

M/S. Ram Chand And Sons Sugar Mills Pvt. ... vs Kanhaya Lal Bhargava & Ors on 10 March, 1966

Equivalent citations: AIR 1966 SUPREME COURT 1899, 1967 ALL. L. J. 102, 1967 BLJR 59, 1967 37 COM CAS 42, 1967 SCD 52, 1966 3 SCR 856

PETITIONER:

M/S. RAM CHAND AND SONS SUGAR MILLS PVT. LTD.

Vs.

RESPONDENT:

KANHAYA LAL BHARGAVA & ORS.

DATE OF JUDGMENT:

10/03/1966

BENCH:

ACT:

Code of Civil Procedure (Act 5 of 1908), s. 151 and O.XXIX r. 3--Director of Company summoned to answer material questions--company when responsible for his non-appearance--Inherent powers of court to prevent abuse of process of court--scope of.

HEADNOTE:

The first respondent filed a suit against the appellant company and one R for recovery of a sum of money. The court acting under O.XXIX r. 3 of the Code of Civil Procedure directed J one of the directors of the company to appear before it and answer certain material questions in relation to the suit and when he did not appear the appellant was directed to produce him, with the same result. The Court after giving notice to the appellant struck off its defence in purported exercise of its inherent powers under s. 151 of the Code. The High Court dismissed the appellant's revision petition whereupon it appealed to this Court by special leave. It was contended on behalf of the appellant that inherent power could not be invoked in the circumstances of the case.

HELD : (i) Whatever limitations are imposed by construction on the provisions of s. 151 of the Code, they do not control the undoubted power of the court conferred under s. 151 of the Code to make a suitable order to prevent the abuse of the process of the Court. [860]

Padam Sen v. State of Uttar Pradesh, [1961] 1 S.C.R. 884, Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal,

[1962] Supp. 1 S.C.R. 450 and Arjun Singh v. Mohindra Kumar, [1964] 5 S.C.R. 946, applied.

(ii) There is nothing in O.XXIX of the Code which expressly or by necessary implication, precludes the exercise of the inherent power of the Court under s. 151 of the Code. In a case of default made by a director who failed to appear in court when he was so required under the aforesaid rule, the court can make a suitable consequential order under s. 151 of the Code as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. [861 E]

(iii) 'Any director' in O.XXIX r. 3 need not be the same director who has signed and verified a pleading or on whom summons had been served. He can be any one of the directors who will be in a position to answer material questions relating to the suit. [861 A-B]

(iv) In the present case the court was justified in striking off the defence of the appellant company. Unless there was a finding of collusion between the appellant and the director in that the former prevented the latter from appearing in court it was difficult to make the company constructively liable for the default of one of its directors. A director's acts outside the scope of his powers could not bind the company and it was not possible to hold that the director in refusing to respond to the notice given by the court was acting within the scope of the powers conferred on him. [861H-862 D]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 166 of 1966. Appeal by special leave from the order dated August 27, 1965 of the Punjab High Court (Circuit Bench) at Delhi in Civil Revision No. 289-D of 1965.

S.N. Andley, Ramevhar Nath, Mahinder Narain, for the appellants.

A. K. Sen. B. Sen, B. P. Maheshwari, P. D. Bhargava and M. S. Narasimhan, for the respondents.

The Judgment of the Court was delivered by Subba Rao. J.--This appeal by special leave is directed against the order of the Punjab High Court confirming that of the Subordinate Judge, Delhi, striking out the defence of the appellant under s. 151 of the Code of Civil Procedure, hereinafter called the Code.

Kanhaya Lal Bhargava, the 1st respondent, filed a suit on April 27, 1962, in the Court of the Subordinate Judge, First Class, Delhi, against Messrs. Ram Chand & Sons Sugar Mills Private Limited, the appellant, and one Ram Sarup for the recovery of a sum of Rs. 45,112.94. Pending the suit, on October 27, 1964, the 1st respondent filed an application in the said court under O.XI, r. 21,

of the Code, read with O.XXIX, r. 3, thereof, for striking off the defence or in the alternative for directing Jugal Kishore, a director of the Appellant-company, to appear in court on December 14, 1964. On December 3, 1964, the court made an order therein directing the said Jugal Kishore to be present in court on December 14, 1964, to answer material questions relating to the suit. The appellant took a number of adjournments to produce the said Jugal Kishore on the ground that the latter was ill. On February 3, 1965, the court gave the appellant a final opportunity to produce the said Jugal Kishore. Even so, the appellant took two more adjournments to produce him, but did not do so on the ground that he was ill. Finally on February 25, 1965, the court issued a notice to the 1st defendant, appellant herein, to show cause why his defence should not be struck off. On March 16, 1965, after hearing the arguments the court held that Jugal Kishore had failed to comply with the orders of the court and was persistent in his default in spite of chances given to him; and on that finding, it struck off the defence of the appellant. The High Court, on revision, held that Jugal Kishore did not appear in court in spite of orders to that effect and that the learned Subordinate Judge had Jurisdiction to strike out the defence of the appellant. It further negated the contention of the appellant that it was not in its power to compel Jugal Kishore to appear in court on the ground that he was the director of the company and was under its control and, therefore, the appellant-company could not be heard to say CI/66---9 that one of the directors did not obey the orders of the court. Hence the present appeal.

The argument of Mr. S. N. Andley, learned counsel for the appellant, may be briefly stated thus: The Code of Civil Procedure provides express power for a court to strike out defence against a party under specified circumstances and, therefore, s. 151 thereof cannot be invoked to strike out the defence in other circumstances, for to do so will be to override the provisions of the Code. Order XXIX, r.3, of the Code does not empower the court to require the personal appearance of a director other than a director who signed and verified the pleading within the meaning of O.XXIX, r. 1 thereof.

Mr. Sen, learned counsel for the respondent, on the other hand contended that the court had ample jurisdiction to strike out the defence of a party if he was guilty of abuse of the process of the court. In the instant case, he contended Jugal Kishore, one of the permanent directors of the appellant-company had adopted a recalcitrant attitude in defying the orders of the court to be present for interrogation and, therefore, the Subordinate Judge rightly, after giving every opportunity for him to be present, struck off the appellant's defence.

Section 151 of the Code reads:

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

The words of the section appear to be rather wide. But the decisions of this Court, by construction, limited the scope of the said section In *Padam Sen v. The State of Uttar Pradesh* (1) the question raised was whether a Munsif had inherent powers under s. 151 of the Code to appoint a commissioner to seize account books. This Court held that he had no such power. *Raghubar Dayal*,

J., speaking for the Court, observed:

"The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in s. 151 of the Code when the exercise of these powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be contrary to or (1) [1961] 1 S.C.R 884,887.

8 5 9 different from the procedure expressly provided in the Code".

This Court again in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*(1) considered the question whether a court had inherent power under s. 151 of the Code to issue a temporary injunction restraining a party from proceeding with a suit in another State. In that context, *Raghubar Dayal, J.*, after quoting the passage cited above from his earlier judgment, interpreted the said observations thus:

"These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in s. 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature. This restriction, for practical purposes, on the exercise of these powers is not because these powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is dictated by the interests of justice."

This Court again in *Arjun Singh v. Mohindra Kumar*(2) considered the scope of s. 151 of the Code. One of the questions raised was whether an order made by a court under a situation to which O. IX, r. 7, of the Code did not apply, could be treated as one made under s. 151 of the Code. *Rajagopala Ayyangar, J.*, made the following observations:

"It is common ground that the inherent power of the Court cannot override the express provisions of the law. in other words, if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code need not be expressed but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates."

Having regard to the said decisions, the scope of the inherent power of a court under s. 151 of the Code may be defined thus: The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is

inconsistent with, or comes (1) [1962] Supp. 1 S.C.R. 450, 461.

(2) [1964] 5 S.C.R. 946, 968.

8 60 into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of s.151 of the Code, they' do not control the undoubted power of the court conferred under s. 151 of the Code to make a suitable order to prevent the abuse of the process of the Court.

Now let us look at the relevant provisions of the Code.

Order XXIX. r. 1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

r.2 Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served--

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) r. 3. The Court may, at any stage of the suit, require the personal appearance' of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit. The contention of the learned counsel for the appellant is that the director mentioned in r. 3 is the director mentioned in r. 1 thereof. To put it in other words, the director who signs and verifies the pleadings can only be required to appear personally to answer material questions relating to the suit. Though this contention appears to be plausible, it is not sound, Rules 1, 2 and 3, of O. XXIX of the Code use the words "any director". Under r. 1 thereof a director who is able to depose to the facts of the case may sign and verify the pleadings; under r. 2, a summons may be served upon any director; and under r. 3, any director who may be able to answer material questions relating to the suit may be required to appear personally before the court. The adjective "any" indicates that any one of the directors with the requisite qualifications, prescribed by rr. 1, 2 and 3 can perform the functions laid down in each of the rules respectively. One can visualize a situation where a director who signed and verified the pleadings may not be in a position to answer certain material questions relating to the suit.

If so, there is no reason why the director who may be able to answer such material questions is excluded from the scope of r. 3. Such an interpretation will defeat the purpose of the said rule. Therefore, "any director" in r. 3 need not be the same director who has signed and verified a pleading or on whom summons has been served. He can be any one of the directors who will be in a position to answer material questions relating to the suit.

Even so, learned counsel for the appellant contended that O.XXIX, r. 3, of the Code did not provide for any penalty in case the director required to appear in court failed to do so. By drawing an analogy from other provisions where a particular default carried a definite penalty, it was argued that in the absence of any such provision it must be held that the Legislature intentionally had not provided for any penalty for the said default. In this context the learned counsel had taken us through O.IX, r. 12, O. X, r. 4, O.XI, 21, O.XVI, r. 20, and O. XVIII, rr. 2 and 3 of the Code. No doubt under these provisions particular penalties have been provided for specific defaults. For certain defaults, the relevant Orders provide for making an ex parte decree or for striking out the defence. But it does not follow from these provisions that because no such consequential provision is found in O.XXIX, the court is helpless against a recalcitrant plaintiff or defendant who happens to be a company. There is nothing in O.XXIX of the Code. which, expressly or by necessary implication, precludes the exercise of the inherent power of the court under S. 151 of the Code. We are, therefore, of the opinion that in a case of default made by a director who failed to appear in court when he was so required under O.XXIX, r. 3, of the Code, the court can make a suitable consequential order under s. 151 of the Code as may be necessary for the ends of justice or to prevent abuse of the process of the court. The next question is whether the court can, as it did in the present case, strike off the defence of the appellant for the default made by its director to appear in court. Learned counsel for the respondent contended that both the courts in effect found that the director was guilty of a recalcitrant attitude and that he had abused the process of the court and, therefore, the Subordinate Judge had rightly exercised his inherent power in striking off the defence of the appellant, We are satisfied, as the courts below were, that Jugal Kishore, the director of the appellant-company, purposely for one reason or other, defied the orders of the court on the pretext of illness and had certainly abused the process of the court. The learned Subordinate Judge would have been well within his rights to take suitable action against him, but neither of the courts found that the appellant was responsible or instrumental for the director not attending the court. Unless there is a finding of collusion between the appellant and the director in that the former prevented the latter from appearing in court, we find it difficult to make the company constructively liable for the default of one of its directors. Many situations may be visualized when one of the directors may not obey the directions of the company or its board of directors or may be even working against its interests.

It cannot be disputed that a company and the directors of the company are different legal personalities. The company derives its powers from the memorandum of association. Some of the powers are delegated to the directors. For certain purposes they are said to be trustees and for some others to be the agents or managers of the company. It is not necessary in this case to define the exact relationship of a director qua the company. The acts of the directors within the powers conferred on them may be binding on the company. But their acts outside the said powers will not bind the company. It is not possible to hold that the director in refusing to respond to the notice given by the court was acting within the scope of the powers conferred on him. lie is only liable for his acts and not the company. If it was established that the company was guilty of abuse of the process of the court by preventing the director from attending the court, the court would have been justified in striking off the defence. But no such finding was given by the courts below.

The orders of the courts below are not correct. We set aside the said orders and direct the Subordinate Judge to proceed with the suit in accordance with law. The appeal is allowed, but, in the circumstances of the case, without costs.

Appeal allowed.