

AJITH
v.
CEYLON PAPER SACKS LTD

COURT OF APPEAL
EDUSSURIYA, J. (P/CA)
CA/LA NO. 149/99
DC COLOMBO NO. 5375/SPL
01ST, 29TH OCTOBER 1999
05TH NOVEMBER 1999

Interim Injunction - Civil Procedure Code S.79 of 1988 (Amendment), S.664(1), S.666 - Could the District Court grant an injunction ex parte - Injunction granted inter parte - Could the opposite party reargitate the issue again.

Held :

(1) An injunction can issue only after notice to the opposite party and a full inquiry had after the opposite party files objections with affidavits, if they so desire. If however the opposite party fails to come into court after notice is served, then the Court is free to make an appropriate order based on the material placed before it by the Applicant for the Injunction.

Per Edussuriya j.,

“Where the Injunction is issued after full inquiry after the opposite party has filed objections, such party cannot then once again avail itself of S.666 to have the Injunction set aside.”

Quarere

“Where the opposite party failed to come into Court after service of the Petition with the affidavits and notice of application can he come under S.666 without purging his default.”

(ii) The failure to serve notice of the application for injunction is fatal and therefore all proceedings thereafter are irregular.

Per Edussuriya j.,

“there has been some confusion after the procedural law relating to injunction was amended. If a party is entitled to have a “second bite

of the cherry" it will cause unnecessary expenses to the parties as well as overcrowding of the District Courts with such second applications to re-agitate the same matter, which has been dealt with once, this certainly could not have been the intention of the legislature."

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

Wijedasa Rajapakse with *M.C. Muneer* for Defendant-Petitioner.

K. Kanag-Iswaran, P.C. with *MA Sumanthiran* and *Nigel Bartholemeus* for Plaintiff-Respondents.

Cur. adv. vult.

February 02, 2000.

EDUSSURIYA, J. (P/CA)

The Defendant Petitioner's complaint is that only a summons had been served on him but that no notice of an application for an injunction was served on him and that when he attended Court he came to know that an interim injunction had been applied for, but that he was not given an opportunity to file objections substantiated by affidavit or affidavits together with other relevant material, but was directed to make oral submissions if, any and thereafter the interim injunction was issued. Further, that he made oral submissions since he had no alternative.

The learned District Judge had taken the view that in as much as the Petitioner was entitled to have the interim injunction set aside under Section 666, the Petitioner was not entitled to file objections.

Prior to the amendment to the Civil Procedure Code by Act No. 79 of 1988 the District Court could grant interim injunctions ex-parte, except where the application for the interim injunction was made after answer was filed. However as the law stands today the District Court cannot grant interim injunction ex-parte, but always with notice to the

Respondents to the application. Yet Section 666 with a minor amendment remains in the Civil Procedure Code enabling the Respondent to such an application to have the injunction set aside.

What then is meant by the words the Court shall before granting an injunction cause the petition of application for the same together with accompanying affidavit *to be served on the opposite party*, found in Section 664(1) today?

Counsel Rajapakse contended that Section 664(1) applies to cases where the injunction is applied for by petition and affidavit after the institution of the action, in view of the words "Petition of application" found therein and that in view of the application for injunction being made in this case in the Plaint, the District Court could not grant the injunction under Section 664(2). This, I think is not tenable. The words "Petition of application" were found in Section 664 prior to the amendment and all along Courts have taken the view that where the injunction is applied for in the Plaint itself the words "Petition of application" refer to the Plaint.

As Section 664 stands today, no injunction shall be issued without serving the Petition of application together with the accompanying affidavit being served on the opposite party.

In this connection Mr. Rajapakse submitted that the notice of application for injunction had not been served on him.

When Section 664(1) sets out that the Court shall before granting the injunction cause the petition and affidavit be served on the opposite party, it must be understood that the purpose of serving the petition and affidavit is to enable the opposite party to come into Court and object, and show cause if any against the issue of the injunction and hence the opposite party must be given an opportunity to file its full and

compete objections. It cannot be said that he can only be heard orally. Of what purpose are oral submissions by counsel, or the opposite party himself in person, if he is not permitted to substantiate those oral submissions with an affidavit or affidavits and other relevant material, unless on the face of it the application is bad in law and or irregular.

Thus, it is my view that today an injunction can issue only after notice to the opposite party and a full inquiry had after the opposite party files objections with affidavits if they so desire. Of course where the opposite party fails to come into Court after notice is served then the Court is free to make an appropriate order based on the material placed before it by the applicant for the injunction. In such an instance it may be said that the opposite side may still come in under Section 666 to have the injunction set aside, but where the opposite party comes in on service of the petition of application and affidavit and notice of application for injunction then such party is entitled to file objections and have a full inquiry into the application for injunction, and it is also my view that where the injunction is issued after full inquiry after the opposite party has filed objections, such party cannot then once again avail itself of Section 666 to have the injunction set aside. Further, can it be said that where the opposite party failed to come into Court after service of the petition with the affidavit and notice of application that he can come in under Section 666 without purging his default?

Then did the legislature in bringing in amended legislation overlook the fact that no injunction shall be granted ex-parte under the amendment, in incorporating Section 666 with a minor amendment. Or was Section 666 to apply only to cases where new material was discovered after the issue of the injunction? The latter cannot be since the words used are "any party dissatisfied with such order . . ." Thus, it is my view that once an injunction has been issued after objections are filed and inquiry, a Respondent cannot avail himself of Section 666 to have the injunction set aside.

President's Counsel Mr. Kanag-Iswaran contended that the Petitioner to the present application before this Court participated at the inquiry by making oral submissions and therefore the order made issuing the injunction was made inter-partes.

However, the present Petitioner made oral submissions since he had no alternative after his application to file objections was refused and he did so under compulsion, and of what assistance are such oral submissions to Court if he was not allowed to file petition and affidavit or affidavits, unless as hereinbefore mentioned the oral submissions were directed at some irregularity in the procedure on some fatal flaw in the application for the injunction. I therefore hold that the Petitioner is entitled to file objections with affidavits and other material if any to oppose the application for injunction. I also hold that the failure to serve notice of the application for injunction is fatal and therefore all proceedings thereafter are irregular and accordingly set aside the order issuing the injunction with costs fixed at Rs. 3150/- and this Court directs that the Petitioner be given an opportunity to file objections and an inquiry be held thereafter on the application for injunction.

It is appropriate to mention that there has been some confusion after the procedural law relating to injunctions was amended. If a party is entitled to have a "second bite at the cherry" (under section 666 as Justice Soza stated in his very exhaustive article to the Judges Journal of December 1991) it will cause unnecessary expense to the parties as well as over crowding of the District Courts with such second applications to re-agitate the same matter which has been dealt with once. This certainly could not have been the intention of the legislature.

Application allowed. Petitioner allowed to file objections. District Court directed to hold an Inquiry on the application for Injunction.