

PETITIONER:
ABHAY SINGH SURANA

Vs.

RESPONDENT:
INDIAN RAYON & INDUSTRIES LTD.

DATE OF JUDGMENT 03/08/1988

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
SHARMA, L.M. (J)

CITATION:
1988 AIR 1870 1988 SCR Supl. (2) 204
1988 SCC (4) 358 JT 1988 (3) 458
1988 SCALE (2) 770

ACT:

Letters Patent of 1865 of Calcutta High Court: Clause 13-Extraordinary original jurisdiction-Exercise of by High Court-Conditions requisite -Ejectment suit under W.B. Premises Tenancies Act, 1956 and title suit transferred to High Court by consent of parties-But retransferred to trial court-Held disposal of suit by High Court would serve purpose of justice.

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Constitution of India-Art. 136-Proceeding at a preliminary stage-Interference-When called for.

Practice and Procedure: Disposal of suits by High Court would serve purpose of justice-Lesser number of appeals and possibility of settlement.

HEADNOTE:

The appellant let out his godown to a Textile company, which was subsequently amalgamated with the respondent Company, under a scheme of amalgamation approved by the High Court.

On August 29, 1985 the appellant issued a notice to the erstwhile company under s. 106 of the Transfer of Property Act read with s. 13(6) of West Bengal Premises Tenancy Act, 1956 to quit and hand over vacant possession of the godown. Thereafter he filed a suit for eviction in the City Civil Court against the erstwhile Company and the respondent Company. The respondent also filed a suit under Order 39(I) and (2) of the Civil Procedure Code for temporary injunction restraining the appellant from disconnecting electricity in the said premises.

The appellant filed an application in the High Court under clause 13 of the Letters Patent for transfer of the two suits on the ground that the respondent had adopted dilatory tactics and had taken several adjournments to file written statement, and that the original records relating to amalgamation were available in the High Court. By consent of the parties, the High Court transferred these suits to itself for trying in its extraordinary original civil jurisdiction.

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When the suits appeared before the Single Judge, it was

represented that the suits were transferred to the High Court only on the understanding that the suits would be settled and that the efforts to settle the suit had failed. Hence, the Judge fixed a date for hearing of the two suits. On February 17, 1988 the respondent filed an application for recalling the order of transfer.

Accordingly, the High Court recalled its earlier order and retransferred them to the City Civil Court.

Aggrieved, the appellant filed an appeal by special leave, contending that there was simply an agreement to have the suits transferred to the High Court for quick and expeditious disposal, in view of the long delay in filing written statements.

The Respondent, however, contended that the agreement was that the suits would be settled in the High Court.

Disposing of the appeal,

HELD: 1.1 Clause 13 of the Letters Patent enables the High Court to exercise the extraordinary original civil jurisdiction. The Letters Patent contemplates two contingencies for the High Court to exercise extraordinary jurisdiction, namely, on agreement of the parties to that effect, the suits be transferred and, secondly, for the purpose of justice. It further stipulates that the reasons for so doing to be recorded on the proceedings in the High Court. [209C-D]

1.2 The disposal of the suits by the High Court would serve the purpose of justice. It would shorten litigation in the sense that there would be lesser number of appeals to the higher Court and the possibility of settlement is there in the High Court more than anywhere else. Suits are likely to be more expeditiously disposed of under the supervision of the High Court Judge than before the City Civil Court or the Court subordinate to High Court. [210B]

1.3 The purpose of justice must be determined by reference to the circumstances of each case and the balance of convenience having regard to those circumstances, is one of the matters for consideration. [210D]

In the instant case, even though initially the agreement to transfer might have been on the basis that the suits would be settled but the agreement to transfer was not

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unequivocal. The possibility of settlement might have been the motivation. But the High Court has, undoubtedly, for the purpose of justice, rightly power to dispose of the suits. Having once transferred the suits, it would be just and fair and would also serve the purpose of justice that the suits should continue to be disposed of by the High Court. [210C-D]

Though the suits are at a preliminary stage, but for the purpose of justice, the Court must oversee the administration of justice by different Courts and orders passed High Court as well as City Civil Courts. [210E]

Therefore, the purpose of justice would be served by directing expeditious disposal of the suits by the High Court. [210F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2597 of 1988.

From the Judgment and Order dated 17.3.1988 of the Calcutta High Court in Matter No. 2462 of 1987.

Soli J. Sorabji, R. Mahapatra, B.P. Singh and L.P. Agarwala for the Appellant.

S.K. Kapoor, S. Dube, Chatterji and Mrs. Indra Sawhney for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Special leave granted. The appeal is disposed of by the judgment herein.

On or about 7th August, 1963 Jayshree Textiles & Industries Ltd. (hereinafter called 'the Jayshree ') was inducted as a tenant in respect of a godown in Calcutta on groundfloor at a monthly rent of Rs. 151 per month payable according to the English calendar month w.e. f. 1.8. 1963 exclusive of electric charges. Such induction was by the predecessor in title of the present appellant. The said rent of Rs.151 p.m. was later enhanced from time to time and the last rent was Rs.225 p.m.

On or about 21st July, 1975, the High Court at Calcutta, in Company Petition No. 161/76 connected with company application No. 70/76 filed by the Jayshree, approved the

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scheme of amalgamation whereby the Jayshree merged in the respondent Company. It is alleged that on or about 4th July, 1985, the appellant for the first time came to know that the said godown was in occupation of Indian Rayon Corporation Ltd and, hence, a notice to quit was issued. On or about 11th July, 1985, the respondent by its letter intimated the appellant. that Jayshree was amalgamated with the respondent in accordance with the scheme sanctioned by the High Court at Calcutta on 21st July, 1976.

On 29th August, 1985, a notice under Section 106 of the Transfer of Property Act, read with Section 13(d) of the W.B. Premises Tenancy Act, 1956 (hereinafter called 'the Act'), to quit, vacate and hand-over vacant possession on the last date of the following month, was issued to Jayshree. Thereafter, on 1st December, 1985 the appellant filed a suit for eviction in the City Civil Court at Calcutta against the Jayshree and the respondent herein. On 25th March, 1986, the respondent filed a Title Suit No. 545/86 under Order 39(1) and (2) of the Civil Procedure Code praying for temporary injunction restraining the appellant from disconnecting electricity in, the said premises.

It is alleged and was also alleged before the High Court that the defendant No. 2 in the suit in the City Civil Court, took 15 adjournments to file written statement between March 1986 to May 1987. On about 6th July, 1987, the appellant filed an application under Clause 13 of the Letters Patent in the High Court at Calcutta, praying for transfer of the two suits on the ground that the respondent had adopted dilatory tactics and had taken several adjournments and. furthers that the original records relating to amalgamation are available in the High Court. Rule nisi was issued by the High Court. On 10th October, 1987 the High Court passed the following order:

The Court: By consent of the parties, this application for transfer of the suit under Clause 13 of the Letters Patent is treated as on days' list and is disposed of by the following order:

By consent of the parties the title suit being Title Suit No. 345 of 1986 between Indian Rayon Corporation Ltd. and Abhay Singh Surana pending before the learned Judge's bench in the City Civil Court and the ejectment suit being Ejectment Suit No. 1088 of 1985 between Abhay Singh Surana and Jayshree Textiles & Industries Ltd. and another pending in the City Civil Court are removed and transferred to this

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Court and to be entertained and tried by this Court in its

extraordinary original civil jurisdiction, the records be transferred to this Court by 16th September 1987. The Registrar, Original Side, shall communicate order to the Registrar, City Civil Court. If necessary, at the cost of the petitioner a special messenger is to be deputed for the purpose of transfer of the records from the City Civil Court to this Court. Let the two suits appear in the for settlement on 17th September, 1987. "

It appears that the suits appeared before the learned Judge upon mentioning on 15th December, 1987. It was represented that the suits were transferred to the High Court only on the understanding that the suits would be settled. It was further represented that the effort settle the suits had failed and, hence, the learned Single judge of the High Court fixed a date for hearing of the two suits.

On 17th February, 1988, the respondent filed an application before the learned Trial Judge in Calcutta for recalling the order of transfer dated 10.10.1987. On 17th March, 1987, the court passed the following order:

"The Court: It appears that on 10th September, 1987, an order was passed directing transfer of the suit to this Court so that the parties could settle the matter in this Court. It has been stated by Mr. Ranjan Dev, Advocate, that there is no possibility of settlement and the suit should be heard. In that view of the matter, let the suit be heard by the appropriate Court. The order dated 10th September, 1987 is hereby recalled. Let there also be an order in terms of prayer [b] of the petition. Since the suit is being re-transferred to the City Civil Court, this Court cannot pass any order as to the prayers made for deposit of rent. Liberty is given to the parties to make an appropriate application before the appropriate Court for such a direction."

Aggrieved thereby, the petitioner had filed a special leave petition and leave was granted herein. That is how, this appeal is here.

In order to appreciate the contentions urged in this case, it is imperative to refer to Clause 13 of the Letters Patent of 1865 of the High Court, which reads as follows:

"And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have power to
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remove, and to transfer and determine, as a Court of extraordinary original jurisdiction of any court, whether within or without the Bengal Division of the Presidency of Fort William. subject to its superintendence. when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice. the reasons for so doing being recorded on the proceeding of the said High Court. "

The aforesaid clause has been the subject-matter of various adjudications and interpretations by the High Court. It enables the High Court to exercise the 'extraordinary' original civil jurisdiction. The Letters Patent contemplates two contingencies for the High Court to exercise extraordinary jurisdiction. namely. on agreement of the parties to that effect. the suits be transferred and, secondly, for the purpose of justice. It further stipulates that the reasons for so doing to be recorded on the proceedings in the High Court. In this case. apparently the suits were transferred by agreement of the parties. There is. however, great deal of difference as to what that agreement was. On behalf of the appellant, it is contended that there was simply an agreement to have the two suits transferred to the High Court for quick and expeditious

disposal. It was further, asserted that in view of the long delay in filling the written statements, it was, therefore, advisable to have the suits disposed by the High Court.

On the other hand, it is seriously contended that the agreement was that the suits would be settled in the High Court. It appears that some such representations had been made to the learned Judge that the suits would be settled. This, however, the appellant disputes. The suits have been transferred for settlement. As the agreement to settle the suits has not fructified, the respondent does not want the suits to be tried in the High Court. The appellant states that there was no such agreement that the suits would be settled. There was, undoubtedly, a possibility for the suits being settled and the counsel for the appellant stated that the suits could more easily be settled in the High Court. On the basis that there was some such kind of agreement and it is desirable that the suits should be tried by an appropriate Court having jurisdiction, the High Court has remitted the suits back to the City Civil Court. There is no doubt that the City Civil Court is the appropriate Court and that there existed the agreement which, as recorded in the order of the Court, does not indicate that it was on the basis that the suits would be settled. There

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are factors indicating that the purpose of justice would be met if the suits are tried in the High Court. Undoubtedly, the written statement has been long delayed in the suit in 1985 and the same has not yet been filed.

The disposal of the suits by the High Court, would serve the purpose of justice. It would shorten litigation in the sense that there would be lesser number of appeals to the higher Court and the possibility of settlement is there in the High Court more than anywhere else. Suits are likely to be more expeditiously disposed of under the supervision of the High Court Judge than before the learned City Civil Court or the Court subordinate to High Court. Hence, even though initially the agreement to transfer might have been on the basis that the suits should be settled but the agreement to transfer was not unequivocal. The possibility of settlement might have been the motivation. But the High Court has, undoubtedly, for the purpose of justice rightly power to dispose of the suits and in the facts of this case, in our opinion, having once transferred the suits, it would be just and fair and would also serve the purpose of justice that the suits should continue to be disposed of by the High Court. The purpose of justice must be determined by reference to the circumstances of each case and the balance of convenience having regard to those circumstances, is one of the matters for consideration.

Counsel for the respondent contended under Art. 136 of the Constitution that it is not an order which should be interfered with. We are unable to agree. It is true that the suits are at a preliminary stage but it is also true that for the purpose of justice the Court, if possible, must oversee the administration of justice by the different Courts and the orders passed therein by the High Courts as well as the City Civil Courts.

In that view of the matter we think that the purpose of justice would be served by directing expeditious disposal of these suits by the High Court. In the premises the order of the High Court is set aside and let these two suits be heard by the High Court one after the other. The written statement as mentioned hereinbefore, has not been filed. The written statement, if any, by the respondent may be filed within

four weeks from today and further directions for expeditious disposal may be obtained from the learned Judge taking these suits. Let these suits appear before the appropriate Bench in the High Court of Calcutta.

The appeal is disposed of as aforesaid. No order as to costs.

N,P.V.

Appeal disposed of.
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JUDIS