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of the judgment there is nothing more that we need say.

Petitions 79 *of* 1957
168 *of* 1958 *and*
4 *of* 1959 *allowed.*
Petition 167 *of* 1958 *dismissed.*

MANOHAR LAL CHOPRA

v.

RAI BAHADUR RAO RAJA SETH HIRALAL

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November 16.

(K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH and RAGHUBAR DAYAL, JJ.)

Civil Procedure—Inherent powers of courts—Temporary Injunction—Restraining party from proceeding with suit in another State—Legality and propriety of—Code of Civil Procedure, 1908 (V of 1908), ss. 94(c) 151 : O. 39 r. 1.

M filed a suit at Asansol against H for recovery of money. Later, H filed a counter suit at Indore againtst M for recovery of money. In the Asansol suit one of the defences raised by H was that the Asansol court had no jurisdiction to entertain the suit. H applied to the Asansol court to stay the suit but the court refused the prayer. An appeal to the Calcutta High Court against the refusal to stay was dismissed with the direction that the preliminary issue of jurisdiction should be disposed of by the trial court immediately. Thereupon, H applied to the Indore court for an injunction to restrain M from proceeding with the Asansol suit pending the disposal of the Indore suit and the court purporting to act under O. 39 Code of Civil Procedure granted the injunction. M appealed to the Madhya Bharat High Court which dismissed the appeal holding that though O. 39 was not applicable to the case the order of injunction could be made under the inherent powers of the court under s. 151 Code of Civil Procedure.

Held, that the order of injunction was wrongly granted and should be vacated.

Per, Wanchoo, Das Gupta, and Dayal, JJ.—The Civil courts had inherent power to issue temporary injunctions in cases which were not covered by the provisions of O. 39 Civil Procedure Code. The provisions of the Code were not

exhaustive. There was no prohibition in s. 94 against the grant of a temporay injunction in circumstances not covered by O. 39. But inherent powers were not to be exercised when their exercise was in conflict with the express provisions of the Code or was against the intention of the legislature. Such powers were to be exercised in very exceptional circumstances. A plaintiff of a suit in another jurisdiction could only be restrained from proceeding with his suit if the suit was vexatious and useless. It was not so in the present case. It was proper that the issue as to jurisdiction should be decided by the Asansol court as directed by the Calcutta High Court. The Indore court could not decide this issue. Besides, it was open to the Asansol court to ignore the order of the Indore court and to proceed with the suit. This would place M in an impossible position. An order of a court should not lead to such a result.

Varadacharlu v. *Narsimha Charlu*, A. I. R. 1926 Mad. 258 ; *Govindarajalu* v. *Imperial Bank of India*, A. I. R. 1932 Mad. 180 ; *Karuppayya* v. *Ponnuswami*, A. I. R. 1933 Mad. 500(2) ; *Murugesa Mudali* v. *Angamuthu Madali*, A.I. R. 1938 Mad. 190 and *Subramanian* v. *Seetarama*, A.I. R. 1940 Mad. 104, not approved.

Dhaneshwar Nath v. *Ghanshyam Dhar*, A. I. R. 1940 All. 185, *Firm Richchha Ram* v. *Firm Baldeo Sahai*, A. I. R. 1940 All. 241, *Bhagat Singh* v. *Jagbir Sawhney*, A. I. R. 1941 Cal. 670 and *Chinese Tannery Owners' Association* v. *Makhan Lal*, A. I. R. 1952 Cal. 550, approved.

Padam Sen v. *State of U. P.* [1961] 1 S. C. R. 884, *Cohen* v. *Rothfield*, L. R. [1919] 1 K. B. 410 and *Hyman* v. *Helm*, L. R. (1883) 24 Ch. D. 531, relied on.

Per, Shah, J.—Civil courts have no inherent power to issue injunctions in cases not covered by O. 39, rr. 1 and 2 Code of Civil Procedure. The power of civil courts, other than Chartered High Courts, to issue injunctions must be found within the terms of s. 94 and O. 39, rr. 1 and 2. Where an express provision is made to meet a particular situation the Code must be observed and departure therefrom is not permissible. Where the Code deals expressly with a particular matter the provision should normally be regarded as exhaustive.

Padam Sen v. *State of U. P.* [1961] 1 S. C. R. 884, relied upon.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 346 of 1958.

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Manoharlal Chopra
v.
Rai Bahadur Rao Raja Seth Hiralal

Appeal by special leave from the judgment and order dated May 10, 1955, of the former Madhya Bharat High Court in Misc. Appeal No. 26 of 1954.

S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the appellant.

S. T. Desai, K. B. Bhatt and *B. R. L. Iyengar*, for the respondent.

1961. November 16. The Judgment of Wanchoo, Das Gupta and Dayal, JJ., was delivered by Dayal J. Shah J., delivered a separate Judgment.

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—The appellant and the respondent entered into a partnership at Indore for working coal mines at Kajora gram (District Burdwan) and manufacture of cement etc., in the name and style of 'Diamond Industries'. The head office of the partnership was at Indore. The partnership was dissolved by a deed of dissolution dated August 22, 1945. Under the terms of this deed, the appellant made himself liable to render full, correct and true account of all the moneys advanced by the respondent and also to render accounts of the said partnership and its business, and was held entitled to 1/4th of Rs. 4,00,000/- solely contributed by the respondent towards the capital of the partnership. He was, however, not entitled to get this amount unless and until he had rendered the accounts and they had been checked and audited.

The second proviso at the end of the convenants in the deed of dissolution reads :

> "Provided however and it is agreed by and between the parties that as the parties entered into the partnership agreement at Indore (Holker State) all disputes and differences whether regarding money or as to the relationship or as to their rights and liabilities of the parties hereto in respect of the

partnership hereby dissolved or in respect of questions arising by and under this document shall be decided amicably or in court at Indore and at nowhere else."

On Sepetember 29, 1945, a registered letter on behalf of the respondent was sent to the appellant. This required the appellant to explain to and satisfy the respondent at Indore as to the accounts of the said colliery within three months of the receipt of the notice. It was said in the notice that the accounts submitted by the appellant had not been properly kept and that many entries appeared to be wilfully falsified, evidently with malafide intentions and that there appeared in the account books various false and fictitious entries causing wrongful loss to the respondent and wrongful gain to the appellant. The appellant sent a reply to this notice on December 5, 1955, and denied the various allegations, and requested the respondent to meet him at Asansol or Kajoragram on any day suitable to him, within ten days from the receipt of that letter.

On August 18, 1948, the appellant instituted Suit M. S. No. 33 of 1948 in the Court of the Subordinate Judge at Asansol againt the respondent for the recovery of Rs. 1,00,000/- on account of his share in the capital and assests of the partnership firm 'Diamond Industries' and Rs. 18,000/- as interest for detention of the money or as damages or compensation for wrongful withholding of the payment. In the plaint he mentioned about the respondent's notice and his reply and to a second letter on behalf of the respondent and his own reply thereto. A copy of the deed of dissolution, according to the statement in paragraph 13 of the plaint, was filed along with it.

On October 27, 1948, respondent filed a petition under s. 34 of the Arbitration Act in the Asansol Court praying for the stay of the suit in

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view of the arbitration agreement in the original deed of partnership. This application was rejected on August 20, 1949.

Meanwhile, on January 3, 1949, the respondent filed Civil Original Suit No. 71 of 1949 in the Court of the District Judge, Indore, against the appellant, and prayed for a decree for Rs. 1,90, 519-0-6 against the appellant and further interest on the footing of settled accounts and in the alternative for a direction to the appellant to render true and full accounts of the partnership.

On November 28, 1949, the respondent filed his written statement in the Asansol Court. Paragraphs 19 and 21 of the written statement are :

> "19. With reference to paragraph 21 of the plaint, the defendant denies that the plaintiff has any cause of action against the defendant or that the alleged cause of action, the existence of which is denied, arose at Kajora Colliery. The defendant craves reference to the said deed of dissolution whereby the plaintiff and the defendant agreed to have disputes, if any, tried in the Court at Indore. In the circumstances, the defendant submits that this Court has no jurisdiction to try and entertain this suit.
>
> 21. The suit is vexatious, speculative, oppressive and is instituted malafide and should be dismissed with costs."

Issues were struck on Febuary 4, 1950. The first two issues are :

> "1. Has this Court jurisdiction to entertain and try this suit ?
>
> 2. Has the plaintiff rendered and satisfactorily explained the accounts of the partnership in terms of the deed of dissolution of partnership ?"

In December 1951, the respondant applied in the Court at Asansol for the stay of that suit in the exercise of its inherent powers. The application was rejected on August 9, 1952. The learned Sub-Judge held :

> "No act done or proceedings taken as of right in due course of law is 'an abuse of the process of the Court' simply because such proceeding is likely to embarass the other party."

He therefore held that there could be no scope for acting under s. 151, Code of Civil Procedure, as s. 10 of that Code had no application to the suit, it having been instituted earlier than the suit at Indore. The High Court of Calcutta confirmed this order on May 7, 1953, and said :

> "We do not think that, in the circumstance of these cases and on the materials on record, those orders ought to be revised. We would not make any other observation lest it might prejudice any of the parties."

The High Court further gave the following direction :

> "As the preliminary issues, Issue No. 1 in the two Asansol suits have been pending for over two years, it is only desirable that the said issues should be heard out at once. We would, accordingly, direct that the hearing of the said issues should be taken up by the learned Subordinate Judge as expeditiously as possible and the learned Subordinate Judge will take immediate steps in that direction."

Now we may refer to what took place in the Indore suit till then. On April 28, 1950, the appellant applied to the Indore Court for staying that suit under ss. 10 and 151 Code of Civil Procedure.

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The application was opposed by the respondent on three grounds. The first ground was that according to the term in the deed of dissolution, that Court alone could decide the disputes. The second was that under the provisions of the Civil Procedure Code in force in Madhya Bharat, the court at Asansol was not an internal Court and that the suit filed in Asansol Court could not have the effect of staying the proceedings of that suit. The third was that the two suits were of different nature, their subject matter and relief claimed being different. The application for stay was rejected on July 5, 1951. The Court mainly relied on the provisions of the Second proviso in the deed of dissolution. The High Court of Madhya Bharat confirmed that order on August 20, 1953.

The position then, after August 20, 1953, was that the proceedings in both the suits were to continue, and that the Asansol Court had been directed to hear the issue of jurisdiction at an early date.

It was in these circumstances that the respondent applied under s. 151, Code of Civil Procedure on September 14, 1953, to the Indore Court, for restraining the appellant from continuing the proceedings in the suit filed by him in the Court at Asansol. The respondent alleged that the appellant filed the suit at Asansol in order to put him to trouble, heavy expenses and wastage of time in going to Asansol and that he was taking steps for the continuance of the suit filed in the Court of the Subordinate Judge of Asansol. The appellant contested this application and stated that he was within his rights to institute the suit at Asansol, that that Court was competent to try it and that the point had been decided by overruling the objections raised by the respondent and that the respondent's objection for the stay or

proceedings in the Court at Asansol had been rejected by that Court. He denied that his object in instituting the suit was to cause trouble and heavy expenses to the respondent.

It may be mentioned that the respondent did not state in his application that his application for the stay of the suit at Asansol had been finally dismissed by the High Court of Calcutta and that that Court had directed the trial Court to decide the issue of jurisdiction at an early date. The appellant, too, in his objections, did not specifically state that the order rejecting the respondent's stay application had been confirmed by the High Court at Calcutta and that that Court had directed for an early hearing of the issue of jurisdiction.

The learned Additional District Judge, Indore, issued interim injunction under O. XXXIX, Code of Civil Procedure, to the appellant restraining him from proceeding with his Asansol suit pending decision of the Indore suit, as the appellant was proceeding with the suit at Asansol in spite of the rejection of his application for the stay of the suit at Indore, and, as the appellant wanted to violate the provision in the deed of dissolution about the Indore Court being the proper forum for deciding the dispute between the parties. Against this order, the appellant went in appeal to the High Court of Judicature at Madhya Bharat, contending that the Additional District Judge erred in holding that he was competent to issue such an interim injunction to the appellant under O. XXXIX of the Code of Civil Procedure and that it was a fit case for the issue of such an injunction and that, considering the provisions of O. XXXIX, the order was without jurisdiction.

The High Court dismissed the appeal by its order dated May 10,1955. The learned Judges agreed with the contention that O. XXXIX, r. 1, did not

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apply to the facts of the case. They, however, held that the order of injunction could be issued in the exercise of the inherent powers of the Court under s. 151, C.P.C. It is against this order that the appellant has preferred this appeal, by special leave.

On behalf of the appellant, two main questions have been raised for consideration. The first is that the Court could not exercise its inherent powers when there were specific provisions in the Code of Civil Procedure for the issue of interim injunctions, they being s. 94 and O. XXXIX. The other question is whether the Court, in the exercise of its inherent jurisdiction, exercised its discretion properly, keeping in mind the facts of the case. The third point which came up for discussion at the hearing related to the legal effect of the second proviso in the deed of dissolution on the maintainability of the suit in the Court at Asansol.

We do not propose to express any opinion on this question of jurisdiction as it is the subject matter of an issue in the suit at Asansol and also in the suit at Indore and because that issue had not yet been decided in any of the two suits.

On the first question it is argued for the appellant that the provisions of cl. (c) of s. 94, Code of Civil Procedure make it clear that interim injunctions can be issued only if a provision for their issue is made under the rules, as they provide that a Court may, if it is so prescribed, grant temporary injunctions in order to prevent the ends of justice from being defeated, that the word 'prescribed', according to s. 2, means 'prescribed by rules' and that rr. 1 and 2 of O. XXXIX lay down certain circumstances in which a temporary injunction may be issued.

There is difference of opinion between the High Courts on this point. One view is that a Court

cannot issue an order of temporary injunction if the circumstances do not fall within the provisions of Order XXXIX of the Code : *Varadacharlu* v. *Narsimha Charlu* (1), *Govindarajulu* v. *Imperial Bank of India* (2), *Karuppayya* v. *Ponnuswami* (3), *Murugesa Mudali* v. *Angamuthu Mudali* (4) and *Subramanian* v. *Seetarama* (5). The other view is that a Court can issue an interin injunction under circumstances which are not covered by Order XXXIX of the Code, if the Court is of opinion that the interests of justice require the issue of such interin injunction : *Dhaneshwar Nath* v. *Ghanshyam Dhar* (6), *Firm Bichchha Ram* v. *Firm Baldeo Sahai* (7), *Bhagat Singh* v. *Jagbir Sawhney* (8) and *Chinese Tannery Owners' Association* v. *Makhan Lal* (9). We are of opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of O.XXXIX, Code of Civil Procedure. There is no such expression in s. 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by O. XXXIX or by any rules made under the Code. It is well-settled that the provisions of the Code are not exhaustive for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression 'if it is so prescribed' is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of s. 94

(1) A.I.R. 1926 Mad. 258.
(2) A.I.R. 1932 Mad. 180.
(3) A.I.R. 1933 Mad. 500 (2).
(4) A.I.R. 1938 Mad. 190.
(5) A.I.R. 1949 Mad. 104.
(6) A.I.R. 1940 All. 185.
(7) A.I.R. 1940. All. 241.
(8) A.I.R. 1941 Cal. 670.
(9) A.I.R. 1952 Cal. 560.

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were not there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of s. 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.

There is nothing in O. XXXIX, rr. 1 and 2, which provide specifically that a temporary injunction is not to be issued in cases which are not mentioned in those rules. The rules only provide that in circumstances mentioned in them the Court may grant a temporary injunction.

Further, the provisions of s. 151 of the Code make it clear that the inherent powers are not controlled by the provisions of the Code. Section 151 reads :

> 'Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the Court."

A similar question about the powers of the Court to issue a commission in the exercise of its powers under s. 151 of the Code in circumstances not covered by s. 75 and Order XXVI, arose in *Padam Sen* v. *The State of Uttar Pradesh* (1) and this Court held that the Court can issue a commission in such circumstances. It observed at page 887 thus :

> "The inherent powers of the Court are in addition to the powers specifically conferred on

(1) [1961] 1 S.C.R. 884.

> the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purpose mentioned in s. 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature."

These observations clearly mean that the inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in s. 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature. This restriction, for practical purposes, on the exercise of these powers is not because these powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is dictated by the interests of justices.

In the above case, this Court did not uphold the order of the Civil Court, not coming under the provisions of Order XXVI, appointing a commissioner for seizing the account books of the plaintiff on the application of the defandants. The order was held to be defective not because the Court had no power to appoint a commissioner in circumstances not covered by s. 75 and O. XXVI, but because the power was exercised not with respect to matters of procedure but with respect to a matter affecting the substantive rights of the plaintiff. This is clear from the further observations made at page 887. This Court said :

> "The question for determination is whether the impugned order of the Additional Munsif appointing Shri Raghubir Pershad Commissioner for seizing the plaintiff's books of account

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can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by s. 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure."

The case reported as *Maqbul Ahmad Pratap Narain Singh* (1) does not lay down that the inherent powers of the Court are controlled by the provisions of the Code. It simply holds that the statutory discretion possessed by a Court in some limited respects under an Act does not imply that the Court possesses a general discretion to dispense with the provisions of that Act. In that case, an application for the preparation of a final decree was presented by the decree-holder beyond the period of limitation prescribed for the presentation of such an application. It was however contended that the Court possessed some sort of judicial discretion which would enable it to relieve the decree-holder from the operation of the Limitation Act in a case of hardship. To rebut this contention, it was said at page 87 :

"It is enough to say that there is no authority to support the proposition contended for. In their Lordships' opinion it is impossible to hold that, in a matter which is governed by Act, an Act which in some limited respects gives the Court a statutory discretion, there can be

(1) L. R. 62 I. A. 80.

> implied in the Court, outside the limits of the Act, a general discretion to dispense with its provisions. It is to be noted that this view is supported by the fact that s. 3 of the Act is peremptory and that the duty of the Court is to notice the Act and give effect to it, even though it is not referred to in the pleadings".

These observations have no bearing on the question of the Court's exercising its inherent powers under s. 151 of the Code. The section itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it.

Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code.

We therefore repel the first contention raised for the appellant.

On the second question, we are of opinion that in view of the facts of the case, the Courts below were in error in issuing a temporary injunction to the appellant restraining him from proceeding with the suit in the Asansol Court.

The inherent powers are to be exercised by the Court in very exceptional circumstances, for which the Code lays down no procedure.

The question of issuing an order to a party restraining him from proceeding with any other suit in a regularly constituted Court of law deserves

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great care and consideration and such an order is not to be made unless absolutely essential for the ends of justice.

In this connection, reference may usefully be made to what was said in *Cohen v. Rothfield* (1) and which case appears to have influenced the decision of the Courts in this country in the matter of issuing such injunction orders. Scrutton, L. J., said at page 413 :

> "Where it is proposed to stay an action on the ground that another is pending, and the action to be stayed is not in the Court asked to make the order, the same result is obtained by restraining the person who is bringing the second action from proceedings with it. But, as the effect is to interfere with proceedings in another jurisdiction, this power should be exercised with great caution to avoid even the appearance of undue interference with another Court".

And again, at page 415 :

> "While, therefore, there is jurisdiction to restrain a defendant from suing abroad, it is a jurisdiction very rarely exercised, and to be resorted to with great care and on ample evidence produced by the applicant that the action abroad is really vexatious and useless."

The principle enunciated for a plaintiff in a earlier instituted suit to successfully urge a restraint order against a subsequent suit instituted by the defendant, is stated thus in this case, at page 415 :

> "It appears to me that unless the applicant satisfies the Court that no advantage can be gained by the defendant by proceeding with the action in which he is plaintiff in another part of the King's dominions, the Court should not stop him from proceeding

(1) L. R. [1919] 1 K. B. 410.

> with the only proceedings which he, as plaintiff, can control. The principle has been repeatedly acted upon."

The injunction order in dispute is not based on any such principle. In fact, in the present case, it is the defendant of the previously instituted suit that has obtained the injunction order against the plaintiff of the previously instituted suit.

The considerations which would make a suit vexatious are well explained in *Hyman* v. *Helm* (1). In that case, the defendant, in an action before the Chancery Division of the High Court brought an action against the plaintiffs in San Francisco. The plaintiffs, is an action in England, prayed to the Court to restrain the defendants from proceeding further with the action in San Francisco. It was contended that it was vexatious for the defendants to bring the action in San Francisco as the witnesses to the action were residents of England, the contract between the parties was an English contract and that its fulfilment took place is England. In repelling the contention that the defendants' subsequent action in San Francisco was vexatious, Brett, M. R., said at page 537 :

> "If that makes an action vexatious it would be a ground for the interference of the Court, although there were no action in England at all, the ground for alleging the action in San Francisco to be vexatious being that it is brought in an inconvenient place. But that is not the sort of vexation on which an English Court can act.
>
> It seems to me that where a party claims this interference of the Court to stop another action between the same parties, it lies upon him to shew to the Court that the multiplicity of actions is vexatious, and that the whole burden of proof lies upon him. He does not satisfy that burden of proof by merely she-

(1) L. R. [1883] 24 Ch. D. 531.

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wing that there is a multiplicity of actions, he must go further. If two actions are brought by the same plaintiff against the same defendant in England for the same cause of action, then, as was said in *Mchonry* v. *Lewis* (22 Ch. D. 397) and the case of the *Peruvian Guano Company* v. *Bockwoldt* (23 Ch. D. 225), prima facie that is vexatious, and therefore the party who complains of such a multiplicity of actions had made out a prima facie case for the interference of the Court. Where there is an action by a plaintiff in England, and a crossaction by a defendant in England, whether the same prima facie case of vaxation arises is a much more difficult point to decide and I am not prepared to say that it does."

It should be noticed that this question for an action being vexatious was being considered with respect to the subsequent action brought by the defendant in the previously instituted suit and when the restraint order was sought by the plaintiff of the earlier suit. In the case before us, it is the plaintiff of the subsequent suit who seeks to restrain the plaintiff of the earlier suit from proceeding with his suit. This cannot be justified on general principles when the previous suit has been instituted in a competent Court.

The reasons which weighed with the Court below for maintaining the order of injunction may be given in its own words as follows :

"In the plaint filed in the Asansol Court the defendant has based his claim on the deed of dissolution dated 22, 1945, but has avoided all references to the provisions regarding the agreement to place the disputes before the Indore Courts. It was an action taken by the present defendant in anticipation of the present suit and was taken in flagrant breach

of the terms of the contract. In my opinion, the defendant's action constitutes misuse and abuse of the process of the Court."

The appellant attached the deed of dissolution to the plaint he filed at Asansol. Of course, he did not state specifically in the plaint about the proviso with respect to the forum for the decision of the dispute. Even if he had mentioned the term, that would have made no difference to the Asansol Court entertaining the suit, as it is not disputed in these proceedings that both the Indore and Asansol Courts could try the suit in spite of the agreement. The appellant's institution of the suit at Asansol cannot be said to be in anticipation of the suit at Indore, which followed it by a few months. There is nothing on the record to indicate that the appellant knew, at the time of his instituting the suit, that the respondent was contemplating the institution of a suit at Indore. The notices which the respondent gave to the appellant were in December 1945. The suit was filed at Asansol in August 1948, more than two years and a half after the exchange of correspondence referred to in the plaint filed at Asansol.

In fact, it is the conduct of the respondent in applying for the injunction in September 1953, knowing full well of the order of the Calcutta High Court confirming the order refusing stay of the Asansol suit and directing that Court to proceed with the decision of the issue of jurisdiction at an early date, which can be said to amount to an abuse of the process of the Court. It was really in the respondent's interest if he was sure of his ground that the issue of jurisdiction be decided by the Asansol Court expeditiously, as ordered by the Calcutta High Court in May 1953. If the Asansol Court had clearly no jurisdiction to try the suit in view of the terms of the deed of dissolution, the decision of that issue

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would have finished the Asansol suit for ever. He, however, appears to have avoided a decision of that issue from that Court and, instead of submitting to the order of the Calcutta High Court, put in this application for injunction. It is not understandable why the appellant did not clearly state in his objection to the application what the High Court of Calcutta had ordered. That might have led the consideration of the question by the Indore Court in a different perspective.

It is not right to base an order of injunction, under s. 151 of the Code, restraining the plaintiff from proceeding with his suit at Asansol, on the consideration that the terms of the deed of dissolution between the parties make it a valid contract and the institution of the suit at Asansol is in breach of it. The question of jurisdiction of the Asansol Court over the subject matter of the suit before it will be decided by that Court. The Indore Court cannot decide that question. Further, it is not for the Indore Court to see that the appellant observes the terms of the contract and does not file the suit in any other Court. It is only in proper proceedings when the Court considers alleged breach of contract and gives redress for it.

For the purposes of the present appeal, we assume that the jurisdiction of the Asansol Court is not ousted by the provisions of the proviso in the deed of dissolution, even though that proviso expresses the choice of the parties for having their disputes decided in the Court at Indore. The appellant therefore could choose the forum in which to file his suit. He chose the Court at Asansol, for his suit. The mere fact that Court is situate at a long distance from the place of residence of the respondent is not sufficient to establish that the suit has been filed in that Court in order to put the respondent to trouble and harassment and to unnecessary expense.

It cannot be denied that it is for the Court to control the proceedings of the suit before it and not for a party, and that therefore, an injunction to a party with respect to his taking part in the proceedings of the suit would be putting that party in a very inconvenient position.

It has been said that the Asansol Court would not act in a way which may put the appellant in a difficult position and will show a spirit of cooperation with the Indore Court. Orders of Court are not ordinarily based on such considerations when there be the least chance for the other Court not to think in that way. The narration of facts will indicate how each Court has been acting on its own view of the legal position and the conduct of the parties.

There have been cases in the past, though few, in which the Court took no notice of such injunction orders to the party in a suit before them. They are: *Menon* v. *Parvathi Ammal*(1), *Harbhagat Kaur* v. *Kirpal Singh* (2) and *Shiv Charan Lal* v. *Phool Chand* (3). In the last case, the Agra Court issued an injunction against the plaintiff of a suit at Delhi restraining him from proceeding with that suit. The Delhi Court, holding that the order of the Agra Court did not bind it, decided to proceed with the suit. This action was supported by the High Court. Kapur J., observed at page 248:

> "On the facts as have been proved it does appear rather extra-ordinary that a previously instituted suit should be sought to be stayed by adopting this rather extraordinary procedure."

It is admitted that the Indore Court could not have issued an injuction or direction to the Asansol Court not to proceed with the suit. The effect of issuing an injunction to the plaintiff of the

(1) A.I.R. 1950 Mad. 373. (2) A.I.R. 1951 Pepsu 78.
(3) A.I.R. 1952 Punj. 247.

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suit at Asansol, indirectly achieves the object which an injunction to the Court would have done. A court ought not to achieve indirectly what it cannot do directly. The plaintiff, who has been restrained, is expected to bring the restraint order to the notice of the Court. If that Court, as expected by the Indore Court, respects the injunction order against the appellant and does not proceed with the suit, the injunction order issued to the appellant who is the plaintiff in that suit is as effective an order for arresting the progress of that suit as an injunction order to the Court would have been. If the Court insists on proceeding with the suit, the plaintiff will have either to disobey the restraint order or will run the risk of his suit being dismissed for want of prosecution. Either of these results is a consequence which an order of the Court should not ordinarily lead to.

The suit at Indore which had been instituted later, could be stayed in view of s. 10 of the Code. The provisions of that section are clear, definite and mandatory. A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under s. 151 is not justified. The provisions of s. 10 do not become inapplicable on a Court holding that the previously instituted suit is a vexatious suit or has been instituted in violation of the terms of the contract. It does not appear correct to say, as has been said in *Ram Bahadur v. Devidayal Ltd.* (1) that the Legislature did not contemplate the provisions of s. 10 to apply when the previously instituted suit be held to be instituted in those circumstances. The provisions of s. 35A indicate that the Legislature was aware of false or vexatious claims or defences

(1) I. L. R. 1954 Bom. 334.

being made, in suits, and accordingly provided for compensatory costs. The Legislature could have therefore provided for the non-application of the provisions of s. 10 in those circumstances, but it did not. Further, s. 22 of the Code provides for the transfer of a suit to another Court when a suit which could be instituted in any one of two or more Courts is instituted in one of such Courts. In view of the provisions of this section, it was open to the respondent to apply for the transfer of the suit at Asansol to the Indore Court and, if the suit had been transferred to the Indore Court, the two suits could have been tried together. It is clear, therefore, that the Legislature had contemplated the contingency of two suits with respect to similar reliefs being instituted and of the institution of a suit in one Court when it could also be instituted in another Court and it be preferable, for certain reasons, that the suit be tried in that other Court.

In view of the various considerations stated above, we are of opinion that the order under appeal cannot be sustained and cannot be said to be an order necessary in the interests of justice or to prevent the abuse of the process of the Court. We therefore allow the appeal with costs, and set aside the order restraining the appellant from proceeding with the suit at Asansol.

SHAH, J.—I have perused the judgment delivered by Mr. Justice Dayal. I agree with the conclusion that the appeal must succeed but I am unable to hold that civil courts generally have inherent jurisdiction in cases not covered by rr. 1 and 2 of O. 39, Civil Procedure Code to issue temporary injunctions restraining parties to the proceedings before them from doing certain acts. The powers of courts, other than the Chartertd High Courts, in the exercise of their ordinary original Civil jurisdiction to issue temporary injunctions are defined by the terms of s. 94(1)(c) and

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O. 39, Civil Procedure Code. A temporary injunction may issue if it is so prescribed by rules in the Code. The provisions relating to the issue of temporary injunctions are to be found in O. 39 rr. 1 and 2: a temporary injunction may be issued only in those cases which come strictly within those rules, and normally the civil courts have no power to issue injunctions by transgressing the limits prescribed by the rules.

It is true that the High Courts constituted under Charters and exercising ordinary original jurisdiction do exercise inherent jurisdiction to issue an injunction to restrain parties in a suit before them from proceedings with a suit in another court, but that is because the Chartered High Courts claim to have inherited this jurisdiction from the Supreme Courts of which they were successors. This jurisdiction would be saved by s. 9 of the Charter Act (24 and 25 Vict. c. 104) of 1861, and in the Code of Civil Procedure, 1908 it is expressly provided by s. 4. But the power of the civil courts other than the Chartered High Courts must be found within s. 94 and O. 39 rr. 1 and 2 of the Civil Procedure Code.

The Code of Civil Procedure is undoubtedly not exhaustive: it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil courts are authorised to pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of court, but where an express provision is made to meet a particular situation the Code must be observed, an departure therefrom is not permissible. As observed in L. R. 62 I. A. 80 (*Maqbul Ahmed* v. *Onkar Pratab*) "It is impossible to hold that in a matter which is governed by an Act, which in some limited respects gives the court a statutory discretion, there can be implied in

court, outside the limits of the Act a general discretion to dispense with the provisions of the Act." Inherent jurisdiction of the court to make order *ex debito justitiae* is undoubtedly affirmed by s. 151 of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive.

Power to issue an injunction is restricted by s. 94 and O. 39, and it is not open to the civil court which is not a Chartered High Court to exercise that power ignoring the restrictions imposed thereby, in purported exercise of its inherent jurisdiction. The decision of this Court in *Padam Sen* v. *The State of Uttar Pradesh*(1) does not assist the case of the appellant. In Padam Sen's case this Court was called upon in a criminial appeal to consider whether an order of a Munsiff appointing a commissioner for seizing certain account books of the plaintiff in a suit pending before the Munsiff was an order authorised by law. It was the case for the prosecution that the appellants offered a bribe to the commissioner as consideration for being allowed to tamper with entries therein, and thereby the appellants committed an offence punishable under s. 165A of the Indian Penal Code. This Court held that the commissioner appointed by the civil court in exercise of powers under O. 26 C. P. Code did not hold any office as a public servant and the appointment by the Munsiff being without jurisdiction, the commissioner could not be deemed to be a public servant. In dealing with the argument of counsel for the appellants that the civil court had inherent powers to appoint a commissioner in exercise of authority under s. 151 Civil Procedure Code for purposes which do not fall

(1) [1961] 1 S.C.R. 884.

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within the provisions of s. 75 and O. 26 Civil Procedure Code, the Court observed:

> "Section 75 of the Code empowers the Court to issue a commission, subject to conditions and limitations which may be prescribed, for four purposes, viz., for examining any person, for making or adjusting accounts and for making a partition. Order XXVI lays down rules relating to the issue of commissions and allied matters. Mr. Chatterjee, learned counsel of the appellants, has submitted that the powers of a Court must be found within the four corners of the Code and that when the Code has expressly dealt with the subject matter of commissions in s. 75 the Court cannot invoke its inherent powers under s. 151 and thereby add to its powers. On the other hand, it is submitted for the State, that the Code is not exhaustive and the Court, in the exercise of its inherent powers, can adopt any procedure not prohibited by the Code expressly or by necessary implication if the Court considers it necessary for the ends of justice or to prevent abuse of the process of the Court.
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> The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in s. 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. It is also well recognized that the inherent power is not to be exercised in a manner which will be

contrary or differant from the procedure expressly provided in the Code."

The Court in that case held that in exercise of the powers under s. 151 of the Code of Civil Procedure, 1908 the Court cannot issue a commission for seizing books of account of plaintiff—a purpose for which a commission is not authorized to be issued by s. 75.

The principle of the case is destructive of the submission of the appellants. Section 75 empowers the Court to issue a commission for purposes specified therein: even though it is not so expressly stated that there is no power to appoint a commissioner for other purposes, a prohibition to that effect is, in the view of the Court in Padam Sen's case, implicit in s. 75. By parity of reasoning, if the power to issue injunctions may be exercised, if it is so prescribed by rules in the Orders in Schedule I, it must he deemed to be not exercisable in any other manner or for purposes other than those set out in O. 39 rr. 1 and 2.

Appeal allowed.

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November 16.

RIKHABDAS

v.

BALLABHDAS AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR, and K. N. WANCHOO, JJ.)

Arbitration—Award—Arbitrator filing in court unstamped award—Court's power to remit—Arbitration Act, 1940 (10 of 1940), ss. 13(d), 14(1), 15(b) (c), 16(1)(c), 20—Code of Civil Procedure, 1908(Act 5 of 1908), s. 151.

An arbitration agreement was filed in court under s. 20 of the Arbitration Act, 1940, and an order of reference was made thereon. The arbitrator entered upon the reference and in due course filed his award in court. The award was however, unstamped and on objection raised that no judgment