Privy Council Appeal No. 6 *of* 1948

The Sree Meenakshi Mills, Limited - - - - - *Appellant*

v.

The Provincial Textile Commissioner, Madras - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH JULY, 1949

Present at the Hearing:

LORD OAKSEY
LORD REID
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal by special leave from a judgment and order of the High Court of Judicature at Madras in its civil appellate jurisdiction, dated the 23rd April, 1946, which affirmed a judgment and order of the said High Court in its original civil jurisdiction, dated the 29th March, 1946.

The appeal arises out of an application to the High Court of Madras made by the appellant, the Sree Meenakshi Mills Limited, under section 45 of the Specific Relief Act, 1877, against the respondent, the Provincial Textile Commissioner, Madras. It concerns the validity of certain seizures made by the respondent of yarn belonging to the appellant.

The material provisions of section 45 of the Specific Relief Act are as follows:—

> "45. Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or temporary nature, . . . provided—:
>
> (*a*) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act;
>
> (*b*) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, . . . ;
>
> (*c*) that in the opinion of the High Court such doing or forbearing is consonant to right and justice;
>
> (*d*) that the applicant has no other specific and adequate legal remedy; and
>
> (*e*) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorise any High Court—

. . . . . .
. . . . . .
. . . . . .

(*h*) to make any order which is otherwise expressly excluded by any law for the time being in force."

The application came to be made in the following circumstances:—

The appellant is a limited liability company and carries on cotton-spinning and weaving business in Madura. It spins yarn and weaves it into cloth with about 80 handlooms installed in the mill premises. These not being sufficient to weave all the yarn produced by the mill, the services of handloom weavers outside the mill are engaged by the appellant. Of these outside weavers, some carry on business in the neighbourhood of Madura, and others in the neighbourhood of Rajapalayam, about 60 miles distant from Madura. The appellant hands over to these weavers extra yarn produced at the mills in order that it may be woven into cloth by the said weavers for the appellant and be brought back to the mills as finished cloth. The outside weavers are paid piece rates, i.e., according to the quantity of cloth which they produce. The transaction between the appellant and the outside weavers is not a transaction of sale or a transaction in which the property in the yarn passes to the persons to whom it is entrusted. Both the yarn and the cloth made out of it belong to the appellant. It is common case that the transaction is one of bailment of the yarn made under a contract by which outside weavers undertake to do certain work in relation to the yarn so bailed. The business has been carried on by the appellant in this manner since 1944.

On the 20th February, 1946, the respondent issued an order under clause 18B (1) (*b*) of the Cotton Cloth and Yarn (Control) Order, 1945—hereinafter referred to as the "Control Order"—directing the appellant to confine its delivery of yarn to three categories of persons, namely:—

(*a*) Licensed yarn dealers (in accordance with . . . Clause 18A of the Control Order).

(*b*) To Consumers who purchased yarn directly from the appellant during the basic period 1940-42.

(*c*) Persons working the appellant's handlooms erected in the appellant's spinning mill at Madura.

Clauses 18A and 18B of the Control Order are as follows:—

"18A (1) No manufacturer shall, save in accordance with a general or special permission of the Textile Commissioner or in compliance with a direction given under clause 18B—

(*a*) sell or agree to sell cloth or yarn to any person who—

(i) is not a licensed dealer under the rules framed in this behalf by the Provincial Government ; and

(ii) did not as a dealer buy any cloth or yarn from him at any time during the years 1940, 1941 and 1942 ;

(*b*) during any quarter deliver to any dealer, whether in pursuance of a pre-existing contract or otherwise, cloth or yarn in excess of his quota determined under sub-clause (2).

(2) For purposes of sub-clause (1) (*b*), a dealer's quota of cloth shall bear to the value of the total deliveries of cloth made to all dealers during the quarter by the manufacturer concerned the same proportion as the value of the total deliveries of cloth made to that dealer during the years 1940, 1941 and 1942 bore to the value of the total deliveries made to all dealers during the same years by the same manufacturer ; and a dealer's quota of yarn shall be similarly determined.

(3) Every manufacturer shall maintain a register of contracts and deliveries and shall submit returns in such form and at such time as the Textile Commissioner may prescribe.

18B (1) The Textile Commissioner may, with a view to securing a proper distribution of cloth or yarn or with a view to securing compliance with this order, direct any manufacturer or dealer, or any class of manufacturers or dealers—

(*a*) to sell to such person or persons such quantities of cloth or yarn as the Textile Commissioner may specify ;

(*b*) not to sell or deliver cloth or yarn of a specified description except to such person or persons and subject to such conditions as the Textile Commissioner may specify ;

(*c*) to furnish such returns or other information relating to his or their undertaking, and in such manner, as the Textile Commissioner may specify ; and may issue such further instruction as he thinks fit regarding the manner in which the direction is to be carried out.

(2) Every manufacturer or dealer shall comply with the directions and instructions given under sub-clause (1)."

It will be observed that the order passed under 18B (1) (*b*) in effect prohibits the appellant from delivering yarn to owners of handlooms outside the mill premises. Despite the prohibition the appellant continued to deliver yarn to such owners in order (as already mentioned) that they might turn the yarn into cloth and bring the article back to the mills. The respondent considered this to be an infringement of his order of the 20th February, 1946, and seized certain quantities of yarn which had been delivered to the outside weavers.

In the above-mentioned circumstances the appellant filed the petition under section 45 of the Specific Relief Act (already mentioned) in the High Court of Madras for directions to the respondent :—

"(1) to desist from seizing yarn supplied by the applicant to the weavers at or around Madura and Rajapalayam for the purpose of converting the yarn into cloth, (2) to restore to the applicant yarn already seized, (3) to forbear from seizing yarn that might be entrusted to the weavers by the applicant in the usual course of business according to the practice obtaining for conversion of yarn into cloth and for costs."

As may be seen from the affidavits filed, the main contention of the appellant was that the object of the delivery of yarn to the outside weavers was not to transfer property to them, but was only for the purpose of weaving the yarn into cloth, in other words, the delivery was by way of bailment, which would not be delivery which can be prohibited by an order issued by the Textile Control officer.

It was contended on behalf of the respondent that he was within his rights in issuing the order and that the delivery of yarn by the appellant to outside weavers fell within its scope. It was also contended that the application was not maintainable under section 45 of the Specific Relief Act, and that the appellant was not entitled to any relief under it.

Kunhi Raman J. upheld the contentions of the respondent and dismissed the petition. The learned judge held that the word "deliver" in clause 18B (1) (*b*) must be understood in its ordinary sense in the absence of a special notification to the contrary, and if it is understood in this sense it would include delivery of any nature that can be controlled by the Textile Commissioner. He also held that the court had no jurisdiction to give relief to the appellant under section 45 of the Specific Relief Act as the seizures called into question were made beyond the limits of the ordinary original civil jurisdiction of the High Court, and further, that even if an order in favour of the appellant was made, it would prove futile as it could be frustrated by a positive direction made under sub-clause (*a*) of clause 18B (1).

On appeal, the learned Chief Justice and Lakshmana Rao J. held that the delivery of yarn by the appellant was in contravention of the respondent's order and dismissed the appeal. The learned judges did not consider the other grounds dealt with by Kunhi Raman J.

Two questions arise for determination before the Board. These are :—

(1) Does the delivery of yarn to outside handloom weavers in the present case fall within clause 18B (1) (*b*) of the Control Order?

(2) Is the application out of which the present appeal arises maintainable under section 45 of the Specific Relief Act?

Question No. 1. The word "deliver" used in clause 18B (1) (*b*) has not been defined anywhere in the Control Order. In the absence of any special explanation of the term limiting its meaning it must be understood in its ordinary sense of handing over of possession which would include delivery of possession to a bailee. If so understood there is no doubt that the delivery of yarn in the present case can be controlled by the respondent. The learned counsel for the appellant, Sir Valentine Holmes, however, argues that the respondent acting under clause 18B (1) (*b*) can control only the delivery of yarn on alienation, and not delivery to a bailee as in the present case, who cannot claim property in the yarn delivered to him by the appellant. In this connection their Lordships' attention was drawn to the meaning of the term "delivery" given in Benjamin on Sale, 7th Edition, p. 711, where the following statement occurs :—

> "There is no branch of the law of sale more confusing than that of delivery. The word is unfortunately used in very different senses :—(1) The word delivery is sometimes used with reference to the passing of *the property* in the chattel, sometimes to the change of *its possession;* in a word it is used in turn to denote transfer of title or transfer of possession."

(Reference was also made to Pollock and Wright on Possession in Common Law, p. 58.)

The learned counsel contends that the word "deliver" used in the clause indicates passing of property, i.e., transfer of title in the article delivered, in other words, the clause would apply only to a delivery by which property passes in the article. To use his own words, by the use of the word "deliver", "it is not intended to cover a case where the property delivered is to be turned into cloth and brought back to its owner." According to the learned counsel, the order made by the respondent could only affect the delivery of an article which "you may have sold but not delivered." If so interpreted, the order may prove useless and of no practical value, for the circumstances may be such that the officer seizing the yarn may not be able to decide whether it has been sold or not. Their Lordships are not prepared to accept such an interpretation of the term. If the ordinary meaning of the term is to be cut down in any manner there must be some indication of that intention in the Control Order. Their Lordships have been taken through the various provisions of the Control Order but have not been able to get any help from them in support of the appellant's contention which would restrict the usual meaning of the term. There is nothing in the Control Order which requires the word "deliver" to be construed in a way different from its usual meaning.

On the other hand the policy underlying the issue of orders under clause 18B makes it clear that the word "deliver" used in clause (1) (*b*) has to be understood in its ordinary broad sense of handing over possession; otherwise it will be impossible "to secure a proper distribution of cloth or yarn" of the specified description, which is stated clearly to be the object of the orders passed under that clause.

It was argued on behalf of the appellant that the delivery contemplated under 18B (1) (*b*) relates only to delivery to the outside public, and not delivery to outside weavers who are bailees, as in the present case. The scope of the Control Order is very wide. It relates to both dealers and manufacturers (these terms are defined in clause (*c*) of the Control Order), in their dealings with themselves or with outside persons, the object of the directions issued under clause 18B, as already stated, being the proper distribution of cloth or yarn of a specified description. Their Lordships do not think that the operation of the clause is limited to dealings with the outside public only, as contended for by the appellant. The object aimed at by the clause will not be secured if the scope of the Order is so limited.

It may be pointed out that clauses 18A and 18B are not to be read together. Clause 18A relates only to "manufacturers" in their relation with the "dealers" and concerns itself with prohibition of *sale* of cloth or yarn, whereas section 18B is wider in its scope as its object is to prohibit *delivery* of cloth or yarn to any person, including delivery to a bailee.

In their Lordships' view question No. 1 should be answered in the affirmative.

The next question relates to the maintainability of the application under the Specific Relief Act.

The scope of the provisions of section 45 restricts the jurisdiction of the High Court of Madras to make an Order "requiring any specific act to be done or foreborne within the local limits of its ordinary original civil jurisdiction". In the present case the appellant desired the Court to direct the respondent to desist from seizing the yarn supplied or that might be entrusted to the weavers at or around Madura or Rajapalayam and to "restore to the applicant the yarn already seized". Both Madura and Rajapalayam are outside the local limits of the ordinary original civil jurisdiction of the Madras High Court. It is not shown that the yarn seized was brought to Madras. It must be presumed that the yarn still remains in Madura, where it was seized. It is clear that all the reliefs asked for relate to acts done or to be done outside the limits of the ordinary original civil jurisdiction of the High Court. It was held in *The Inspector of Municipal Councils and Local Boards, Madras* v. *Venkatanarasimham* (1934) 66 M.L.J. 233, that:—

> "The jurisdiction of the High Court under S. 45 of the Specific Relief Act is confined to acts done or to be done within the limits of its Ordinary Original Civil Jurisdiction. The High Court has therefore no jurisdiction to issue an injunction prohibiting the Inspector of Municipal Councils and Local Boards from issuing a circular to, and interfering with the functions of, District Election Officers who perform their functions in the mufassal."

The reasoning of the learned judges of the High Court with reference to the act complained against in that case appears from the following extract of the judgment:—

> "It appears that the Inspector has his office in Madras, and we may infer that his circular was issued from his office in Madras. But the interference by that circular with the functions of District Election Officers, which the order purported to prohibit, could never take place within the limits of the Ordinary Original Civil Jurisdiction of this Court, because, as is admitted, District Election Officers perform their functions in the mufassal, outside the limits of the Ordinary Original Civil Jurisdiction of this Court."

In the present case, on the same reasoning, though the respondent may have his office in Madras within the limits of the ordinary original civil jurisdiction of the High Court, it is clear that the act with reference to which relief was asked took place outside the limits of the ordinary original civil jurisdiction of the High Court. It therefore follows that the application under section 45 of the Specific Relief Act is incompetent and should on that ground alone be dismissed.

In the circumstances, it is not necessary to discuss the further question whether, even if an order was made in favour of the appellant, it would be frustrated by a positive direction made under sub-clause (*a*) of clause 18B (1), i.e., in other words, whether the proviso (*e*) to section 45 of the Specific Relief Act would be a bar to the granting of the relief asked for in the application.

For the above reasons their Lordships will humbly advise His Majesty that the appeal should be dismissed with costs.

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In the Privy Council

THE SREE MEENAKSHI MILLS, LIMITED

v.

THE PROVINCIAL TEXTILE COMMISSIONER, MADRAS

[DELIVERED BY SIR MADHAVAN NAIR]

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