Supreme Court of India
Mrs. Kavita Trehan And Another vs Balsara Hygience Products Ltd. on 11 July, 1994
Equivalent citations: AIR 1995 SC 441, JT 1994 (4) SC 519, (1995) 109 PLR 315, 1994 (3) SCALE 168, (1994) 5 SCC 380, 1994 Supp 1 SCR 340
Author: M Venkatachaliah
Bench: M V I., S Agrawal
ORDER M.N. Venkatachaliah, C.J.

1. Civil Appeal No. 1581 of 1993 arises out of and is directed against the appellate judgment of the Division Bench dated 29th January, 1992 of the High Court of Delhi dismissing RFS [OS] No. 36/91 preferred by the present appellants and affirming the judgment and decree dated 28th May, 1991 of the learned Single Judge dismissing the appellants' Original Suit No. 39/90. There was a further order by the Division Bench which declined to entertain fresh and further arguments in the appeal which were sought by the present appellants by means of C.M. No. 3209/92. That order is assailed in Civil Appeal No. 1582 of 1993. The appeals raise a short and interesting question as to the scope of restitutionary jurisdiction of the courts.

2. On 27th March, 1989, the appellants instituted Civil Suit No. 74/1989 in the Court of Senior Sub-Judge, Chandigarh. Simultaneously, appellants sought an injunction under Rules 1 and 2, Order 39 C.P.C. The averments in the plaint were that the plaintiff-appellant "M/s. Subhagya Agencies" was a firm of partners and had been appointed by the respondent - M/s. Balsara Hygiene Products Ltd. - as the latter's clearing and forwarding agents for the respondent's products, such as, tooth- pastes, tooth-powder, tooth-brushes, mosquito-repellents, cleaning powders, toilet fresheners etc. under terms of an agreement said to be executed on 1st April, 1985 stipulating a commission at the rate of 1.5% upto a turnover of Rs. 2 crores and 1% in respect of turnover in excess thereof. Appellants further pleaded that there were, allegedly, certain renewals, revisions and updating of these arrangements from time to time whereunder large sums by way of commission fell due and remained unpaid. It was also alleged that the purported termination of the arrangements by the respondent under letter dated 15th February, 1989 was invalid. On these and other allegations the appellants sought a declaration of the appellants' lien to the extent of Rs. 15,80,861.85 over the goods of the respondent lying with the appellants; for a further declaration that the purported termination was illegal and that the respondent may be restrained from interfering in the appellants' alleged right to dispose of the stocks. The learned Sub-Judge, 1st Class, Chandigarh, before whom the suit was instituted and a temporary injunction in terms of the above reliefs sought was persuaded to grant an ex-parte injunction in terms following :

...the defendants are restrained from interfering in the disposal of the stock in question otherwise than in due course of law till further orders. In the meanwhile notices of the suit as well as application Under Order 39 rules 1 and 2 CPC be issued to the defendant in filing of PF for 8.5.89. Compliance of Order 39 Rule 3 CPC be also made by the plaintiff.

3. Respondents moved to have this ex-parte interim order vacated. Upon hearing both the parties, the learned Sub-Judge, 1st Class, Chandigarh, by his order dated 29th April, 1989 made the interim order absolute. In the meanwhile, the appellants had sold away bulk of the stocks under the

authority of the ex-parte interim order dated 27.3.1989. Though the goods worth Rs. 32.4 lakhs were admittedly sold away, Sri Prem Nath Trehan, the husband of Smt. Kavita Trehan who brought the suit, claimed that he had recovered only Rs. 23 lakhs by way of sale proceeds. The learned Sub-Judge, 1st Class, Chandigarh, directed furnishment of a 'bond' in the sum of Rs. 16 lakhs by the appellants. The suit was, at the instance of the respondent, subsequently transferred to the original side of the Delhi High Court by an order of the Supreme Court by its order dated 20th November, 1989.

It was admitted by the appellants - this is borne out by the statement of Sri Prem Nath Trehan who was examined under Rule 2 Order 10 C.P.C. that appellants had in their possession respondent's goods to the extent of about Rs. 36 lakhs - that under cover of the interim injunction granted in the suit, the appellants had sold goods to the extent of Rs. 32.40 lakhs. Except a sum of Rs. 7 lakhs paid to the respondent under directions of the court, the balance was retained by the appellants. The suit came to be dismissed on the undisputed ground that it was hit by Sub-section (2) of Section 69 of the Indian Partnership Act, 1932. Indeed, the appellants did not dispute the liability of the suit for such dismissal on the ground of non-registration of the partnership.

4. The further question that arose before the learned Single Judge of the High Court who tried the suit was whether, in view of the fact that under the directions and orders of the court dated 27th March, 1989 and 29th April, 1989, the appellants had disposed of the goods, the respondent was entitled to restitution of the stocks or their money-value by way of restitution. The learned Single Judge noticed the two questions that arose before him, thus :

Two questions arise in this suit. The first one being whether the suit is liable to be dismissed in view of Section 69 of the Indian Partnership Act, partnership being unregistered on the date of filing of the suit and in case the suit is to be dismissed, the second question would be whether the parties are to be relegated to the original situation prevailing on March 27, 1989.

5. On the first question, the learned Single Judge observed :

...Insofar as the first point is concerned, Mr. Sahai, learned Counsel for the plaintiff fairly conceded that the suit is liable to be dismissed as the partnership was not registered on the date of institution of the suit. The position in law is that where the suit is filed by the partners it shall be taken to be a suit on behalf of the firm. In the present case the suit has been filed by the partners of a firm which was not registered on the date of filing of the suit and as such the suit would be hit by the provisions of Sub-section 2 of Section 69 of the Partnership Act.

The correctness of this view and the consequent dismissal of the suit are not questioned before us.

6. On the second question, the learned Single Judge noticed that at least a sum of Rs. 32,40,000 was the value of the goods which the appellants had admittedly sold away. In computing the quantum, the learned Single Judge relied upon appellants' own accounts of the stocks held by them at Zirakpur and Chandigarh. On the question of the extent of the stocks sold and the quantum of sale proceeds realised, the learned Single Judge observed :

Before the legal aspect of the matter is thrashed out, it has first to be seen as to what extent the goods and stocks of the defendant were in the custody and possession of the plaintiffs at the time of passing of the interim order. Fortunately, that evidence to some extent is on record. The plaintiffs have filed the accounts of Zirakpur and Chandigarh.

xxxx xxxx xxxx Again in the statement of Mr. Prem Nath Trehan, General Attorney of Subhagya Agencies it has been clearly admitted that the value of the goods of the defendant which were with them were to the tune of Rs. 35 lakhs on the date when the present suit was filed. It has been further stated that they are left with stocks worth Rs. 2,64,000. It is also admitted in his statement that though goods worth about Rs. 32.40 lakhs were sold pursuant to the orders of the Sub-Judge, no payment as such was made by them to the defendant. Mr. Trehan has stated that the value of the goods sold was no doubt to the tune of Rs. 32.40 lakhs.... In view of the aforesaid accounts of Zirakpur and Chandigarh, and statement of general attorney of the firm there is no manner of doubt that the goods worth Rs. 32.40 lakhs belonging to defendant have been admittedly sold by the plaintiffs. For the purpose of this case I would proceed on this basis though the figure is disputed by the defendant who claim that its goods and stocks in the hands of the plaintiffs was more than what is made out by them. Out of the said amount a sum of Rs. 7 lakhs stands paid by the plaintiffs to the defendant. Now the question that arises is whether the plaintiffs can be directed to pay the remaining sum of Rs. 25.40 lakhs to the defendant. If not, what is the other course open to secure the interest of the defendant.

7. It was urged by the respondent before the High Court that at least the amount of Rs. 25,40,000 (i.e. Rs. 32,40,000 less Rs. 7,00,000 paid) should be directed to be said to the respondent on the ground that the appellants were merely a clearing and forwarding agent and had no right to sell the goods and to appropriate the sale proceeds. It was urged that the possession was really that of the principal, i.e. the respondent and the sale proceeds should be directed to be paid over to the respondent by way of restitution. Learned Single Judge rejected this prayer for payment. Learned Single Judge noticed that the goods were in the possession of the appellants and that the limited question that fell for consideration was whether the appellants should be directed to furnish sufficient and satisfactory security for the value of the goods which the appellants had sold away pursuant to the interlocutory orders of the learned Sub-Judge, 1st Class, Chandigarh. Accordingly, the learned Single Judge, while dismissing the suit on the ground of non-registration of the partnership, issued the following directions :

...plaintiffs are also directed to take out an FDR from a nationalised bank in the sum of Rs. 25.40 lakhs in the name of the Registrar of this Court for a period of one year in the first instance which would be subject to further orders of this Court depending upon the outcome of the proceedings pending before the court at Chandigarh and to the result of a claim, if any, made by the competent court by the defendant, if so advised, within the period prescribed by law. The FDR will be deposited in this Court within a period of thirty days. On deposit of the FDR with the Registrar, the security bond dated July 18, 1989 furnished by the plaintiffs to the tune of Rs. 16 lakhs will stand discharged.

9. This order was assailed in appeal before the Division Bench of the High Court. The Division Bench by its order dated 29.1.1992 dismissed the appellants' appeal observing :

The record of the case has been placed before us. After hearing the learned Counsel for the parties we are of the view that no case for interference with the well considered judgment and order dated 28.5.91 of the learned Single Judge is made out.

10. In these appeals, the appellants assail the correctness of the view taken by the High Court in directing them to furnish security for the said sum of Rs. 25.40 lakhs in the manner directed. Before we examine the merits and limitations of the contentions of the appellants, it is necessary to refer to the reasoning of the learned Single Judge. The learned Judge observed :

It is well settled that a party who has received benefit under erroneous order of the court must restore to the other party what the latter lost as a result of the said order on the same being reversed or set aside. Here in the present case, how far this principle applies is to be determined.

Then referring to the effect of the dismissal of the suit on the interim order, the learned Judge said :

...Dismissal of the suit has the effect of automatic dissolution of the interim order. But what is the use of setting aside or reversing a wrong order of the court if a party who has suffered as a consequence thereof remains seething with pain of injustice even when the order is knocked down ? Healing touch in such a case is a must. The stain of injustice must be removed, at least bleached if it is not possible to totally eradicate it. In the present case, at least the money value of the goods which have been sold by the plaintiffs should be secured and available in the event of the plaintiffs failure to establish their lien in a suit which Mr. Sahai, learned Counsel for the plaintiffs says has been instituted by them in a court at Chandigarh or in any other appropriate proceedings which the parties may institute within the time imperative prescribed by law.

xxxx xxxx xxxx There is no higher principle for the guidance of the court than the one that no act of courts should harm a litigant and it is the bounden duty of courts to see that if a person is harmed by a mistake of the court he should be restored to the position he would have occupied but for that mistake....

On the question whether Section 144 in terms applied to the present case or not, the learned Judge observed :

...But in a case where a party was not in possession but nevertheless has suffered the injury and the same would be in fact get aggravated, if no remedial measure is taken to set right the wrong after setting aside the offending order of the court, the aforesaid principles would also operate in such a case, with innovations depending upon the circumstances of the case as otherwise the court will be a mute helpless spectator after causing injustice and prejudice to a party. It will not be justified to say that though the interests of a litigant have been harmed by its act, it cannot undo the wrong as the sufferer did not have possession of the property over which he had undoubted title. May be possession cannot be restored but any other prejudice, harm and suffering caused to him which is capable of being removed or at least mitigated could be directed to be so removed or mitigated.

Then the learned Judge proceeded to make the following observations which have drawn critical comments by the learned Counsel for the appellants:

...In any event horizons of law are ever expanding for law does not remain static. Precedents are not halting place, if justice demands that a party to the litigation should be put in the position which he would have occupied but for the wrong order of the court, an obligation is cast on the court to repair the wrong to the extent possible.

11. Sri Ashok Grover, ably presenting the case for the appellants, urged that the High Court fell into a serious confusion, and the consequential error, about the scope and nature of the restitutionary of jurisdiction which, according to the High Court, entitled the respondent to this relief. It is implicit in the reasoning of the High Court, says Sri Grover, that Section 144 C.P.C. did not in terms apply; but then the High Court seemed to rely on the supposed principle underlying Section 144. Sri Grover's contention is that in the present case having regard to the fact that no transfer of possession of any property pursuant to any order of the court from the respondent to the appellants had taken place, Section 144 C.P.C. in terms did not apply and could not be invoked.

Sri Graver further contended that powers under Section 151, as pointed out by this Court in Padam Sen and Anr. v. The State of Uttar Pradesh , could not be exercised when such exercise is, in any way, in conflict with what is expressly provided by the Code or against the intention of the legislature. The following passage in the said pronouncement of the Code was relied upon :

...It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.

The question for determination is whether the impugned order of the Additional Munsif appointing Sri Raghubir Pershad Commissioner for seizing the plaintiff's books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure.

[P.887] Sri Grover contended that Section 151 can be invoked in aid of a jurisdiction that manifestly exists and cannot, in itself, be seen as a source of jurisdiction. No court, counsel says, has any inherent powers to invest itself with a jurisdiction not conferred by law. Learned counsel says that Section 151 empowers the court to control the proceedings and not the parties before it. He further contends that an appeal against the order dated 29.4.1989 confirming the injunction having been taken to the District Judge and later withdrawn, the matter which so assumed finality could not be re-agitated in any subsequent proceedings. The inherent powers, says the counsel, cannot be a substitute for an appeal or revision or review. It was also urged that with the decision of the High Court that the suit itself was not maintainable, the court became functus-officio and could not give

any direction of the kind it did.

12. Sri Harish N. Salve, learned senior counsel for the respondent, urged that as, on their own admission, appellants had sold away goods pursuant to and under the authority of the interim injunction restoration of the status quo-ante, as nearly as may be possible, is the clear and patent duty of the court to prevent abuse of process of court and the consequent miscarriage of justice. He urged that since the goods were converted into money, the High Court quite appropriately directed furnishment of security in substitution of the goods. It was further urged by Sri Salve that in the instant case the appellants were appointed to act only as clearing and forwarding agents and that the goods were entrusted to the appellants for delivery to the buyers specified by the respondent against payment of price by cheques drawn in favour of the respondent. Sri Salve stated that the present case presented the extraordinary spectacle of the sale of goods worth over Rs. 33 lakhs being enabled by an ex-parte order in a suit that ultimately came to be dismissed as not even maintainable. The ex-parte order of injunction granted by learned Sub-Judge, 1st Class, says counsel, improper and such ex-parte order made without circumspection exposes administration of justice and, particularly, discretionary jurisdiction to severe criticism and makes the administration of justice a reproach, and that it was unfortunate that the order made by the learned Sub-Judge, Ist Class, in this case exposes itself to such criticism.

13. The Law of Restitution encompasses all claims founded upon the principle of unjust enrichment. 'Restitutionary claims are to be found in equity as well as at law'. Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common Inebriates counts for money had and received and for money paid, and from quantum meruit and quantum vale bat claims." [See 'The Law of Restitution" - Goff & Jones, 4th Edn. Page 3]. Halsburys Law of England, 4th Edn. Page 434 states :

Common Law. Any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a third category of the common law which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjustifiable enrichment. It may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution.

Recently the House of Lords had occasion to examine some of these principles in Woolwich Equitable Building Society v. Inland Revenue Commissioners [1993] A.C. 70.

14. In regard to the law of restoration of loss or damage caused pursuant to judicial orders, the Privy Council in Alexander Rozer Charles Carnie v. The Comptoir D'Escompte De Paris [1869-71] 3 AC 465 at 475 stated :

...one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case.

In Jai Berham and Ors. v. Kedar Nath Marwari and Ors. AIR (1922) P.C. 269 at 271, the Judicial Committee referring to the above passage with approval added :

It is the duty of the Court under Section 144 of the Civil Procedure Code to "Place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed.

Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved.

In Binayak Swain v. Ramesh Chandra Panigrahi and Anr. , this Court stated the principal thus :

...The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from....

15. Section 144 CPC incorporates only a part of the general law of restitution. It is not exhaustive. (See Gangadhar and Ors. v. Raghubar Dayal and Ors. F.B. and State Govt. of Andhra Pradesh v. Manickchand Jeevraj & Co. Bombay .

The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose,..." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every court.

We have considered this submission of Sri Grover relying on Sakamma v. Eregowda [1974] 2 KLJ 357 that the mere fact that the suit for permanent injunction was dismissed resulting in the vacation of the interim order of injunction granted during its pendency, would not entitle the successful defendant to seek restitution under Section 144 CPC. That principle has no application in this case. In the case before us the injunction granted by the learned Senior Sub-Judge,/Chandigarh, was not

merely negative in terms interdicting interference from the respondent with the custody of the goods by the appellants; it went much further and expressly enabled the appellants to sell the goods. Pursuant to this order, the appellants disturbed the status-quo as on the date of the suit and sold away respondent's goods and converted them into money. The High Court while declining the prayer for payment of the sale proceeds to the respondent, however, sought to relegate the parties to the extent practicable, to the same position as obtained on the date of the suit. This the High Court did by directing furnishment of security to the extent of the value of goods sold away under the cover of the interlocutory order. That an appeal filed against the said interlocutory order was withdrawn, does not, in our opinion, make any difference. Upon dismissal of the suit, the interlocutory order stood set-aside and that whatever was done to upset the status-quo, was required to be undone to the extent possible. It is unfortunate that the learned Sub-Judge, Ist Class made an order which, we think, ought not to have been made. If the Trial Judge felt that it was in the interest of justice that the goods required to be disposed of, he should have ordered the sale by or under the supervision of a Commissioner of the court ensuring that the sale-proceeds were under the court's control. We are constrained to observe that the order of the learned Sub-Judge, Ist Class, failed to have due regard to the need to protect the interests of the opposite party and, to say the least, an improper order was passed. The ex-pane order granted by the learned Sub-Judge, Ist Class, was not of mere negative import but virtually enabled and authorised the appellants to sell away respondent's goods of which appellants were mere clearing and forwarding agents. This permission to sell implicit in the form of the order enabled the appellants to purport to convey; respecting the goods, a better title than what appellants themselves had. That such a thing was achieved by an ex-parte order, tends to shake litigants' faith in the judicial process. The learned Sub-Judge, Ist class ought not to have made an ex-parte order which occasioned serious prejudice and loss to the respondent. On the administrative side, the High Court may have to look into the propriety of the conduct of the learned Sub-Judge, Ist Class, in this case.

16. In these facts and circumstances, what the learned Single Judge of the High Court did, which has since been approved by the Division Bench, is both good-sense and good law. There are, in our opinion, no legal infirmities in the orders under appeal. The appeals do not call for interference. Both the appeals are, accordingly, dismissed with costs. The costs payable to the respondent are quantified at Rs. 25,000.