

Delhi High Court

Smt. Bharti Televentures Limited vs Bell South International ... on 23 February, 2001

Author: V Sen

Bench: V Sen

ORDER Vikramajit Sen, J.

1. By these orders I intend to decide as to whether the present application should be entertained and disposed off by me, even though, consequent upon a change in the Roster, I am not hearing civil suits any longer. The application has been filed by DSS Enterprises Private Ltd. under Section 151 of the Code of Civil Procedure, for deleting the observations against the Applicant in the Order dated 28.8.2000. The prayers in the application are as follows:

"(a) Delete the observations made against the Applicant in the Order dated 28.8.2000.

(b) Stay the operation of the observations till the disposal of the present application.

(c) Clarify that nothing stated in the Order should be construed as a finding of this Hon'ble Court against the Applicant.

(d) Clarify that the observations should not be used to prejudice the interests of the Applicant in other proceedings.

(e) Pass any other order(s) as the Hon'ble Court may deem fit and proper in the facts and circumstances."

2. To briefly recapitulate the facts of the case, I had by Orders dated 28th August, 2000 restrained Bell South International Asia/Pacific Incorporated USA from selling or entering into any arrangement/agreement for the sale of its shareholding in SKYCELL with any party other than the Bharti Televentures Ltd. In the order I had also made reference to the Applicant herein. It has been averred in this application that a separate suit, i.e. S.No. 1957/2000 has now been filed by Bharti Televentures Ltd. against the Applicant. It is complained that, in the Plaint extensive reference is made to the proceedings in the present suit and in particular to the Orders dated 28.8.2000. It has also been averred that this Order was produced before Hon'ble Mr. Justice B.A. Khan who was hearing an appeal arising between the parties. It is also relevant to mention that a Review Application has been filed by the Defendant namely Bell South International Asia/Pacific Incorporated USA which, despite the change in the Roster, is being heard by me.

3. Mr. Rajiv Sawhney, Learned Senior Counsel appearing for the Applicant has pressed that this application should rightly be also heard and disposed off by me even though the suit is now receiving the attention of my learned Brother Hon'ble Mr. Justice J.D. Kapoor. As I was of the view that it would not be proper for me to hear any application other than the Review, arguments on this preliminary issue were addressed. Mr. Sawhney, Learned Senior Counsel submitted that I should ignore the factum of Section 151 of the Code of Civil Procedure having been invoked for the hearing of the Application. Instead he has asked me to treat it as having been filed under Order XLVII of the

CPC. It is well settled that Courts ought not to decline relief merely because a wrong provision of law had been captioned and mentioned in the application. Mindful of this, but looking at the reliefs prayed for in the application, I am still not at all in agreement that the application is in substance one seeking a Review. It is for this reason that the Prayers have been reproduced by me at the beginning. I had put it to Learned Counsel that the proper forum for prosecuting this application would be before the Hon'ble Judge who is now seized of the dispute. It was contended however, that since observations vital to the dispute had been made by, and these observations were allegedly affecting the decisions of my learned Brothers, it is in the interest of justice that I should hear the application. I do not agree. It was also emphasised that the order is a precedent which is binding on every Court, a proposition with which I am not in the slightest agreement. Interlocutory orders are passed from time to time and these do not in any way impede or prohibit the Court from passing orders to the contrary, if the circumstances so necessitate. In the present case, since the Applicant was not a party to the suit, the Orders sought to be reviewed can by no reasoning be equated to a precedent.

4. In Suit No. 1957/2000 filed against the present applicant, the following orders had been passed-

28.09.2000 Present: Mr.Kapil Sibal, Sr.Advocate with Mr. Amar Gupta for the Plaintiff Mr. Rajiv Sawhney, Sr.Advocate with Mr. Vibhu Bhakhru for the Defendant.

IA No.9836/2000 & S.No.1957/2000 Mr. Sawhney, learned Senior counsel states that till the next date of hearing the Defendant shall not enter into any agreement for the sale/purchase of its shares to any third party without the leave of the Court. Learned counsel for the Defendant further submits that Mr. Ganapathy, learned counsel for the Defendant states that the present orders are being relied upon in litigation pending between DSS Enterprises and Bharti Televentures Ltd. and Mr. Kapil Sibal, learned Senior counsel for the Plaintiff further states that none of the observations made in order disposing of the interim application filed in these proceedings has been relied upon by the Plaintiff in respect of DSS Enterprises. It is clarified that the interim orders passed by me dated 28th August, 2000 shall have an application only in respect of the disputes that have been brought before this Court in suit No.1727/2000 by Bharti Televentures Ltd. against Bell South International, Asia/Pacific Incorporated, USA.

Renotify on 18th October, 2000.

September 28, 2000 aj sd/- Vikramajit Sen, J.

5. This should have put an end to the controversy, pressed before me but obviously it has not. None of the parties has assailed any of the Orders by carrying it to the Division Bench, a right which is easily available to them.

6. Reliance has been placed by Mr. Sawhney on two decisions of the Hon'ble Supreme Court, i.e. K. Ajit Babu and Others vs. Union of India and others, and Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others, . These cases pertain to service matters and were presided over by Hon'ble Ms. Justice Sujata V. Manohar. In Ajit Babu's case (supra), it had been observed as follows:-

"Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the Court or the Tribunal may not be strictly judgments in persons affecting only the parties to the cases, they would be judgments in rem. In such situation, the question arises as to what remedy is available to such affected persons who are not the parties to the case, yet the decision in such a case adversely affect their rights in the matter of seniority.....Ordinarily, right of review is available only to those who are party to a case. However, if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seen review by opening the whole case decided by the Tribunal. The right to review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking the Order 47 of the Code of Civil Procedure may not be applicable to the Tribunals but the principles contained therein surely have to be extended.....We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

7. This passage, on which reliance has been placed by the applicant, itself clarifies its non-applicability to civil suits, and to parties to such suits alone. The Court did not have to consider the availability of belief under Order XXXIX or other provision of the Civil Procedure Code. Since the power to Review its order is reserved to the Tribunals by virtue of Section 22(3)(f), without indicating the ambit and details of procedure, the Hon'ble Supreme Court had considered the detailed provisions of Order 47. These cases are of no assistance to the argument of Learned Counsel for the applicant who is also not a party in the present case, to be heard in an application which is sought to be metamorphosed from one under Section 151 to one under Order XLVII.

8. In *Gopabandhu Biswal's case* (supra), similar observations were made, incorporating the words "parties aggrieved". There can be no doubt that the observations made in these two cases would not apply to matters other than service disputes, and especially to civil suits which are strictly governed by the procedure set down in the Civil Procedure Code itself.

9. Order XXXIX Rule 4 immediately comes to mind. But I may clarify that even if this Rule is inapplicable, I am still unable to accede to the argument that I should decide the present application. It reads as follows:

"Order for injunction may be discharged, varied or set aside-Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:

[Provided that if in an application for temporary injunction or in any affidavit supporting such application a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.]"

10. The Rule permits any party dissatisfied with an order, in contra-distinction to a party to the suit, to approach the Court. Such a party may seek impleadment or may not. Instead of filing an application under Section 151 of the Code of Civil Procedure, why recourse was not taken to Rule 4 of Order XXXIX, or to an appeal before the Division Bench, cannot be appreciated. Even if I treat the application under Section 151 as, in fact, an application for a Review, thus necessitating its disposal by me rather than by the Court now served with the Suit, the further question that would arise is whether a person who is not a party to the suit can apply for its Review. This matter had arisen in the case of Bharat Singh vs. Firm Sheo Pershad Giani Ram and Others, , in which the Hon'ble Division Bench had opined as follows:

"In our opinion, it is not necessary to go into the facts of the case because the impugned order dismissing the review application can be upheld on a preliminary point, namely, that no review petition under O. 47, R.1 C.P.C. could be filed by Bharat Singh. O. 47 R.1 C.P.C. reads as under :-

"1. (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

On the very reading of the rule it is clear that a review application can be filed only by a party to the lis in which the order sought to be reviewed has been passed. It cannot be preferred by a third party. It was urged on behalf of the petitioner that himself aggrieved" would include anyone who is adversely affected by the impugned order, whether that person is or is not party to the lis in which the impugned order has been passed. We do not agree. As will be apparent from a reading of the rule any person considering himself aggrieved by a decree or order may apply for review provided he can establish that he "from the discovery of new and important matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision was passed or order made." This postulates that the person applying for review has to satisfy two conditions, namely, that he is aggrieved by the order and also that he for the

reasons mentioned was not a position to bring that fact to the notice of the Court earlier which resulted in a wrong order being passed. If these two conditions are necessary before a review application can be moved, it follows that the review application has to be made by a person who was a party to the lis decided by the impugned order or decree.

No authority contrary to the view that we have expressed above was cited, nor was any authority cited in favor of the view that we have expressed. We are, however, fortified in taking the view that we have taken on the principle that a decree or order adversely affecting a person who is not a party to the lis in which that order or decree is passed is in law not binding on him. Such a person, therefore, can ignore the order or decree which adversely affects him and so, cannot apply for a review of that order or decree. He may take such other steps as may be available to him in law to protect his rights as and when the order or decree adversely affecting him is sought to be enforced so as to jeopardise his rights. (See (1921) 61 Ind Case 534 (Lah)."

11. This precedent is not an authority for the proposition that the Judge who passed the injunction should along decide an application seeking its variance. It lays down that only a party to the lis can prefer a Review. It annihilates the contentions raised before me.

12. Mr. Rajiv Sawhney has also relied on the decision of Dr. Dliip Kumar Deka and Another vs. State of Assam and Another, . But I cannot appreciate is reliance.

13. In these circumstances, I see no justification for Learned Counsel for the Applicant's insistence that I must decide this application even though the suit is not before me. The Applicant is not without relief. This very application can properly be heard and decided by the Court to which the Suit has been assigned, either in the context of Section 151 or any other provision of law.

14. The parties are accordingly directed to appear before the Regular Bench on 30th March, 2001.