Supreme Court of India
Cotton Corporation Of India vs United Industrial Bank on 19 September, 1983
Equivalent citations: 1983 AIR 1272, 1983 SCR (3) 962
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
COTTON CORPORATION OF INDIA

Vs.

RESPONDENT:
UNITED INDUSTRIAL BANK

DATE OF JUDGMENT19/09/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
ERADI, V. BALAKRISHNA (J)

CITATION:
1983 AIR 1272 1983 SCR (3) 962
1983 SCC (4) 625 1983 SCALE (2)324
CITATOR INFO :
D 1987 SC 874 (18)

ACT:
Specific Relief Act, 1963-S. 41(b)-Whether court has jurisdiction to grant injunction restraining any person from instituting any proceeding in a court not subordinate to that from which injunction is sought ?

HEADNOTE:
A Branch Manager of the respondent-Bank co-accepted 16 usance bills of the aggregate value of over Rs. 45 lakhs relating to purchases of cotton made by a textile mill from the appellant-Corporation. When the usance bills matured, the Corporation called upon the Bank to make payment. The Bank filed a suit against the Corporation praying inter alia for a declaration that the co-acceptance of the usance bills by its Branch Manager was null and void as he did not have the requisite authority to co-accept the bills on behalf of the Bank and also for an interim injunction restraining the Corporation from presenting a winding-up petition under the Companies Act, 1956. The prayer for injunction was turned down by a Single Judge of the High Court but the same was granted by a Division Bench which heard the appeal against the order of the Single Judge. The narrow question examined

in this appeal was. Whether in view of the provision contained in s. 41(b) of the Specific Relief Act, 1963, the court will have jurisdiction to grant an injunction restraining any person from instituting any proceeding in a court not subordinate to that from which the injunction is sought ?

Allowing the appeal,

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HELD: From the language used in s. 56(b) of the Specific Relief Act, 1887 (which was the predecessor provision of s. 41(b) of the 1963 Act) it was clear that the court could not stay a proceeding in a court superior in hierarchy to the court from which injunction was sought; but by a process of judicial interpretation a consensus had been reached that a court could by an injunction restrain a party before it from further prosecuting the proceeding in other courts, superior or inferior. To some extent this approach had not only effectively circumvented the provision contained in s. 56(b) of the repealed Act but also denuded it of its content. The legislature took notice of this judicial interpretation and materially altered the language of the succeeding provision. It manifestly expressed its mind by enacting s. 41(b) in such clear and unambiguous language that an injunction cannot be granted to restrain any person-the language takes care of injunction acting in personum-from instituting or prosecuting any proceeding in a Court not subordinate to that from which injunction is sought. This change in language deliberately adopted by the legislature has to be given full effect. [970 F-H; 971 A-B, D]

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(i) Anyone having a right, that is a legally protected interest, complains of its infringement and seeks relief through Court must have an unhindered, uninterrupted access to law courts. Access to court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori therefore, no other court can by its action impede access to justice. This principle is deducible from the Constitution which seeks to set up a society governed by rule of law. As a corollary it must yield to another principle that a superior court can injunct a person by restraining him from instituting or prosecuting a proceeding before a subordinate court. Save this specific carving out of the area where access to justice may be impeded by an injunction of the court, the legislature desired that courts ordinarily should not impede access to justice through court. This is the equitable principle underlying s. 41(b). Accordingly, it must receive such interpretation as would advance the intendment and thwart the mischief it was enacted to suppress and to keep the path of access to justice through court unobstructed. [971 F-H; 972 A-B]

(ii) The legal system in our country envisages

obtaining redressal of a wrong or relief against unjust denial thereof by approaching the court set up for the purpose. If a person complaining of invasion of his rights is injuncted from approaching the court set up to grant relief by an action brought by the opposite side against whom he has a claim and which he wanted to enforce through court, he would have to first defend that action and vindicate his right and thereafter, when the injunction is vacated, he has to approach the court for relief. In order to avoid such multiplicity of proceedings, the legislature enacted s. 41(b) and statutorily provided that an injunction cannot be granted by a court with a view to restraining any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. [972 C-F; G]

(iii) The contention that s. 41 (b) is not attracted because it deals only with perpetual injunction cannot be accepted. The expression 'injunction' in s. 41(b) is not qualified by an adjective and therefore it would comprehend both interim and perpetual injunction. It is true that s. 37 specifically provides that temporary injunctions which have to continue until a specified time or until further order of the court are regulated by the Code of Civil Procedure. But if a dichotomy is introduced by confining s. 41 to perpetual injunction only and s. 37 read with o. 39 C.P.C. being confined to temporary injunction, an unnecessary grey area will develop. It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the Court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid of or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. [973 C-F]

State of Orissa v. Madan Gopal Rungta, [1952] S.C.R. 28 referred to.

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Udyog Mandir v. Messrs. Contessa Knit Wear and Ors., A.I.R. [1975] Bom. 158; and Krishnadevi P. Gupta & Anr. v. Banwarilal Hanuman Prasad Tibrewala, A.I.R. [1976] Bom. 233 approved.

In the instant case the Bank seeks to restrain the Corporation by an injunction of the court from instituting a proceeding for winding-up of the Bank. There is a clear bar in s. 41(b) against granting this relief. The court has no jurisdiction to grant a perpetual injunction restraining a person from instituting a proceeding in a court not subordinate to it as a relief, and therefore; ipso facto temporary relief cannot be granted in the same terms.

[974 B-C]

(iv) One cannot bodily import English decisions into our system to develop a hybrid legal system and one cannot be so hypnotised by English decisions to overlook legislative changes introduced in Indian Law. Where provisions are in pari materia between the English Act and the Indian Act and where local conditions do not materially differ from the conditions in U.K., one may, keeping in view the conditions in our country, look at the view taken by the English Courts and if consistent with our jurisprudence, our social conditions and our chalked out path in which the law must move, one can profitably take help of the decision. [975 D-E]

Cadiz Waterworks Co. v. Barnett, [1874-75], 19 Equity Cases 182; Circle Restaurant Castiglione Co. v. Lavery, [1881] 18 Ch. Div. 555; and New Travellers Chambers Ltd. v. Messrs Cheese & Green, [1894] 17 Law Times Reports 171-plea to take notice of, declined.

Buckley: Companies Act , 14th Edn., footnotes 7, 8 and 9, P. 524; and Palmer's Company Precedents, Part II, 17th Ed. p. 45-plea to take notice of declined.

Hungerford Investment Trust Ltd. v. Haridas Mundhra & Ors.,[1972] 3 S.C.R. 690, at 701; Chales Forte Investments Ltd. v. Amanda, [1963] 2 All E.R. 940; Bryanston Finance Ltd. v. De Vries, [1976] 1 All E.R. 25; and Stonegate Securities Ltd. v. Gregory, [1980] 1 All E.R. 241; referred to.

(v) The Court can in appropriate cases grant temporary injunction in exercise of its inherent power in cases not covered by O. 39, C.P.C, But the inherent power of the Court cannot be invoked to nullify or stultify a statutory provision. While exercising inherent power, the court should not overlook the statutory provision in s. 41(b) which clearly indicates that injunction to restrain initiation of proceeding cannot be granted. [980 C-D]

Manoharlal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, [1962] Supp. 1 S.C.R. 450: and Padam Sen v. State of U.P.; [1961] 1 S.C.R. 884; referred to.

In the instant case, the appellate judgment does not contain the slightest reference to the invocation of the inherent power of the court in granting the order of injunction now under challenge. Not only that, but the court has not held that the contention of the Corporation is frivolous or untenable or

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the claim is mala fide. This becomes clear from the observation of the court that the order passed by it is not founded on the merits of the Bank's case or lack of merit in any claim which the Corporation may have against the plaintiff-Bank and it would be open to the Corporation to file a regular suit or summary suit against the plaintiff-Bank in which appropriate orders would be passed by the court seized of the matter as and when the occasion arises for the same.

[980 D-F]

(vi) The contention that the presentation of winding-up petition coupled with advertisement thereof in newspaper as required by law has certain serious consequences on the status, standing, financial viability stability and operational efficiency of the company, and where the debt is bona fide disputed, a petition for winding-up, which is not an alternative to the suit to recover the same, may be a pressure tactic to obtain an unfair advantage, and therefore, the court must, despite the provision in s. 41(b), spell out a power in appropriate cases to injunct a person from filing a winding-up petition, cannot be accepted. This contention overlooks the various statutors safeguards against admission, advertising and publication of winding-up petitions. There is sufficient built-in safeguard in the provisions of the Companies Act and the Rules framed thereunder which would save the company from any adverse consequences, if a petitioner actuated by an ulterior motive presents the petition. According to rule 96 of the Companies (Court) Rules, 1959 a petition for winding-up has to come up in chambers before the Company Judge and not in open court, and the rule confers a discretionary power on the judge not to give any directions at that stage but merely issue a notice to the company before giving directions. If upon receipt of such notice the company appears and satisfies the judge that the debt is bona fide disputed or the presentation of the petition is mala fide, or actuated by an ulterior motive, or abuse of the process of the court, the Judge may decline to admit the petition and may direct and party presenting the winding-up petition to prove its claim by a suit or in any other manner. This is the jurisdiction of the Company Court and it cannot be restrained from exercising the same by some other court restraining the creditor from presenting a winding-up petition. [981 B-H; 982 A; D]

National Conduits Pvt. Ltd. v. S. S. Arora, [1968] 1 S.C.R, 430, referred to.

George v. The Athimattam Rubber Co. Ltd ., A.I.R. 1964 Kerala 212, approved.

In the instant case, even assuming that the Appellate Bench had in its mind the inherent power of the court to grant injunction despite statutory inhibition and consistent with the view taken by the courts in England, it had then in order to do justice between the parties first reach an affirmative finding that the winding-up petition as and when presented by the Corporation would be frivolous and would constitute an abuse of the process of the court or would be a device to pressurise the Bank to submit to an unjust and dishonest claim. It must also reach an affirmative conclusion that the debtor-Bank is sufficiently solvent to satisfy the claim as and when established. It has also

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to record an affirmative finding that the Corporation is not

seeking bona fide to present a petition for winding-up but is actuated by an ulterior motive in presenting the petition. However, the decision of the Appellate Bench is conspicuously silent on these relevant points. [983 E-H; 984 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7348 of 1983.

Appeal by Special leave from the judgment and order dated the 19th March, 1982 of the Bombay High Court in Appeal No. 527 of 1981 in notice of motion No. 1156/81 in Suit No. 1508/81.

Sankar Ghose, Miss Radha Rangaswamy and Rangaswamy for the Appellant.

A.K. Sen, R. C. Nag, Rameshwar Nath and A. K. Sil for the Respondents.

The Judgment of the Court was delivered by DESAI, J. First respondent United Industrial Bank Limited (Bank for short') having its registered office at 7, Red Cross Place, Calcutta filed Suit No. 1508 of 1981 on the original side of the Bombay High Court against the appellant-The Cotton Corporation of India Limited ('Corporation' for short) and one Tapan Kumar Ghosh, who at the relevant time was the Chief Branch Manager of the Worli Branch of the Bank and defendant No. 3-Bradbury Mills Limited, an existing Company within the meaning of the Companies Act, 1956 carrying on business at Maulana Azad Road, Jacob Circle, Bombay praying for a declaration that the acceptance and or co-acceptance of the bill of exchange and/or hundies listed in Exhibit 'K' by second defendant Tapan Kumar Ghosh for and on behalf of the Bank was null and void and not binding on the Bank and calling upon the Corporation to deliver up to the Court the disputed bills of exchange and/or hundies for the purpose of cancellation and for a direction cancelling the same. In this suit the Bank took out a notice of motion No. 1156 of 1981 seeking to restrain by an interim injunction the Corporation from enforcing any claim whatever in any form or from relying on or giving effect to the bills of exchange or hundies involved in the dispute for the purpose of any suit or other proceedings including winding-up proceedings under the Companies Act, 1956 and/or the Banking Regulation Act, 1949 against the Bank. Notice of motion also included a prayer for an interim injunction restraining the defendants in any manner whatsoever either endorsing or negotiating or transferring the said bills of exchange or hundies and for appointment of a receiver to take custody of the bills of exchange and hundies listed in Exh. 'K'. An ex- parte ad-interim injunction was granted as prayed for. When the notice of motion came up for hearing, the learned judge made the following order :

> "...Mr. Chagla confines prayer (a) only to the filing of winding up petition by Defendant No. 1 and 3. He presses prayer (b) in full. Notice of motion as against the Defendant No. 1 dismissed. The Notice of Motion made absolute in terms of prayer (a) in so far winding up is concerned as against the defendant No. 3, so far as prayer (b) is concerned, the bills are in the possession of the Ist Defendants and there is no

question of other defendants negotiating the same. Notice of Motion dismissed as regards prayer (b) also against Defendants 2 and 3..."

The Bank having been dissatisfied with the rejection of the Notice of Motion against the Corporation preferred Appeal from an order No. 527 of 1981. A Division Bench of the Bombay High Court allowed the appeal and issued interim injunction restraining the Corporation from presenting a winding up petition, the order being in the same terms as made against the 3rd defendant by the learned Single judge. The correctness and validity of this order is impugned in this appeal.

As the suit is pending awaiting adjudication on merits, every attempt would be made by us to avoid any expression of opinion on the merits of the suit. The few facts which we propose to set out are for the purpose of understanding and appreciating the contention only, the correctness or otherwise of the allegation of facts being immaterial for the present purpose.

The Corporation is engaged in the business of purchasing and selling cotton to textile mills in India. The policy of the Corporation appears to be to sell cotton against cash payment, but in some cases to accommodate the textile mills the sale is effected on credit against acceptance of usance bills co-accepted by the bankers of the textile mills guaranteeing payment on due dates. 3rd defendant Bradbury Mills Limited is alleged to have purchased cotton of the aggregate value of Rs. 45,75,000 and in payment of the price issued 16 usance bills. The 3rd defedant by its letter dated May 21, 1981 had informed the Corporation that the Bank has given an undertaking, to Government of Maharashtra to monitor the cash flow of the 3rd defendant and hence it had to operate account with that Bank only, and it requested the Corporation to accept usance bills co-accepted by the Bank. The Corporation asserts that the Bank through defendant No. 2 its Chief Branch Manager at Worli co-accepted the 16 usance bills and according to the Corporation the acceptance was evidenced by four letters issued by the Bank. When the usance bills matured and became due for payment, the Bank of Baroda on behalf of the Corporation called upon the Bank to make the payment of the amounts covered by the various usance bills. Simultaneously, the 3rd defendant was asked to direct its bankers, the plaintiff-bank in this case, to discharge the usance bills and make the necessary payment. The Solicitors of the Bank informed the Corporation that they were awaiting instruction from the head office of the Bank at Calcutta. Thereafter, the Solicitors of the Corporation served a notice dated August 5, 1981 on the Bank calling upon it to make the payment under the usance bills co-accepted by the Bank within 4 days from the receipt of the notice. Soon thereafter the Bank filed a suit against the Corporation and 2 others as stated hereinbefore. The main contention of the Bank in the suit is that the Chief Branch Manager defendant No. 2 had not the requisite authority to co-accept the bills on behalf of the Bank and therefore, the Bank had incurred no liability under the usance bills. There is some allegation of fraud but it is not relevant for the present purpose. The suit is pending on the Original Side of the Bombay High Court.

A very narrow question which we propose to examine in this appeal is : Whether in view of the provision contained in Sec. 41(b) of the Specific Relief Act, 1963 ('Act' for short), the Court will have jurisdiction to grant an injunction restraining any person from instituting any proceeding in a court not subordinate to that from which the injunction is sought ? The contention may be elaborated thus : Can a person be restrained by an injunction of the Court from instituting any proceeding which

such person is otherwise entitled to institute in a court not subordinate to that from which the injunction is sought? In the facts of the present case, the narrow question is whether the Corporation can be restrained by an injunction of the court from presenting a winding-up petition against the Bank ? The High Court seems to hold that the Court has such powers in view of the provisions contained in 0.39 of the Code of Civil Procedure read with Sec. 37 of the Specific Relief Act, 1963 or in exercise of the inherent powers of the Court under Sec. 151 of the Code of Civil procedure. This position is seriously contested by the appellant in this appeal.

The reliefs which the Bank as plaintiff is seeking in the suit filed by it are a declaration that Bank is not liable to honour and discharge the usance bills co-accepted in its name by its Chief Branch Manager-defendant 2 as envisaged by Sec. 34 and a further relief that the disputed bills of exchange and hundies be delivered to the Court for cancellation and be cancelled as envisaged by Sec. 31. It is in this suit that the Bank has obtained an interim injunction restraining the Corporation from presenting a winding-up petition against the Bank.

Part III of the Act bears the heading 'Preventive Relief' and fasciculus of sections therein included provide for injunctions generally. Sec. 36 provides that preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual. Sec. 37 specifies the nature and character of temporary and perpetual injunctions. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908. Permanent injunctions can only be granted by the decree made at the hearing and upon merits of the suit and thereby defendant in the suit is perpetually enjoined from assertion of a right or from commission of an act, which would be contrary to the rights of the plaintiffs. Section 38 sets out situations in which the court can grant a perpetual injunction to the plaintiff to prevent the breach of an obligation existing in its favour, whether expressly or by implication. Sec. 38 is thus an enabling section which confers power on the court to grant perpetual injunction in situations and circumstances therein enumerated. Sec. 41 caters to the opposite situation. It provides that an injunction cannot be granted in the situation and circumstances therein set out. The Corporation relies on Sec. 41 (b) in support of its contention that the court had no jurisdiction to grant temporary injunction because perpetual injunction could not have been granted by the Court in terms in which temporary or interim injunction was sought. Sec. 41 (b) reads as under :

> "41. An injunction cannot be granted :-
>
> (a) .....
>
> (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
>
> ....."

The predecessor of Sec. 41 (b), Sec. 56 (b) of the Specific Relief Act of 1887 repealed by 1963 Act read as under :

"56. Injunction cannot be granted :-

(a) .....

(b) to stay proceeding in a Court not subordinate to that from which the injunction is sought,"

A glance at the two provisions, the existing and the repealed would reveal the legislative response to judicial interpretation. Under Sec. 56 (b) of the repealed Act, the Court was precluded by its injunction to grant stay of proceeding in a court not subordinate to that from which the injunction was sought. In other words, the Court could stay by its injunction a proceeding in a court subordinate to the court granting injunction. The injunction granting stay of proceeding was directed to the Court and the Court has to be the Court subordinate to the one granting the injunction. This is postulated on the well recognised principle that the superior court can regulate proceedings in a court subordinate to it. It is implicit in this assumption and the language used in Sec. 56 (b) that the court could not grant injunction under Sec. 56 (b) of the repealed Act to stay proceeding in a court superior in hierarchy to the Court from which injunction is sought. But by judicial interpretation, a consensus was reached that as injunction acts in personum while the Court by its injunction cannot stay proceedings in a Court of superior jurisdiction; it could certainly by an injunction restrain a party before it from further prosecuting the proceeding in other courts may be superior or inferior in the hierarchy of courts. To some extent this approach not only effectively circumvented the provision contained in Sec. 56 of the repealed Act but denuded it of its content. The Legislature took notice of this judicial interpretation and materially altered the language of the succeeding provision enacted in Sec. 41 (b) replacing Sec. 56 (b) of the repealed Act while enacting Specific Relief Act of 1963. The Legislature manifestly expressed its mind by enacting Sec. 41 (b) in such clear and unambiguous language that an injunction cannot be granted to restrain any person, the language takes care of injunction acting in personum, from instituting or prosecuting any proceeding in a court not subordinate to that from which injunction is sought. Sec. 41(b) denies to the court the jurisdiction to grant an injunction restraining any person from instituting or prosecuting any proceeding in a court which is not subordinate to the court from which the injunction is sought. In other words, the court can still grant an injunction restraining a person from instituting or prosecuting any proceeding in a court which is subordinate to the court from which the injunction is sought. As a necessary corollary, it would follow that the court is precluded from granting an injunction restraining any person from instituting or prosecuting any proceeding in a court of co-ordinate or surerior jurisdiction. This change in language deliberately adopted by the Legislature after taking note of judicial vacillation has to be given full effect.

It is, therefore, necessary to unravel the underlying intendment of the provision contained in Sec. 41 (b). It must at once be conceded that Sec. 41 deals with perpetual injunction and it may as well be conceded that it has nothing to do with interim or temporary injunction which as provided by Sec. 37 are dealt with by the Code of Civil Procedure. To begin with, it can be said without fear of contradiction that anyone having a right that is a legally protected interest complains of its infringement and seeks relief through court must have an unhindered, uninterrupted access to law courts. The expression 'court' here is used in its widest amplitude comprehending every forum

where relief can be obtained in accordance with law. Access to justice must not be hampered even at the hands of judiciary. Power to grant injunction vests in the court unless the Legislature confers specifically such power on some other forum. Now access to court in search of justice according to law is the right of a person who complains of infringement of his legally protected interest and a fortiori therefor, no other court can by its action impede access to justice. This principle is deducible from the Constitution which seeks to set up a society governed by rule of law. As a corrolary, it must yield to another principle that the superior court can injunct a person by restraining him from instituting or prosecuting a proceeding before a subordinate court. Save this specific carving out of the area where access to justice may be impeded by an injunction of the court, the Legislature desired that the courts ordinarily should not impede access to justice through court. This appears to us to be the equitable principle underlying sec. 41 (b). Accordingly, it must receive such interpretation as would advance the intendment, and thwart the mischief it was enacted to suppress, and to keep the path of access to justice through court unobstructed.

Viewed from a slightly different angle, it would appear that the legal system in our country envisages obtaining of redressal of wrong or relief against unjust denial there of by approaching the court set up for the purpose and invested with power both substantive and procedural to do justice that is to grant relief against invasion or violation of legally protected interests which are jurisprudentially called rights. If a person complaining of invasion or violation of his rights, is injuncted from approaching the court set up to grant relief by an action brought by the opposite side against whom he has a claim and which he wanted to enforce through court, he would have first to defend the action establishing that he has a just claim and he cannot be restrained from approaching the court to obtain relief. A person having a legal right and complains of its violation or infringement, can approach the court and seek relief. When such person is injuncted from approaching the court, he has to vindicate the right and then when injunction is vacated, he has to approach the court for relief. In other words, he would have to go through the gamut over again: When defending against a claim of injunction the person vindicates the claim and right to enforce the same. If successful he does not get relief but a door to court which was bolted in his face is opened. Why should he be exposed to multiplicity of proceedings ? In order to avoid such a situation the Legislature enacted sec. 41 (b) and statutorily provided that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought. Ordinarily a preventive relief by way of prohibitory injunction cannot be granted by a court with a view to restraining any person from instituting or prosecuting any proceeding and this is subject to one exception enacted in larger public interest, namely, a superior court can injunct a person from instituting or prosecuting an action in a subordinate court with a view to regulating the proceeding before the subordinate courts. At any rate the court is precluded by a statutory provision from granting an injunction restraining a person from instituting or prosecuting a proceeding in a court of coordinate jurisdiction or superior jurisdiction. There is an unresolved controversy whether a court can grant an injunction against a person from instituting or prosecuting a proceeding before itself but that is not relevant in the present circumstances and we do not propose to enlarge the area of controversy.

Mr. Sen, learned counsel for the respondent-Bank, contended that sec. 41 (b) is not at all attracted because it deals with perpetual injunction and the temporary or interim injunction is regulated by

the Code of Civil Procedure specially so provided in Sec. 37 of the Act. Expression 'injunction' in sec. 41 (b) is not qualified by an adjective and therefore, it would comprehend both interim and perpetual injunction. It is, however, true that Sec. 37 specifically provides that temporary injunctions which have to continue until a specified time or until further order of the court are regulated by the Code of Civil Procedure. But if a dichotomy is introduced by confining Sec. 41 to perpetual injunction only and Sec. 37 read with O. 39 of the Code of Civil Procedure being confined to temporary injunction, an unnecessary grey area will develop. It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. It the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted.

In The State of Orissa v. Madan Gopal Rungta(1) a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that 'an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted. To illustrate this point, let us take the relief which the Bank seeks in its suit. The prayer is that the Corporation be restrained by an injunction of the Court from presenting a winding-up petition under the Companies Act, 1956 or under the Banking Regulation Act, 1949. In other words, the Bank seeks to restrain the Corporation by an injunction of the court from instituting a proceeding for winding-up of the Bank. There is a clear bar in Sec. 41 (b) against granting this relief. The Court has no jurisdiction to grant a perpetual injunction restraining a person from instituting a proceeding in a court not subordinate to it, as a relief, ipso facto temporary relief cannot be granted in the same terms.

The interim relief can obviously be not granted also because the object behind granting interim relief is to maintain status quo ante so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings.

Mr. Sen, however, urged that even though the Legislature has materially altered the language of the corresponding provision in sec. 56(b) of 1877 Act while enacting Sec. 41(b), yet the change in language would have no impact on the view of law taken by the courts while interpreting sec. 56(b) of the repealed Act. Proceeding along this line, Mr. Sen urged that under sec. 56(b) of the 1877 Act even though injunction could not be granted to stay proceedings in a court not subordinate to that from which injunction is sought, the Court by an interpretative process spelt out a power to grant injunction in personum against a party from instituting a proceeding. It is true that giving a literal meaning to the provision contained in sec. 56(b) which denied the power to the Court to grant injunction to stay proceedings in a court not subordinate to that from which injunction is sought, the court demarcated the unoccupied area by holding that even if the court cannot grant injunction to stay the proceeding, it can certainly injunct a party from instituting or prosecuting a proceeding

in a court not subordinate to that from which the injunction was sought. But it is this very interpretation which attracted the attention of the Legislature, and it respondent by specific change in language to nullify the interpretation so that it becomes crystal clear that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction was sought. The power to grant injunction in personum was thus legislatively curtailed. Legislative response to court's interpretation has to be noticed and in our opinion the alteration in the language provides the legislative response to the judicial interpretation, and cannot be wished away, but must be given effect.

Mr. Sen, however, urged that the Specific Relief Act, 1877 was founded on English equity jurisprudence and therefore, it was permissible to refer to English law on the subject wherever the Act did not deal specifically with any topic. (See Hungerford Investment Trust Limited v. Haridas Mundhra & Ors .)(1) It was further submitted that 1963 Act is equally based on the experience derived from the working of the 1877 Act and the English equity jurisprudence and therefore, where light is shed by decisions in England, the same must illumine our path. Where provisions are in pari materia between the English Act and the Indian Act and where local conditions do not materially differ from the conditions in U.K., one may keeping in view the conditions in our country look at the view taken by the English courts and if consistent with our jurisprudence, our social conditions, our chalked out path in which the law must move, one can profitably take help of the decision. There would be nothing wrong in referring to the same. But ignoring all the relevant considerations, one cannot bodily import English decisions in our system to develop a hybrid legal system and one cannot be so hypnotised by English decisions to overlock legislative changes introduced in Indian Law.

With this caution, let us refer to one or two decisions relied on by Mr. Sen to expand the sweep of the language of Sec. 41(b), so that the court can still injunct a person from instituting a proceeding which the person is otherwise entitled to institute in a court of coordinate or superior jurisdiction, in the teeth of express 'prohibition' enacted in sec. 41(b).

To start with, it would be advantageous first to notice Sec. 24(5) of the Supreme Court of Judicature Act of 1873 now reenacted as Supreme Court of Judicature (Consolidation) Act 1925, which reads as under :

> "No case or proceeding at any time pending in the High Court of Judicature or before the Court of Appeal shall be restrained by prohibition or injunction."

It would appear at a glance that an injunction cannot be issued to stay a pending proceeding in the High Court of Judicature or before the Court of Appeal. The section does not refer to initiation or institution of proceeding . On a grammatical interpretation of the section it would be open to the court to spell out a power to grant injunction to restrain a person from instituting a proceeding because what is barred by the statute is injunction from prosecuting a pending proceeding. Compare this language with Section 41(b) which specifically provides that an injunction cannot be granted to restrain a person from instituting and prosecuting any proceeding. The relevant provision in our country covers both the situations while in England it covers only one situation. This clear

distinction in law has to be kept in view before applying English decisions to which our attention was drawn.

And now to the decisions : In Cadiz Waterworks Company v. Barnett(1), the court on being satisfied that the Company was solvent and that the debt was bona fide disputed and that the object of the defendant in the case was not the bona fide purpose of honestly compelling the payment of his debt but for the purpose of making an unjust attempt to compel them to submit to an unjust demand, restrained the respondent from presenting a petition for winding-up the Company in the Court. In reaching this conclusion it was observed that if a winding-up petition is presented and advertised, it would inflict irreparable injury on the plaintiffs, while at the same moment it could not possibly do the defendant slightest good. Let it be definitely made clear that not a whisper was raised challenging the jurisdiction of the Court to grant such an injunction and obviously could not be raised in view of the provision in Supreme Court of Judicature Act of 1873 extracted hereinbefore which did not deny to the Court the power to grant an injunction restraining a person from instituting a proceeding. Similarly in Circle Restaurant Castiglione Company v. Lavery(2) the court by its short order restrained defendant Lavery from presenting any petition to wind-up the company in respect of any debt then due or alleged to have been due to him on certain conditions. In giving the short order, Jessel and followed the decision in Cadiz Waterworks Company. One more decision to which our attention was drawn was the New Travellers' Chambers Ltd. v. Messrs. Cheese and Green(2) in which the defendant was restrained by an injunction of the court from presenting a winding-up petition. In the last two mentioned cases also, no contention was raised, because obviously it could not be raised, that the court had no jurisdiction to grant the injunction. In our opinion these decisions are not at all helpful for two reasons : one that the Supreme Court of Judicature Act clearly provided that injunction cannot be granted restraining prosecuting a pending proceeding and the provision was silent on the question of granting an injunction restraining instituting a proceeding and in respect of which the 1963 Act is more specific, clear and unambiguous; and secondly, at no time in all the three decisions, the defendant against whom the injunction was sought ever questioned the jurisdiction of the court to issue an injunction restraining it from presenting a winding-up petition thereby inviting the court to give a specific ruling on the subject. We are, therefore, disposed to take no notice of these decisions.

However, in the course of further investigation on the point, we tumbled across Chales Forte Investments Ltd. v. Amanda.(1) The Court of Appeal in that case unanimously held that the presentation of a winding-up petition could be restrained by an injunction, granted under the inherent jurisdiction of the court to stay proceedings which were vexatious or an abuse of the process of the court, for amongst others the principal reason that a winding up petition was not the proper remedy in the circumstances of the particular case. In that case a minority share-holder was sought to be restrained by an injunction of the court at the instance of the company from presenting a winding-up petition on the ground that it was just and equitable to wind up the company. Pennycuick, J. declined to grant the interim injunction and the company appealed. The Court of Appeal while reversing the decision held that in the circumstances of the case winding-up petition was not a proper remedy and granted the injunction. The power to grant injunction in such circumstances was not shown to be referable to any statutory provision nor was it pointed out that there was any statutory inhibition against granting it and the source of power was traced to the

inherent powers of the Court.

One more decision we came across and which to some extent deviates from the consistent view taken in all the aforementioned decisions, is the one Bryanston Finance Ltd. v. De Vries.(2) While vacating the injunction granted in broad terms, the Court of Appeal held that the presentation of a petition in the circumstances discussed in the judgment, would not be an abuse on the ground that it could not possibly succeed. In a concurring judgment, Sir John Pennycuick observed as under:

> "I should like to add that where a company seeks relief of this kind the procedure by way of writ claiming an injunction to restrain presentation of a petition, followed immediately by a motion expressed to claim an interlocutory injunction in the same terms, appears clumsy and inapposite. In occurs to me that it should be possible to devise some more apt form of procedure for instance an originating motion in the Companies Court."

One more decision which we would like to refer is the one in Stonegate Securities Ltd. v. Gregory.(1) In that case an injunction was granted restraining a creditor from presenting a winding-up petition on the ground that he was at best a contingent creditor and the company had sought an injunction to restrain the creditor from presenting a petition on any other basis than as the contingent creditor. For the same reasons for which we could not persuade ourselves to accept the earlier decisions as being helpful, these decisions would not be of any assistance.

And it may be clarified that the reliance placed by Mr. Sen on foot-note 7, 8 and 9 in Companies Act by Buckley, Fourteenth Edition, page 524 and Palmer's Company Prededents, Part II Seventeenth Edition at page 45 would not take his case further because these notes are based on the aforementioned decisions.

Canvassing for the contrary view Mr. Ghosh, learned counsel for the appellant referred to Udyog Mandir v. M/s. Contessa Knit Wear and Ors.(2) wherein the late Vaidya, J. set aside an interim injunction granted by the judge of Small Causes Court restraining a defendant in a suit before him from proceeding with the Arbitration case initiated under the Maharashtra Co-operative Societies Act. The learned judge held that the Arbitrator functioning under the Maharashtra Co-operative Societies Act is not a court subordinate to the Small Causes Court and in that case sec. 41 (b) would deny jurisdiction to the court to grant an injunction because a court cannot even do temporarily what it has been prohibited by law to do finally or perpetually. Though it is not made clear, the learned judge was not impressed the contention that sec. 41 (b) deals with perpetual injunction and the grant or refusal of temporary injunction is governed by Order 39 Code of Civil Procedure and there is well- recognised dichotomy between the two. The learned judge appeared to be of the opinion that where the final relief cannot be granted, temporary relief in aid can as well not be granted because that would also be contrary to the provision of Sec. 41 (b). This view was reiterated by the same learned judge in Krishnadevi P. Gupta and Anr. v. Banwarilal Hanumanprasad Tibrewala and Ors.(1) He also took note of the fact that the Chief justice of the same High Court had affirmed the view in another proceeding before him. Therefore, as far as Bombay High Court is concerned, there appeared to be a near unanimous view that the court had no jurisdiction to grant

interim injunction restraining a person from instituting any proceeding in a Court not subordinate to that from which the injunction is sought in view of the provision contained in Sec. 41 (b) of the Act. Surprisingly, the Division Bench of the Bombay High Court against whose decision the present appeal is heard did not even choose to refer or to over- rule any of these decisions and proceeded to dispose of the contention in respect of provision contained in Sec. 41 (b) in the following terms, the meaning of which we find difficult to unravel. Says the Court :

> "Our attention was also drawn to the provisions contained in the Specific Relief Act and in particular to sec. 41 thereof. It appears to us that in an appropriate case particularly in a suit where cancellation of certain negotiable instruments had been sought, it would be open to the Court to restrain further action being taken on the said negotiable instrument particularly the action of the limited type which is sought to be restrained in the instant case viz. winding up proceedings. The position may be different if a total bar was sought which perhaps may not be granted."

Mr. Sen, learned counsel for the respondent-Bank however, contended that even if the respondent-Bank is not entitled to injunc-

tion, temporary or perpetual, under sec. 41 (b) or under 0.39 of the Code of Civil Procedure, yet the court had inherent power to grant injunction and therefore this Court should not interfere with the decision of the High Court at this stage. Reliance was placed on Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal.(1) Raghubar Dayal, J. speaking for the majority in terms held that the court has inherent power to issue temporary injunction in cases which were not covered by the provisions of 0.39 of the Code of Civil Procedure. Shah, J. in his dissenting judgment took the contrary view and relied upon Padam Sen v. State of U. P.(1) In view of the majority decision, it must be conceded that the court can in appropriate cases grant temporary injunction in exercise of its inherent power in cases not covered by 0.39 C.P.C. But while exercising this inherent power, the court should not overlook the statutory provision which clearly indicates that injunction to restrain initiation of proceeding cannot be granted. Sec. 41 (b) is one such provision. And it must be remembered that inherent power of the court cannot be invoked to nullify or stultify a statutory provision. We have meticulously gone through the appellate judgment and we find not the slightest reference to the invocation of the inherent power of the court in granting the order of injunction now under challenge. Not only that, but the court has not held that the contention of the Corporation is frivolous or untenable or the claim is malafide. This becomes clear from the observation of the court that the order passed by it is not founded on the merits of the Bank's case or lack of merit in any claim which the Corporation may have against the plaintiff-Bank and it would be open to the Corporation to file a regular suit or summary suit against plaintiff-Bank in which appropriate orders would be passed by the court seized of the matter as and when the occasion arises for the same. We find it very difficult to appreciate this approach of the Court because the Court has not rejected even at the stage of the consideration of prima facie case or on balance of conviction that the claim of the Corporation is frivolous or untenable or not prima facie substantiated. On the contrary the Court leaves open to the Corporation to file a suit if it is so advised. The High Court only restrains the Corporation from presenting a winding-up petition. We again see no justification for this dichotomy introduced by the Court in respect of various proceedings which were open to the Corporation to be

taken against the Bank leaving some open and some restrained by injunction. Neither in statute law nor in enquity, we find any justification for this dichotomy.

Mr. Sen, however, urged that the presentation of winding-up petition coupled with advertisement thereof in newspaper as required by law has certain serious consequences on the status, standing, financial viability and stability and operational efficiency of the company. Mr. Sen further urged that where the debt is bona fide disputed, a petition for winding-up is not an alternative to the suit to recover the same but may be a pressure tactic to obtain an unfair advantage and therefore, despite the provision contained in sec. 41(b) the court must spell out a power in appropriate cases to injunct a person from filing a winding- up petition. Most of the decisions in England hereinabove discussed a length have been influenced by this aspect. This approach, however, clearly overlooks various statutory safeguards against admission, advertising and publication of winding-up petitions. Sec. 433 of the Companies Act, 1956 sets out circumstances in which a company may be wound-up by the Court, one such being where the company is unable to pay its debts. Sec. 434 sets out the circumstances and situations in which a company may be deemed to be unable to pay its debts. Such a deeming fiction would arise where a notice is served upon the company making a demand of a debt exceeding Rs. 500 then due and requiring the company to pay the same and the company has for a period of 3 weeks neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor. Rule 95 of the Companies (Court) Rules, 1959 provides that the petition for winding-up a company shall be presented in the Registry. Then comes Rule 96 which is very material. It provides that: upon the filing of the petition, it shall be posted before the Judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for the directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. The Judge may, if he thinks fit, direct notice to be given to the Company before giving directions as to the advertisement of the petition. It would appear at a glance that the petition has to come-up in Chambers before the company Judge and not in open Court, and the Rule confers a discretionary power on the judge not to give any directions at that stage but merely issue a notice to the company before giving directions. If upon receipt of such notice the company appears and satisfies the judge that the debt is bona fide disputed or the presentation of the petition is mala fide actuated by an ulterior motive, or abuse of the process of the Court certainly the judge may decline to admit the petition and may direct the party presenting winding-up petition to prove its claim by a suit or any other manner. It is undoubtedly true that winding-up petition is not a recognised mode for recovery of debt and if the company is shown to be solvent and the debt is bona fide disputed, the Court generally is reluctant to admit the petition. Therefore, the power is conferred on the judge before whom the petition comes-up for admission to issue pre-admission notice to the company so that the company is not taken unaware and may appear and point out to the judge that the petitioner is actuated by an ulterior motive and presentation of the petition is a device to pressurise the company to submit to an unjust claim. This is a sufficient safeguard against mala fide action and the company would not suffer any consequences as apprehended, and the company can as well appear and ask for stay of further proceeding till the petitioner-creditor proves his debt by a regular suit. This is the jurisdiction of the Company Court and it cannot be restrained from exercising the same by some other court restraining the creditor from presenting a winding-up petition. There is sufficient built- in safeguard in the provisions of the Companies Act and the Rules framed thereunder which would save the company from any adverse consequences, if a petitioner

actuated by an ulterior motive presents the petition. This was taken notice of by this Court in National Conduits (P) Ltd. v. S. S. Arora.(1) wherein this Court set aside the order of the High Court of Delhi was of the opinion that once a petition for winding-up is admitted to the file, the Court is bound to fourth with advertise the petition. This Court held that the High Court was in error in holding that a petition for winding-up must be advertised even before the application filed by the company for staying the proceeding for the ends of justice or to prevent abuse of the process of the court. This court held that the view taken by the High Court that the court must as soon the petition is admitted, advertise the petition is contrary to the plain terms of Rule 96 and such a view if accepted, would make the court an instrument, in possible cases, of harassment and even of blackmail, for once a petition is advertised, the business of the company is bound to suffer serious loss and injury. This legal position effectively answers the apprehension voiced by Mr. Sen and even entertained by the High Court as also it can be said with confidence that this must be the procedure, Pennycuick J. was in search of when in Bryanston Finance Ltd. case he said that it should be possible to devise some more apt form of procedure than to injunct a person from initiating the proceeding. In fact, the Kerala High Court in George v. The Athimattam Rubber Co. Ltd. Thodupuzha(2) went to the extent of showing that when a pre- admission notice is issued to the company under Rule 96, it would be open to the company to appear and ask for stay of proceedings or even revoke the admission on the ground that the petitioner was not acting bona fide in filing the petition and in the facts before the Kerala High Court it allowed the application of the company and the winding-up petition was dismissed. We are, therefore, not disposed to accept the contention of Mr. Sen that the power to grant injunction restraining one from presenting a winding-up petition must either be spelt out for the protection of the company or as held by decisions herein above quoted kept intact and should not be tinkered with to save the company from being harassed by persons actuated by ill-will towards the company from presenting the petition.

Turning to the facts of this case, let it be recalled that the learned Single Judge had declined to grant any temporary injunction against the present appellant, the Corporation, and in our opinion rightly. The Appellate Bench interfered with the order for the reasons which are far from convincing and it overlooked the provision contained in sec. 41 (b) and effect thereof. Taking the most favourable view of the decision of the Appellate Bench and assuming that the Bench had in its mind the inherent power of the court to grant injunction despite statutory inhibition and consistent with the view taken by the courts in England, it had then in order to do justice between the parties first reach an affirmative finding that the winding-up petition as and when presented by the Corporation-the creditor would be frivolous and would constitute an abuse of the process of the court or a device to pressurise the Bank to submit to an unjust and dishonest claim. It must also reach an affirmative conclusion that the debtor-Bank is sufficiently solvent to satisfy the claim as and when established. It has also to record an affirmative finding that the Corporation-the creditor is not seeking bona fide to present a petition for winding-up but is actuated by an ulterior motive in presenting the petition. Decisions in New Travellers' Chambers Ltd., Chales Forte Investments Ltd. and Bryanston Finance Ltd. (supra) would require these findings to be recorded before an interim injunction can be granted. The decision of the Appellate Bench is conspicuously silent on these relevant points and for this additional reason also the appeal must succeed.

The appeal is accordingly allowed and the order of the Appellate Bench is set aside and the one made by the learned Single Judge Modi, J. is restored with costs.

H.L.C. Appeal allowed.