EVEREST COAL COMPANY (P) LTD.

v.

STATE OF BIHAR & ORS.

September 29, 1977

[V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

Civil Procedure Code (Act V of 1908), *Order XL—Leave to sue the Receiver, whether a must—Principle behind obtaining prior leave of the court which appointed the Receiver before suing the Receiver, explained.*

The appellant-plaintiff entered into a contract with the Receiver defendant State relating to a coal mine which had come within his Receivership in an earlier suit. While the appellant was working the mine under the contract, the Receiver-defendant after obtaining the permission of the court which appointed him but without notice to the appellant, cancelled the contract. The appellant sued the Receiver in damages after giving notice u/s. 80 C.P.C., but without taking the prior permission of the court which appointed the Receiver. Although he failed to apply for leave of the court before suing the Receiver, he made up for it by applying to the said court for permission to continue the litigation against the Receiver. The application was rejected on the view that since the petitioner had already filed a suit without leave of the court, the question of grant of permission to continue it did not arise. A revision to the High Court was dismissed *in limine.*

Allowing the appeal by special leave and granting leave to the appellant to prosecute his suit against Receiver-respondent, the court,

HELD : (1) The principle that prior leave of the court which appointed the Receiver is necessary before suing the Receiver is based on 'contempt' of court. The rule is merely to prevent contempt. Leave obtained before the *lis* terminates is a solvent of contempt. The infirmity does not bear upon the jurisdiction of the trying court or the cause of action. It is perepheral. The property being in *custodia legis,* the court's leave, liberally granted is needed. It is the court appointing the Receiver that can grant leave. If a suit prosecuted without such leave culminates in a decree, it is liable to be set aside. [575 B-E]

(2) When a court puts a Receiver in possession of property, the property comes under court custody, the Receiver being merely an officer or agent of the court. Any obstruction or interference with the court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such an interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the court, the sin is absolved and the proceeding may continue to a conclusion on the merits. In the ordinary course, no court is so prestige-conscious that it will stand in the way of a legitimate legal proceeding for redressal or relief against its receiver unless the action is totally meritless, frivolous or vexatious or otherwise vitiated by any sinister factor. Grant of leave is the rule, refusal the exception. After all, the court is not, in the usual run of cases, affected by a litigation which settles the rights of parties and the Receiver represents neither party, being an officer of the court. For this reason, ordinarily the court accords permission to sue, or to continue. The jurisdiction to grant leave is undoubted and inherent, but not based on black letter law in the sense of enacted law. Any litigative disturbance of the court's possession without its permission amounts to contempt of its authority; and the wages of contempt of court in this jurisdiction may well be voidability of the whole proceeding. Equally clearly, prior permission of the court *appointing the Receiver* is not a condition precedent to the enforcement of the cause of action. Nor is it so grave a vice that later leave sought and got before the decree has been passed will not purge it. If, before the suit terminates, the relevant court is moved and permission to sue or to prosecute further is granted, the requirement of law is fulfilled. Of course failure to secure such leave till the end of the *lis* may prove fatal. [573 E-H, 574 A]

A *Pramatha Nath* v. *Ketra Nath* (1905) 32 Cal. 270; *Jamshedji* v. *Husseinbhai* (1920) 44 Bom. 908, 58 I.C. 411, over-ruled.

Banku Behari 15 Calcutta Weekly Notes 54, approved.

OBSERVATION :

When any proceeding comes before the court for adjudication it is desirable to decide the point instead of mystifying the situation by avoiding a clear-cut B disposal as in the present case. A stitch in time saves nine. [573 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2224 of 1977.

Appeal by Special Leave from the Judgment and Order dated 15-2-77 of the Patna High Court (Ranchi Bench) at Ranchi in Civil Revision Appeal No. 24 of 1977.

C *H. R. Gokhale*, and *B. P. Singh* for the Appellant.

U. P. Singh and *S. N. Jha* for the Respondent No. 1.

The Judgment of the Court was delivered by

KRISHNA IYER, J. This appeal, where we have granted leave, can D be disposed of right away, now that we have heard brief submissions from both sides. The facts are few, the issue is single and the solution simple; but to silence conflicting voices from different High Courts and to clarify the law for the sake of certainty, we have chosen to make a short speaking order. The neat little legal point that arises is this : Can the court appointing a receiver to take charge of properties, grant leave to *continue a suit against him* when a third party wants E to prosecute such action initiated without such permission? If so, what are the guidelines for grant of such leave?

The appellant is the plaintiff in a suit instituted by him against respondent I (defendant in the suit) who is a receiver appointed by the court under O.40, r. 1 C.P.C. Briefly set out, the case of the plaintiff is that he had entered into a contract with the Receiver- F defendant relating to a coal mine which had come within his Receivership. While he was working the mine under the contract, the Receiver-defendant, after obtaining the permission of the court which appointed him, but without notice to the plaintiff-appellant, cancelled the contract wrongfully—such is his case. Thereupon, the appellant sued the Receiver in damages after giving notice under s. 80 CPC. However, he somehow failed to move the court for cancelling the earlier G order passed to his prejudice in which case perhaps the court might have reconsidered the order and issued directions to his Receiver. We are not concerned with that aspect of the case and we do not propose to make any speculative observations thereon. Although the plaintiff-appellant omitted to get leave from the court before suing the Receiver, he made up for it, on second thoughts, by applying to the Court for permission to continue the litigation against the Receiver. H When that proceeding came up for hearing the learned Subordinate Judge dismissed it on the view that since the petitioner had already filed a suit without leave of the court, the question of grant of permission to continue it did not arise. The court's observations which we

A

think are both unhelpful and erroneous and keeps the parties in suspense, are couched in these words :

> "If the petitioner has already filed the suit without leave of the court, he has already taken the risk and now the question does not arise for giving a fresh permission in the matter of continuing the suit. Because of the T.S. 74 of 1975 already instituted, the prayer for permission to continue the same does not arise as it is infructuous... Rejected.

B

A revision to the High Court did not improve matters because the application was dismissed *in limine,* with the rather innocuously wise statement :

C

> "The law will have its own course and if in law the petitioner need not have taken the permission of the court for continuance of the title suit, no observation made by the learned Subordinate Judge can arm the petitioner."

In our view, when any proceeding comes before the court for adjudication it is desirable to decide the point instead of mystyfying the situation by avoiding a clear-cut disposal. A stitch in time saves nine.

D

The laconic affirmance by the High Court of the trial court's order has necessitated the appellant's challenge of its propriety and legality. Instead of leaving the matter 'astrologically' vague and futuristically fluid, we shall state the legal position and settle the proposition governing this and similar situations. When a court puts a Receiver in possession of property, the property comes under court custody, the Receiver being merely an officer or agent of the court. Any obstruction or interference with the court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such as interference and invites the contempt penalty of likely invalidation of the suit or other proceedings. But, if either before starting the action or during its continuance, the party takes the leave of the court, the sin is absolved and the proceeding may continue to a conclusion on the merits. In the ordinary course, no court is so prestige-conscious that it will stand in the way of a legitimate legal proceeding for redressal or relief against its receiver unless the action is totally meritless, frivolous or vexatious or otherwise vitiated by any sinister factor. Grant of leave is the rule, refusal the exception. After all, the court is not, in the usual run of cases, affected by a litigation which settles the rights of parties and the Receiver represents neither party, being an officer of the court. For this reason, ordinarily the court accords permission to sue, or to continue. The jurisdiction to grant leave is undoubted and inherent, but not based on black-letter law in the sense of enacted law. Any litigative disturbance of the court's possession without its permission amounts to contempt of its authority; and the wages of contempt of court in this jurisdiction may well be voidability of the whole proceeding. Equally clearly, prior permission of the court *appointing the Receiver* is not a condition precedent to the enforcement of the cause of action. Nor is it

E F G H

so grave a vice that later leave sought and got before the decree has been passed will not purge it. If, before the suit terminates the relevant court is moved and permission to sue or to prosecute further is granted, the requirement of law is fulfilled. Of course, failure to secure such leave till the end of the *lis* may prove fatal.

This, in short, is the law which has been stabilised by Indian decisions although inherited from principles of English law. In a sense Indian, English and even American jurisprudence lend support to this law.

We now proceed to some citations, text-book-wise and precedent-wise and indicating the conflict to eliminate which is the object of this ruling.

Mulla, with characteristic clarity, has condensed the whole law correctly :

> "A receiver cannot sue or be sued except with the leave of the Court by which he was appointed receiver. A party feeling aggrieved by the conduct of a receiver may seek redress against him in the very suit in which he was appointed receiver, or he may bring a separate suit against the receiver in which case he must obtain the leave of the court"
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> x x x x x
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> "There is no statutory provision which requires a party to take the leave of the Court to sue a receiver. The rule has come down to us as a part of the rules of equity, binding upon all courts of Justice in this country. It is a rule based upon public policy which requires that when the Court has assumed possession of a property in the interest of the litigants before it, the authority of the Court is not to be obstructed by suits designed to disturb the possession of the Court. The institution of such suits is in the eye of the law a contempt of the authority of the Court, and therefore, the party contemplating such a suit is required to take the leave of the Court so as to absolve himself from that charge. The grant of such leave is made not in exercise of any power conferred by statute, but in the exercise of the inherent power which every Court possesses to prevent acts which constitute or are akin to an abuse of its authority."
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> x x x x x
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> "In *Pramatha Nath* v. *Katra Nath* (1905) 32 Cal. 270 Bodilly J. held that the leave of the Court to sue a receiver was a condition precedent to right to sue, and that if the leave was not obtained before suit, it could not be granted subsequent to the institution of the suit and the suit should be dismissed. This decision was dissented from in subsequent Calcutta cases where it was held that the leave may be granted even after the institution of the suit."
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> x x x x x

"Leave subsequently obtained at the time of realising rents directly from the tenants will suffice. In a Bombay case (*Jamshedji* v. *Hussainbhai,* 1920 44 Bom. 908, 58 I.C. 411) Pratt, J., after an exhaustive review of the case-law on the subject, came to the same conclusion; the learned judge held that failure to obtain leave prior to the institution of the suit was cured by subsequent leave."

(Mulla, Vol. II, pp. 1533-34, 13th Edn. CPC)

Since the principle is based on contempt of court, statutory follow-up actions are carved out as exceptions (suits under O.21, O.63). Likewise, where no relief is claimed against the receiver. Similarly, whether the receiver was appointed in a collusive suit or the order itself was unjustified are beside the point. The property being in *custodia legis,* the court's leave, liberally granted is needed. It is the court appointing the receiver that can grant leave. If a suit prosecuted without such leave culminates in a decree it is liable to be set aside.

Once the jurisprudential root of the law is grasped, that the rule is merely to prevent contempt, the many problems proliferating from the appointment of a receiver and legal proceedings against him without the appointing court's permission can be sorted out without converting the failure to get sanction before institution into a major, even fussy issue. Leave obtained before the *lis* terminates is a solvent of the contempt. The infirmity does not bear upon the jurisdiction of the trying court or the cause of action. It is perepheral.

The extreme view taken in *Pramatha Nath* (ILR 32 Calcutta 270) is not good law. *Banku Behari* (15 CWN 54) a later ruling of the same High Court, has struck the correct note :

"But we are unable to appreciate upon what intelligible principle the position can be defended that because the suit has been instituted without leave previously obtained it must necessarily be dismissed, and that it is not open to the Court to stay proceedings in the suit with a view of enable the Plaintiff to obtain leave of the Court to proceed with the suit against the Receiver."

Bombay and Madras, Kerala and Mysore, have claimed in, some going into long erudition, others readily granting the position. The standard commentaries on the C.P.C. (Mulla as well as A.I.R.) concur in this view, footnoting the flow of pan-Indian case-law.

The law in this branch, though based on Anglo-American thought, has a legitimacy when viewed as contempt of the court's authority. Once amends are made by later leave being obtained, the gravamen is gone and the suit can proceed. The pity is that sometimes even such points are expanded into important questions calculated to protract Indian litigation already suffering from unhealthy longevity.

A pragmatic view, not theoretical perfection, is the corrective. The leave should have been given.

We allow the appeal—in the hope that such an objection may not become a dilatory chapter in other litigations. We grant leave to the appellant to prosecute his suit against the Receiver-respondent. The parties will bear their respective costs in this avoidable adventure, but the respondent will be free to urge all his other contentions to meet the plaintiff's claim.

S.R. *Appeal allowed.*