1972 *Present :* **H. N. G. Fernando, C.J., Silva, S.P.J., and Alles, J.**

C. SUNTHARALINGAM, Petitioner, *and* THE ATTORNEY-GENERAL and 2 others, Respondents

S. C. 1 of 1972—Application for an Injunction

Injunction—Proper forum for seeking it—Scope of Courts Ordinance (Cap. 6), s. 20.

In an application for an injunction against the competent authority appointed for the purpose of Regulation 14 of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 5 of 1971, the petitioner's complaint was that the competent authority had wrongly refused to pass for publication certain correspondence which the petitioner had with the Minister of Constitutional Affairs concerning the proposed new Constitution for Sri Lanka. The petitioner claimed an injunction under section 20 of the Courts Ordinance restraining the Competent Authority from further preventing the publication by the petitioner of the correspondence. Although his application was pending in the Supreme Court for two months, the petitioner did not during this interval take any step towards the institution of an appropriate action in the District Court.

Held, that an injunction could not be granted if only for the reason that the proper forum in which an injunction must be sought is an original Court and not the Supreme Court, unless there is good and substantial reason why a petitioner cannot go to the proper forum for relief. The excuse given by the petitioner that the effect of an injunction granted by the District Court might have been stayed or delayed by an appeal to the Supreme Court was of no avail; when the Legislature in section 20 of the Courts Ordinance recognized the District Court to be the proper forum in which to seek an injunction, the Legislature was aware that an order of that Court may be subject to appeal.

APPLICATION for an injunction against the competent authority appointed for the purpose of Regulation 14 of the Emergency (Miscellaneous Provisions and Powers) Regulations No. 5 of 1971.

C. Suntharalingam (Relator-Petitioner) in person.

Ian Wikramanayake, Senior Crown Counsel, with *Sunil de Silva*, Crown Counsel, and *A. de S. Gunawardana*, Crown Counsel, for the 3rd respondent.

Cur. adv. vult.

March 3, 1972. H. N. G. FERNANDO, C.J.—

The Petitioner in this case sought different reliefs against different respondents. His application for an injunction against the Minister of Constitutional Affairs was dismissed for reasons which were stated on 14th February 1972. I set out now my reasons for dismissing his application for an injunction against the competent authority appointed for the purpose of Regulation 14 of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 5 of 1971.

It appears from the averments in the petition that the Petitioner had some correspondence with the Minister of Constitutional Affairs concerning the proposed new Constitution for Sri Lanka, which is being considered by the Constituent Assembly set up in pursuance of a resolution passed by the members of the House of Representatives on 19th July, 1970, and that the Petitioner transmitted to the Minister some Memoranda for consideration by the Constituent Assembly.

The Petitioner intended to publish and circulate the correspondence and the Memoranda, because (so he maintained at the hearing before us) it would be in the public interest to publish the views and facts stated therein and because such publication might induce the promoters of the new Constitution "to see reason". We gathered that he also intended to transmit the Memoranda to Her Majesty Elizabeth II and to members of the British Houses of Parliament, in the expectation that the Parliament of Great Britain will intervene to prevent the establishment of what would be (in the Petitioner's opinion) an unjust and illegal Constitution for Ceylon.

The Petitioner's substantial complaint is that his intentions have been frustrated by the competent authority, who has refused to pass for publication the correspondence and the Memoranda to which I have referred.

It suffices to note for present purposes that Regulation 14 of the Emergency (Miscellaneous Provisions and Powers) Regulations, read with certain orders made thereunder, empower the Competent Authority

to prevent the publication in Ceylon or the transmission from Ceylon to places outside of matter which would or might be prejudicial to the interests of public security, etc. The Petitioner averred that in this case the Competent Authority has acted mala fide and in excess of the powers thus vested in him, and he sought in paragraph (*e*) of his prayer a decree declaring "that the Order of Refusal to pass for publication the documents specified in the Schedule 'A' hereto by the Third Respondent be revoked and that he be prevented from refusing to pass for publication the said documents".

Although the terms of the prayer are uncertain, we were content to accept the petitioner's submission that what he claims is an injunction under s. 20 of the Courts Ordinance restraining the Competent Authority from further preventing the publication by the petitioner of the correspondence and the Memoranda to which I have earlier referred.

The jurisdiction of the Supreme Court to grant injunctions was first conferred by Section 49 of the Charter of 1833. The Full Court[1] held over a hundred years ago that this jurisdiction is "a limited jurisdiction, protecting the applicant *ad interim*, until he can protect himself by obtaining an injunction in the District Court, which he can obtain on filing the libel as the very first step in the cause", and also that "the applicant should, as a condition precedent to obtaining a writ (injunction) from this Court, show that he is prevented by some substantial cause from applying at once to the District Court instead of coming to the Supreme Court at all". The Full Court further observed that "in the case before it there was no proof either of insufficiency of time, or of any other cause, of which this Court could take notice why the application for an injunction could not have been made in the District Court". The existing jurisdiction under s. 20 of the Courts Ordinance is similarly limited. Bonser C.J.[2] held in 1895 that "the power of granting injunctions is a strictly limited one to be exercised only on special grounds, and in special circumstances, (1) where irremediable mischief would ensue from the act sought to be restrained, (2) an action would lie for an injunction in some Court of original jurisdiction, and (3) the Plaintiff is prevented by some substantial cause from applying to that Court".

These early decisions were followed by Sansoni J. (as he then was) in 1955[3], when he held that if the second or the third of the conditions stated by Bonser C.J. is not satisfied, this Court cannot grant an injunction.

Section 20 of the Courts Ordinance is in the following terms :—

> "The Supreme Court, or any Judge thereof, shall be, and is hereby authorized, to grant and issue injunctions to prevent any irremediable mischief which might ensue before the party making application for such injunction could prevent the same by bringing an action in any original Court : "

[1] *(1859) 3 Lorenz 244.* [2] *Mohamado v. Ibrahim, (1895) 2 N. L. R. 36.*
[3] *Buddhadasa v. Nadaraja (1955) 56 N. L. R. 537.*

My own examination of s. 20 enables me to confirm without reservation the correctness of the construction given to it by decisions which I have cited. According to these decisions, the proper forum in which an injunction must be sought is an original Court and not the Supreme Court. The Supreme Court can consider the merits of a particular application, only if there is good and substantial reason why a petitioner cannot go to the proper forum for relief.

In the instant case there was literally not a single sentence in the petition or affidavit which attempted to explain why the petitioner, who filed his application in this Court on 3rd January 1972, did not instead make an application in the District Court. Indeed the omission from the petition of any such explanation indicates that the petitioner, who chose to be his own lawyer, was either unaware of the earlier decisions or preferred to ignore them.

The order of refusal by the Competent Authority was made in August 1971, and the petitioner explained in Court that he delayed to make his application until 3rd January 1972 because an appeal which he had preferred to the Prime Minister had evoked no response. But that explanation does not cover the failure of the petitioner to resort to the District Court even on 3rd January 1972. He stated at the hearing that it would have been futile for him to apply to the District Court, because even if the District Court had granted an injunction, its effect might have been stayed or delayed by an appeal. This excuse is in my opinion of no avail ; when the Legislature in s. 20 recognized the District Court to be the proper forum in which to seek an injunction, the Legislature surely was aware that an order of that Court may be subject to appeal.

Although this application was pending in this Court between 3rd January 1972 and 3rd March 1972, the Petitioner did not even during the interval of two months take any step towards the institution of an appropriate action in the District Court. Sansoni, J.[1], in referring to a similar omission stated that the Petitioner in that case had thus " disentitled himself to any relief whatsoever ".

The present application had to be dismissed on the ground that the third of the conditions specified in the judgment of Bonser C.J. was not satisfied. It is therefore not necessary to consider whether the second of those conditions was satisfied in this case. But I should not refrain from recording that the Petitioner at one stage confidently asserted that a District Court would have no jurisdiction to grant the injunction which he sought. If that assertion be correct, it follows that the Supreme Court also has not that jurisdiction.

The Petitioner relied on s. 45 of the English Judicature Act of 1925 for a submission that an injunction could be granted by the High Court in England in the circumstances of the present case, and that this Court

[1] *Buddhadasa v. Nadaraja (1955) 56 N. L. R. 537.*

must apply the principles of the Law of England in construing s. 20 of the Courts Ordinance. A similar submission was rejected long ago by Bonser C.J. when he pointed out that s. 20 of our Courts Ordinance confers "a limited power, very different from that given by the Judicature Act of 1873 to the English Supreme Court of granting injunctions in all cases in which it shall appear to the Court just or expedient to do so."

When the jurisdiction of a Court to make a particular order is dependent on the existence of any conditions precedent, such as the second and third conditions stated by Bonser C.J.[1], the Court is bound *as a first step* to ascertain whether each such condition does in fact exist. And, if any such condition is not shown to exist, the Court then lacks jurisdiction to proceed to any further inquiry into the alleged "merits" of a case. That is the simple reason why we refused to permit the Petitioner to address us in support of his assertion that irremediable mischief will ensue if an injunction is not granted in this case. We are content to ignore the Petitioner's disrespectful insinuations that natural justice was denied to him by that refusal.

SILVA, S.P.J. — I agree.

ALLES, J. — I agree.

Application refused.