Supreme Court of India
Hindustan Petroleum Corporation ... vs Sri Sriman Narayan & Anr on 9 July, 2002
Author: D.P.Mohapatra
Bench: D.P.Mohapatra, Shivaraj V.Patil.

CASE NO.:
Appeal (civil) 3661-62 of 2002

PETITIONER:
HINDUSTAN PETROLEUM CORPORATION LTD.,

Vs.

RESPONDENT:
SRI SRIMAN NARAYAN & ANR.

DATE OF JUDGMENT: 09/07/2002

BENCH:
D.P.MOHAPATRA, SHIVARAJ V.PATIL.

JUDGMENT:

D.P.MOHAPATRA,J.

Leave is granted.

These appeals, filed by the defendant M/s.Hindustan Petroleum Corporation Ltd., are directed against the order of a single Judge of the High Court of Andhra Pradesh allowing the appeal filed under Order 43 Rule 1(r) Civil Procedure Code (for short 'C.P.C.') by the plaintiff Shri Sriman Narayan, who is respondent herein. The plaintiff had filed the appeals challenging the order of the Trial Court rejecting the petition filed by him under Order 39 Rules 1 & 2 C.P.C. seeking interim injunction, restraining the defendants from interfering with possession of the petrol pump, bearing the name and style Super Service Station at Premises No.5-8-699/8, Nampally Station Road, Abids, Hyderabad and also to restrain them from interfering with running the day to day business of the said petrol pump. The Trial Court took note of the factual position that the plaintiff instituted the suit on 28th September, 2000 whereas notice of termination of dealership agreement had been served on the Manager of the petitioner on 22nd September,2000 i.e. about a week prior to institution of the suit, and that there were claims and counter claims between the parties about the possession of the petrol pump. The Trial Court also took note of the case of the petitioner that though notice of termination was served on 22nd September, 2000 the attempt of the defendant to dispossess him could not succeed and the petitioner continued in possession of the petrol pump till 29th September, 2000 on which date between 9.30 and 10.30 A.M. he was forcibly dispossessed. The trial Court also took into consideration the case of the defendant that on 22nd September, 2000

at about 3.30 p.m. after serving the notice of termination on the Manager of the plaintiff, possession of the petrol pump was taken over and the premises were got vacated by the defendant; that after taking over possession of the petrol pump the first defendant had handed over the same to the second defendant, the Andhra Pradesh State Civil Supplies Corporation. The Trial Court considered the documents marked as Exhibits B-3 to B-6, B-8 and B-9 which prima facie show handing over of the retail outlet at 3.30 p.m. along with the list of items handed over to the second defendant by the first defendant on 22nd September, 2000. The Manager had affixed his signatures on the originals of Exh.B-3 to B-6. The learned Trial Court on consideration of the relevant materials on record accepted the case pleaded by the defendant that possession of the petrol pump was taken over from the plaintiff through his Manager and was handed over to the second defendant on 22nd September, 2000. The further finding recorded by the learned Trial Court was that the plaintiff had failed to prove that after 22nd September, 2000 he was in possession and enjoyment of the petrol pump. The Trial Court held that the plaintiff had failed to prove a strong prima facie case in his favour. Considering the further question whether in the circumstances of the case the plaintiff was entitled for an equitable relief of temporary injunction, the Trial Court held that the plaintiff was only a licensee authorised by the first defendant to sell the petroleum products manufactured by it and an order of injunction could not be passed in favour of the licensee against the licensor. On these findings the Trial Court declined to grant the plaintiff's prayer for temporary injunction.

The trial Court summed up its findings in the following words:-

"As already noted above, the petitioner/ plaintiff has no prima facie case to succeed. The balance of convenience also is not in favour of the petitioner/plaintiff. No irreparable loss or injury also caused to the petitioner/plaintiff, even if the possession is not restored, since entitled for the compensation on proof of his case.

For foregoing discussion, I hold on the point that the petitioner/plaintiff is not entitled for temporary injunction as claimed in I.A.1373/2000 or restoration of alleged possession as claimed in I.A.1497/2000 and I answer the point accordingly against the petitioner/plaintiff.

.From the above principles of law laid down and in the light of the Sections 52 to 64, the Easement Act, relating to law of licensees, I have no hesitation in coming to a positive conclusion that the petitioner/ plaintiff, after service of notice of termination of the agreement which was admittedly on 22.9.2000, is not entitled for the relief of temporary injunction, since he is nothing but a licensee. When the petitioner/plaintiff is not entitled for temporary injunction even if he is in possession since it is unlawful, the question of restoration as claimed in the IA 1497/2000 does not arise."

The High Court in the appeal discussed the case of parties, the contentions raised on their behalf and considered the question whether the orders passed by the Courts below are sustainable in law. The High Court observed that in the instant case show cause notice was issued on the ground that the Corporation was obliged to adhere to the principles of natural justice to the effect that such a provision is made in the agreement between the parties. The High Court appears to have taken note of the fact that there was cancellation of the dissolutions of the partnership firm of the plaintiff with effect from 1.3.2000 and that was intimated to the defendant on 3.3.2000. When such a dissolution

had taken place before the issue of show cause notice the Corporation was not entitled to take recourse to the stipulations in the agreement forbidding the grantee from making any change in the structure of the firm without prior permission of the Corporation. Construing different clauses of the agreement including clauses 44, 45, 55 and 57, the High Court took the view that all illegalities or misconduct or violation need not ipso facto result in inevitable termination of the agreement; for this purpose the Corporation had been vested with the power to call upon the dealer to rectify the mistake and in spite of such direction, if the dealer does not rectify the mistake, it would be open to the Corporation to terminate the agreement. Such procedure having not been followed by the defendant in the case the High Court held that the termination of the dealership agreement was prima facie illegal. Considering the factual position regarding possession of the property the High Court took the view that on the date of filing of the suit the plaintiff was in possession of the property. The High Court also took the view that by taking recourse to the extreme step of termination of the agreement without affording an opportunity to rectify the defect by the plaintiff, serious prejudice leading to irreparable injury has been caused to the plaintiff. On these findings, the High Court felt satisfied that the orders refusing to grant interim injunction and rejecting the prayer for restoration of possession of the property were unsustainable in law. Accordingly, the orders passed by the trial Court were set aside and the interlocutory applications, in I.A.Nos.1373 and 1497 of 2000, were allowed as prayed for. It was directed that the orders were to remain in operation pending disposal of the suit. The lower Court was directed to proceed with the trial of the suit expeditiously. The said order of the High Court is under challenge in the present appeals.

Shri M.L.Verma, learned senior advocate appearing for the appellant contended that the order passed by the High Court is vitiated on account of non-consideration of the relevant criteria and well settled principles in matters of grant of interim injunction. Shri Verma further contended that the High Court has not considered the reasons given by the Trial Court in the order declining to accept the respondent no.1's prayer for interim injunction.

Per contra Shri R.F.Nariman, learned senior counsel appearing for the respondent no.1 submitted that in the context of the facts and circumstances of the case as stated in the impugned order, the High Court rightly granted the prayer for interim injunction. According to the learned senior counsel the order is based on relevant considerations. He urged that this Court may not interfere with the impugned order.

It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests :-

i) whether the plaintiff has a prima facie case;

ii) whether the balance of convenience is in favour of the plaintiff; and

iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. 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. The need for such protection has, however, to 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. The Court must weigh one need against another and determine where the "balance of convenience" lies. [See Gujarat Bottling Co. Ltd.& Ors. Vs. Coca Cola Co. & Ors. (1995) 5 SCC 544 at

574.] In Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors., (1990) 2 SCC 117, this Court, discussing the principles to be kept in mind in considering the prayer for interlocutory mandatory injunction observed :

"The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines.

Generally stated these guidelines are :

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as a prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

In the case of Indian Oil Corporation Ltd. vs. Amritsar Gas Service & Ors., (1991) 1 SCC 533, a bench of three learned Judges of this Court considered the appropriate relief to be granted in a case arising from revocation of the distributorship agreement for sale of LPG by the Indian Oil Corporation under different clauses of the agreement. In that connection, this Court made the following observations :-

"The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributorship was not validly made under clause 27 of the agreement. No doubt, the notice of termination of distributorship dated March 11, 1983 specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the appellant-Corporation; and such acts would permit exercise of the right of termination of distributorship under clause 27. However, the arbitrator having held that clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding has to proceed on that basis.

In such a situation, the agreement being revocable by either party in accordance with clause 28 by giving 30 days' notice, the only relief which could be granted was the award of compensation for the period of notice, that is, 30 days. The plaintiff-

respondent 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 days notice period from March 11, 1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd."

Coming to the case on hand it is to be kept in mind that the controversy raised in the case relates to a commercial contract entered between the appellant and respondent no.1 for sale of petroleum products manufactured by the appellant Corporation. Permission for sale of such products was granted by the appellant on the terms and conditions set out in the agreement. In the said agreement it was clearly stipulated that the respondent no.1 shall not change the structure of the firm without the permission of the appellant. Concededly the respondent no.1 had changed the structure of the firm from a proprietary firm to a partnership firm. The consequence of violation of any condition of the agreement by the respondent no.1 was provided under clause 45 in which it was stated that the grantor/licensor will be entitled to revoke the agreement on the happening of such event. Therefore, prima facie the appellant was entitled to take action for revoking the agreement entered with the respondent no.1. Validity or otherwise of the order of revocation can be considered at the stage of interim injunction only for the limited purpose of ascertaining whether there is prima facie case in favour of the plaintiff/petitioner and not for determination of the question finally. From the discussions in the impugned order it appears that the High Court has dealt with the matter as if it was deciding the suit.

The questions whether, if the respondent no.1 had violated the condition stipulated in the agreement by changing the structure of the firm without taking prior permission from the appellant,

still the latter was bound to give to the former an opportunity for rectifying the defect; and whether passing the order revoking the agreement without affording such opportunity will render the revocation order invalid, are matters which are to be considered when the suit is taken up for hearing. These are not matters to be considered in detail for considering the prayer for interlocutory order of injunction. Regarding the question of status quo on the date of the order of injunction there was serious dispute whether the appellant had taken over possession of the property after notice of revocation of the agreement was served on the manager of respondent no.1 and had made over possession of the suit property to respondent no.2 for the purpose of running the petrol pump. The High Court has tried to get over this question by recording a finding that there were some materials on record to show that the respondent no.1 was transacting business of sale of petroleum products on the date of filing of the suit. This finding has been arrived at by the High Court without considering the reasons given by the Trial Court which had recorded a finding to the contrary in its order. The High Court has not at all discussed the considerations which weighed and the reasons which persuaded the Trial Court in rejecting the prayer for interim mandatory injunction as prayed for by respondent no.1. Most importantly, the High Court has not considered the question whether on the facts and circumstances of the case, if the prayer for interim injunction is refused the plaintiff/petitioner will suffer irreparable loss which cannot be adequately compensated by damages. As has been held by this Court in Dorab Cawasji Warden case (supra), ordinarily the relief to be granted to a plaintiff in such a matter is awarding of damages and interim injunction of a mandatory nature is not to be granted.

On consideration of the entire matter, we are satisfied that the order passed by the High Court granting the prayer for interim injunction, in the context of facts and circumstances of the case, is unsustainable. Accordingly, the appeals are allowed. The order dated 5.12.2000 of the High Court in CMA Nos.3251 and 3255 of 2000 is set aside and the order passed by the Trial Court in I.A.No.1373 & 1497/2000 in O.S. No.1139 of 2000 dated 06.11.2000 is restored. It is made clear that the observations made in this judgment will not in any way affect the merit of the case. In the facts and circumstances of the case, there will be no orders for costs.