
**SHELL GAS LANKA LTD.
VS
SAMYANG LANKA (PVT) LTD.**

COURT OF APPEAL.
SOMAWANSA, J (P/CA) AND.
WIMALACHANDRA, J.
CALA 234/2005.
DC COLOMBO 44032/MR.
AUGUST 26, 2005.

Interim injunction - Acting in breach of a covenant - No likelihood of any defence - Is it contrary to law to grant an injunction if it would give the plaintiff substantial relief claimed by him?

Held :

1. It is permissible to grant interim relief which gave substantially the whole of the relief claimed in the action, in a case where it was plainly seen that there was no defence.
2. Here there is a strong *prima facie* case, in favour of the plaintiff and the balance of convenience too favours the plaintiff and further there is no possible defence available to the defendant and the defendant is acting in breach of a covenant; it is not contrary to law to grant an interim injunction, even if the granting of the interim injunction would give the plaintiff substantial relief claimed by him.

APPLICATION for leave to appeal from an order of the District Court of Colombo.

Cases referred to :

1. *Jinadasa vs. Weerasinghe* 31 NLR 33 at 35K
2. *Richard Perera vs. Albert Perera* (1963) 69 NLR 445
3. *Woolford vs. Simit* (1970) 1 ALL ER 1091
4. *Dodd vs. Amalgamated Marine Workers Union*
5. *Bailley (Malta) Ltd. vs. Bailey*
6. *AG vs. Stocktoth on Tees Corpn*
7. *Heywood vs. BDC Properties Ltd.* (1963) 1 NLR 97
8. *Booker vs. James*
9. *Manchester Corporation vs. Connolly and others* (1970) Chancery 420

S. De Silva for plaintiff - petitioner.

D. P. Wanigasundara for defendant - respondent.

Cur.adv. vult.

September 21, 2005.

L. K. WIMALACHANDRA, J.

This is an application for leave to appeal by the plaintiff petitioner (plaintiff) from the order of the learned Additional District Judge of Colombo dated 03.06.2005.

Briefly, the facts relevant to this application are as follows ;

The plaintiff is in the business of selling liquid petroleum gas (LPG) to consumers and for industrial use and the defendant has been a customer of the plaintiff. On 01.04.1999, the plaintiff and the defendant entered in to a contract (annexed to the petition marked 'c') in which the defendant agreed to purchase LPG from the plaintiff. In terms of the said contract the plaintiff installed a Bulk Gas Vessel and other Equipment at the defendant's premises. The said Gas Vessel and other Equipment installed at the defendant's premises remain the property of the plaintiff. The plaintiff states that in breach of the terms and conditions of the contract marked 'C', the defendant failed to pay for the gas supplied to the defendant and also the rental fee due in connection with the use of the said Bulk Gas Vessel . Hence by letter dated 10.05.2004 marked 'L' the plaintiff terminated the said agreement. In terms of the said agreement marked 'C', it was agreed between the plaintiff and the defendant [clause X (C) (30)] that upon the termination of the said agreement for whatever reason, the customer (defendant) shall permit the Company and its agents, representatives to enter the premises and remove the Bulk Gas Vessel and Equipment and shall pay the Company all costs incurred for such removal. It is the plaintiff's position that although repeated requests were made, the defendant illegally and wrongfully in breach of the terms and conditions of the aforesaid agreement refused the plaintiff to enter the defendant's premises to remove the said Bulk Gas Vessel and Equipment. The plaintiff filed the aforesaid action in the District Court of Colombo *inter alia* for a declaration that the plaintiff is entitled to a sum of Rs. 595,130.16 together with interest thereon

from 10th May 2004 at 24% from the defendant and thereafter on the aggregate amount of the Decree until the date of payment in full, a declaration that the aforesaid Bulk Gas Vessel and Equipment are the property of the plaintiff and a declaration that the defendant and/or its servants and/or agent and/or any persons acting directly or indirectly under the authority of the defendant has no right in law to prevent, obstruct, restrain or in any way interfere with the removal from the defendant's aforesaid premises the said Bulk Gas Vessel and Equipment. The plaintiff also sought an enjoining order and an interim injunction in terms of paragraphs 'd' and 'e' of the prayer to the plaint. Paragraph (e) of the prayer to the plaint reads as follows :

“Until the matter of the permanent injunction is determined issue an interim injunction against the defendant and/or its servants and/or its agents and/or any persons acting directly or indirectly under its authority from preventing, obstructing, restraining or in any way interfering with the plaintiff and/or its agents and/or any persons acting under its authority from removing from the defendant's aforesaid premises the said Bulk Gas Vessel and Equipment.”

With regard to the aforesaid interim injunction prayed for by the plaintiff, an inquiry was held and the learned judge pronounced the order on 03.06.2005 refusing the grant of the interim injunction prayed for in the aforesaid paragraph (e) of the prayer to the plaint. It is against that order the plaintiff has filed this application for leave to appeal.

The plaintiff - petitioner has prayed for interim relief in terms of paragraph (d) of the prayer to the petition. It reads as follows :

“Make Interim Order pending the final determination of this application against the respondent and/or its servants and/or its agents and/or any persons acting directly or indirectly under its authority from preventing, obstructing, restraining or in any way interfering with the petitioner and/or its agents and/or any persons acting under its authority from removing from the respondent's aforesaid premises the Bulk Gas Vessel and Equipment installed in the Respondent's premises.”

The Court directed the plaintiff to support the application for interim relief after notice to the defendant. Accordingly, the notice was issued on the defendant and the matter was taken up on 26.08.2005. The defendant was represented by a counsel. At the inquiry both counsel agreed that the aforesaid Bulk Gas Vessel and Equipment belong to the plaintiff and it was installed at the defendant's premises. They further agreed that the aforesaid agreement has been terminated and that the aforesaid District Court action is pending in the District Court of Colombo. At the inquiry into the application for interim relief, the main submission of the learned counsel for the defendant was that the plaintiff is not entitled to interim relief prayed for in paragraph (d) of the prayer to the petition as the granting of the interim order prayed for in the petition would give the plaintiff substantially the whole of the relief claimed in the petition. The interim relief prayed for in paragraph (d) of the prayer to the petition is the interim injunction prayed for in paragraph (e) of the plaint, which was refused by the learned Additional District Judge.

The question that arises for determination is, can the Court grant the interim relief prayed for in the petition which is the interim injunction prayed for by the plaintiff in paragraph (e) of the prayer to the plaint, which would give the plaintiff substantial relief prayed for in this petition. This is the foremost and sole submission of the learned counsel for the defendant.

It is the general practice that an interim injunction will normally not be granted if the granting will result in a decision of the main question involved. In other words, in deciding whether to grant or refuse the interim injunction the Court must not in effect decide the plaintiff's main relief (vide- *Jinadasa vs Weerasinghe*.¹ However, in the case of *Richard Perera vs. Albert Perera*² HNG Fernando, J. (as then he was) held that although the trial judge should not decide the substantive question in considering an application for injunction, some consideration of the substantive question at this early stage is not irrelevant.

The learned counsel for the defendant admitted that the said Bulk Gas Vessel and Equipment belong to the plaintiff. He also admitted that the said agreement entered into between the plaintiff and the defendant has been terminated. As stated above, in terms of the agreement marked 'C', clause X (C) (3) states that upon termination, for whatever reason the Customer (the defendant) shall forthwith permit the Company (the plaintiff)

and its agents or representatives to enter the premises and remove the Bulk Gas Vessel and/or Equipment and any Shell Gas remaining in the vessel and shall pay the Company all costs incurred for such removal. In these circumstances it can be seen that the plaintiff is entitled to remove its Bulk Gas Vessel and Equipment. The interim relief prayed for by the plaintiff is for the removal of the said Bulk Gas Vessel and Equipment installed in the defendant's premises. As stated above, the learned counsel for the defendant admitted unequivocally, the said Bulk Gas Vessel and the equipment belong to the plaintiff and the aforesaid agreement entered into between the parties has been terminated. Hence there is a strong *prima facie* case in favour of the plaintiff and the balance of convenience too favours the plaintiff. I cannot see any possible defence available to the defendant when he admits that the said Bulk Gas Vessel belongs to the plaintiff.

When it appears that there is no defence for the defendant and he is acting in breach of a covenant, it is not contrary to law to grant an interim injunction even if the granting of the interim injunction would give the plaintiff substantial relief claimed by him.

*In Woodford Vs. Smith*³ Megarry, J. made the following observation at page 1093 ;

“Counsel for the defendant also read me a passage in the Supreme Court Practice 1970, which runs as follows :

“It is not the practice of the Court (except by consent) to grant on an interlocutory application an injunction which will have the practical effect of granting the sole relief claimed (Dodd V. Amalgamated Marine Worker’s Union) This does not deter the Court from granting such interlocutory injunction as may be necessary to preserve property to prevent irreparable damage.

When I ventured to assert that this did not represent the law, counsel for the defendants accepted that as being the case. I do not think that there is anything to prevent the court in a proper case from granting on motion substantially all the relief claimed in the action. It is true that in Dodd. V. Amalgamated Marine Worker’s Union (supra) it was said in the Court of Appeal that it was not the

'usual practice' or the 'general rule of practice' to grant on motion all the relief claimed in the action. But this language is general rather than absolute, the judgments are very brief, no reasons are given, and there have been later decisions. Thus in *Bailey (Malta) Ltd. Vs. Bailey Denning* MR flatly said that it seemed to him that there was 'no such rule'. In this, he based himself on what Sargant LJ had said in *A- G v Stockton-on-Tees Corpn* where there is what I may call a reasoned demolition of the supposed rule, the basis of which seems to have been an objection to trying the same point twice over. In the *Bailey* case, (*supra*) Harman LJ referred to the supposed rule as a theory which had in his view 'long been exploded': see also *Heywood v BDC Properties Ltd.*⁷ and *Booker V. James.*⁸ I have ventured to refer to those authorities (which were not discussed before me, since there was no need) because it is time that the passage in the Supreme Court Practice 1970 which I have read received the firm touch of a revising hand. Plainly in the present case the objection which counsel for the defendants raised but did not press is no obstacle to granting the injunction sought."

In the case of *Manchester Corporation Vs. Connolly and Others*, it was held that there being, on the facts, no likelihood of any defence succeeding at the trial, the Vice Chancellor had been right in exercising his discretion to grant interlocutory relief in the form of the injunction.

At page 428, Lord Diplock made the following observation :

"The question argued in the appeal in *Heywood's Case* was whether it was permissible to grant interlocutory relief which gave substantially the whole of the relief claimed in that action. It was held that in a case where it was plain that there was no defence, it was permissible to do so. In so far as argument, in the present case is based on the ground that the injunction gives substantially the whole of the relief claimed in the action, that case in an answer to that contention"

The complaint of the plaintiff is that the defendant is wrongfully and unlawfully using the Bulk Gas Vessel to store LPG purchased from other suppliers and this would cause immeasurable and irreparable damage to the plaintiff. The counsel for the defendant admits that the said Bulk Gas Vessel is the property of the plaintiff and he makes no claim to the said property. In the circumstances the granting of the interim relief prayed for

in paragraph (d) of the prayer to the petition will not cause any irremediable loss or damage to the defendant. But on the other-hand refusal to grant the interim relief would cause irremediable harm to the plaintiff. In the circumstances when there is no defence forthcoming from the defendant to the application made by the plaintiff, for interim relief in the form of an injunction, I do not see there are reasons on which Court should refuse to grant interim relief.

Admittedly, the Bulk Gas Vessel and Equipment belong to the plaintiff., Where there is clearly no defence to the claim for possession of the said Bulk Gas vessel and Equipment by the defendant an order for possession can be made in favour of the plaintiff as an interim order. Moreover, by granting of the interim relief the Court is not giving the whole of the relief claimed by the plaintiff in the District Court action.

For these reasons the interim relief is granted as prayed for in paragraph (d) of the prayer to the petition and as a precautionary measure, it is subject to the condition that the said Bulk Gas Vessel and Equipment remain to be the property of the plaintiff and the plaintiff shall keep the said Bulk Gas Vessel in good condition until the conclusion of the trial of this action or until further order is made by this Court. This order will not prevent the plaintiff from using it for any purpose.

Accordingly, I set aside the order made by the learned Additional District Judge of Colombo dated 03.06.2005 and the application for interim relief prayed for in paragraph (d) of the prayer to the petition is granted subject to the aforesaid condition. I make no order as to the costs of this inquiry.

Somawansa, J. (P/CA) – I agree.

Application allowed.