned Counsel for petitioners, the said conduct is reflected in the respondents' suppression of prior proceedings and in not taking care to give notice of the abovesaid I.A. No. 7168 of 1995 and the ex-parte injunction order passed therein on 28-4-1995 to the petitioners herein and in bringing forward the abovesaid suit in the City Civil Court Madras when it has no territorial jurisdiction to try the said suit.

4. Though learned Counsel for the respondents refuted these submissions, I should say that he could not argue anything seriously contra.

5. I have considered the rival submissions. There are very good reasons, which I detail below for concurring with the abovesaid submissions of learned Counsel for the petitioners. No doubt, when the above referred to ex-parte interim injunction was granted on 28-4-1995, the Court below gives some reason for passing the said order of injunction ex-parte. But, the Court below has not at all cared to conform to the Letter part of the proviso to Order 39 Rule 3, C.P.C, wherein it is provided that the Court, when it choose to pass ex-parte injunction, shall 'require the applicant (a) to deliver to the opposite party.....immediately after the order granting of injunction.... a copy of the application for injunction together with (i) a copy of the affidavit filed in support of the application; (ii) a copy of the plaint; and (in) copies of documents on which the applicant relies.... and (b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.'

6. In fact, in the counter that was filed in I.A. No. 7168 of 1995, the specific averment in paragraph 12 thereof is that neither the suit summons, nor the copies of the documents and the notice in I.A. No. 7168 of 1995 have been served on them 'till date'. (The date of the said counter affidavit is 9-6-1995). Further, in the affidavit filed in support of the C.M.P. No. 9575 of 1995 in this C.R.P. for suspension of the above referred to interim injunction granted by the Court below, it has been specifically aveered in paragraphs 4 and 6 thereof that no steps were taken by the plaintiffs to serve the suit summons on the petitioners herein and that the petitioners herein came to know about the interim injunction through the 8th defendant-bank. In the counter that has been filed to the said C.M.P., nothing has been said to contradict the abovesaid averments in the affidavit in support of the said CM.P.

7. Before proceeding further to deal with the highly improper extension of the abovesaid interim injunction order by the Court below, I must state one other important fact relating to the suppression of certain relevant facts by the respondents and relating to the non-maintainability of the abovesaid I.A. No. 7168

of 1995 itself. The abovesaid I.A. No. 7168 of 1995 was filed on or about 27-4-1995, while the suit was filed on or about 21-10-1994 itself. But along with the plaint, the respondents herein had filed I.A. No. 20167 of 1994 against the petitioners herein, praying for similar relief as in I.A. No. 7168 of 1995, and the supporting affidavit therein, contained almost similar averments as in the supporting affidavit to I.A. No. 7168 of 1995. In the said I.A. No. 20167 of 1994, notice was ordered on 21-10-1994 and it appears that the petitioners did not pay batta for effecting service and the said I.A., even according to learned Counsel for the respondents was finally dismissed on 11-7-1995. The relevant averments regarding this aspect have been made in paragraphs 3 and 12 of the counter affidavit filed in I.A. No. 7168 of 1995. Inter alia, there, it is specifically pointed out that no notice given of the abovesaid earlier I.A. also to the petitioners herein. This fact also has not been repudiated either by filing any reply to the said counter or at least in the counter that was filed to the abovesaid C.M.P. in the C.R.P., despite the fact that similar averments have been made by the petitioners herein in their supporting affidavit to the said CMP.

8. That apart, it must be noted that when the abovesaid I.A. No. 7168 of 1995 was filed in the supporting affidavit, there was absolutely no reference to the earlier I.A. No. 20167 of 1994 and what has happened there. In other words, there is a complete suppression by the plaintiffs in the said supporting affidavit, about the pendency of the earlier I.A. No. 20167 of 1994. In fact, as already mentioned, learned Counsel for the respondents himself stated that the said I.A. was dismissed only on 11-7-1995. If so, I.A. No. 7168 of 1995 filed on or about 27-4-1995 for the very same relief, which was asked for in the earlier I.A. No. 20167 of 1994 is not maintainable at all. The Court below also has not taken care to note the pendency of the abovesaid I.A. No. 20167 of 1994 on the date when I.A. No. 7168 of 1995 was moved before it.

9. Not only there is the abovesaid suppression by the plaintiffs, there is also one other suppression by them. After the order of interim suspension, (of the abovesaid injunction granted by the Court below), by this court on 17-7-1995 when this C.R.P. was moved, the respondents curiously filed one other suit O.S. No. 234 of 1995 against the petitioners herein on the file of Subordinate Judge, Tirupattur,

seeking the very same prayer of injunction prayed for in the present suit O.S. No. 9384 of 1994. No doubt, apart from the abovesaid injunction prayer, there is also a declaration prayer that they are the trustees of the 'Pandian Educational Trust Board' which conducts the abovesaid Polytechnic Institute. In the said suit also, I.A. No. 241 of 1995 was filed and similar injunction, as prayed for in the present I.A. No. 7168 of 1995 was prayed for. The said suit and the said I.A. were filed in July, 1995. Both in the plaint in the suit and in the supporting affidavit to the said I.A., there was no reference at all to the present suit O.S. No. 9384 of 1994 or I.A. No. 7168 of 1995 therein. Such suppressions repeatedly resorted to by the respondents cannot but be taken as deliberate suppressions in the light of all the abovesaid features. After the abovesaid suppression in O.S. No. 234 of 1995, the respondents have also managed to obtain once again an ex-parte order of temporary injunction in the said I.A. No. 241 of 1995 on 26-7-1995.

10. Here again, it must be stated that the Sub Court, Tirupattur also in granting the said ex-parte injunction, did not conform to Order 39 Rule 3, C.P.C. at all. In other words, not only no reason was recorded as contemplated in Order 39 Rule 3, C.P.C. for granting the injunction ex-parte, but the applicants also use not required to deliver to the opposite party, copies spoken to therein and to file the affidavit spoken to therein.

11. Further, it must also be mentioned that one other contention of learned Counsel for the petitioners is that the suit itself is not maintainable in the City Civil Court, Madras, and it is maintainable only in Tirupattur Court since even according to the plaintiffs, the abovesaid 1st plaintiff Pandian Educational Board is having its office only at Tirupattur and functioning there, and all the other plaintiffs who are said to be members thereof, are all residing at Tirupattur only and the injunction prayer sought for in the suit is only with reference to the management of the said Board by the plaintiffs and with reference to the alleged interference of the said management by the petitioners herein. According to the said learned Counsel, though the plaintiff also alleges that the abovesaid Board 'functions mainly from Madras, where the plaintiffs assemble and meet the 7th defendant- (Director of Technical Education, Madras) in connection with the affairs and management of the Pandian Ploytechnic, run by the plaintiff- Board', the said allegation is totally

unbelievable. He also points out that not only the above referred to O.S. No. 234 of 1995 was filed in the Tirupattur Court, but one or more of the present plaintiffs filed three other suits also, viz., O.S. Nos. 1428 of 1994, 105 of 1994 and 191 of 1993, all relating to the management of the abovesaid Board and the Polytechnic, only in the Tirupattur Court. Further, even O.S. No. 14 of 1994, which was filed by the Pandiyan Educational Trust against some of the present plaintiffs and relating to the management of the present suit-Trust was filed only in the Tirupattur Court. No doubt, learned Counsel for the respondents point out that as per the present plaint, the 1st defendant is residing at Madras and so the suit could be brought in the City Civil Court, Madras. But, it must be noted that admittedly no leave was obtained from the City Civil Court, Madras as contemplated under Section 20(b), C.P.C. nor in there any allegation in the plaint that even the 1st defendant is 'actually and voluntarily' residing at Madras as mentioned in Section 20(b). However, I must say that I do not wish to deal with this territorial jurisdiction question in this civil revision petition, though I find some force in the abovesaid argument of learned Counsel for the petitioners herein since that has to be dealt with by the trial Court after relevant evidence, if any, taken in the light of Section 20, C.P.C. or any other relevant provision of law. At any rate, I must point out that the trial Court should have expedited the final disposal of the said I.A. No. 7168 of 1995, at least after seeing that in the counter affidavit to the said I.A. No. 7168 of 1995 it is specifically averred 'no cause of action in either in part or in whole had arisen within the territorial jurisdiction' of the City Civil Court, Madras.

12. Now, I shall come back to see how the Court below dealt with the abovesaid I.A. subsequent to the abovesaid order dated 28-4- 1995. (Already in paragraphs 5 and 6 supra, how actually, the Court below, on 28-4-1995, while passing the ex-parte order, has thrown to winds, the procedure laid down in Order 39, Rule 3, C.P.C., was mentioned in detail.) Even subsequent to 28-4-1995, the Court below has not followed the procedure prescribed in Order 39 C.P.C. After granting the ex-parte order on 28-4-1995, notice was ordered returnable on 9-6-1995 only, Order 39, Rule 3A provides thus:-

'Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty

days from the date on which the injunction was granted; and where it is unable so to do, it shall record its reasons for such inability.'

But, here, after granting ex-parte injunction, the I.A. itself has been adjourned to a date beyond the abovesaid 30 days. No doubt, it is said by learned Counsel for the respondents that in view of the intervening summer vacation between 30-4-1995 and 8-6-1995, the I.A. cannot be said to have been adjourned wrongly in any way. But, in such a situation, the Court should have either adjourned the case to the succeeding vacation Court sitting, if such adjournment is possible or, at least recorded the reasons as contemplated in Order 39 Rule 3A, C.P.C. for adjourning the I.A. only to 9-6-1995 and should have been that the notice of the I.A. is actually served immediately on the respondents therein, so that if they are aggrieved, they could take necessary steps in such a vacation court.

12.A That apart, even when the said I.A. was taken up on 9-6-1995, the Court simply orders 'Notice 11.7.1995 This shows that even till 9-6-1995, the petitioners in the said I.A. had not taken any effective step to serve notice of the I.A. on the respondents therein, and yet, despite the abovesaid default on the part of the petitioners in the said I.A., ex-parte interim injunction granted on 28-4-1995 has been only extended. At least on 9-6-1995 when the Court below finds that the petitioners in the I.A. have not taken any effective steps to serve notice of the I.A. on the respondents therein, the Court below should have refused to extend the interim injunction. As already mentioned, Order 39, Rule 3 proviso specifically says that not only the petitioners in the I.A. when ex-parte injunction therein has been granted, should deliver to the opposite party immediately after the order of ex-parte injunction, copies of the papers spoken to in the said proviso, but they should also file. On the very same day on which such injunction was granted or at least on the immediately succeeding day, an affidavit stating that the said copies had been so delivered. When the Legislature has so specifically framed the relevant rules of procedure, the Court below, in the present case, even as late as 9-6-1995, simply extends the ex-parte injunction granted on 28-4-1995, even when the petitioners have not taken any effective step for more than a month to serve the notice in the I.A, (Even earlier, I have pointed out that there is no denial to the allegation of the petitioners herein that no notice of I.A. No. 7168 of 1995 was

given by the respondents herein to the petitioners herein).

13. After 9-6-1995, when the I.A. was taken up on 11-7-1995 once again the Court below has only extended the original ex-parte injunction, despite the fact that on 9-6-1995 itself the respondents had filed counter affidavit to the abovesaid I.A. and has also filed I.A. No. 8268 of 1995 for vacating the said ex-parte injunction. In fact, learned Counsel for the petitioners points out that the petitioners herein had even to file I.A. 8269 of 1995 for advancing the hearing of I.A. No. 7168 of 1995. But, even that I.A. 8269 of 1995 was only adjourned more than once and finally was dismissed as infructuous.

14. When the abovesaid order dated 11-7-1995 was passed extending the abovesaid ex-parte injunction, no doubt, the Court ordered also fresh notice to respondents 3 and 4 returnable by 21-7-1995. Here again, it must be pointed out that even though respondents 3 and 4 had not been served by men, the Court below should have taken the abovesaid I.A. No. 8268 of 1995 for hearing since the aggrieved parties have filed the said I.A. for vacating the ex-parte injunction.

15. All said and done, the way in which the Court below has acted, is highly distressing, particularly in the light of very many decisions of this Court including *The Rajapalayam Industrial & Commercial Syndicate v. A. Vairaprakasam* 1988 2 L.W. 179 and *K. Saroja and Ors. v. K. Ranganatha Naicker and Ors.*, (1990) 1 L.W. 230, pointing out how actually the subordinate Courts should conduct themselves while granting ex-parte injunctions. It is also needless to say that the conduct of the respondents is also highly reprehensible.

16. Since the original papers filed in this civil revision petition were said to be missing for the past few days and since the petitioners were keen on getting final orders in the C.R.P., without any further delay, the papers were allowed to be reconstructed and thereafter, both the Counsel were heard.

17. In the above circumstances, the above referred to ex-parte injunction granted on 28-4-1995 and extended thereafter, is vacated. The civil revision petition is allowed with exemplary costs of Rs. 2,500/- C.M.P. No. 9575 of 1995 is consequently dismissed.

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