AJIMAT ALI

v.

MEREWAI M. RANIGA

[HIGH COURT, 1996 (Lyons J) 27 September]

Civil Jurisdiction

Practice: civil- interlocutory relief- whether permissible to make fresh application on grounds previously refused- High Court Rules 1988 Order 29.

The Court refused to discharge an injunction preventing the Defendant from interfering with users of a dam on her land. Later the Defendant sought an injunction to prevent the Plaintiff from using the dam. The High Court dismissed the application. It HELD: that the general rule is that parties are not allowed to re-litigate interlocutory applications in the absence of a change of circumstances or the discovery of circumstances which it was not possible previously to place before the Court.

Case cited:

Reichel v Magrath (1889) 14 App Cas 665

Interlocutory application in the High Court.

H.A. Shah for the Plaintiff
G.P. Shankar for the Defendant

Lyons J:

This decision was delivered on the 27th of September. I dismissed the application. My reasons are as follows :-

The application of the defendant of the 28th of August 1996 is now before the Court. The application is brought by way of Summons and seeks to restrain the plaintiff from using or drawing water from a dam situated on the defendant`s land.

The application reads as follows:-

1. For injunction restraining the plaintiffs their servants, agents or others from using drawing any water from the plaintiffs land and or reservoir on the defendant`s land and allowing others to use water therefrom.

2. For an order that injunction granted in favour of the defendant be stayed and order for speedy trial.

When this matter first came before the Court on 13th of September. Mr. Shah.

appearing for the defendant submitted that the application now before the Court was substantially the same as an earlier application, in that it seeks substantially the same effective relief.

Mr. Gordon, who appeared on behalf of the defendant (as agent), did not agree with this submission and argued that they were different applications.

Mr. Shah insisted that a ruling be given by the Court on the preliminary point raised by him. I agreed and adjourned the matter of the 27th of September during which time I would consider of the submission of Mr. Shah.

Having done that I have come to my decision on that point.

The facts are briefly, the defendant has on her land a dam. The dam was funded by the Government as well as the combined resources of the defendant, the plaintiff and some others. The plan was to supply water to the plaintiff, the defendant and, I understand, some others.

By Notice of Motion, by the 1st of June 1995 the plaintiff applied for the following relief:-

i) An Order that the defendant be restrained both by herself her servants or agents howsoever from interfering with the Plaintiff's right to an unrestricted water supply over the defendant's property;

ii) That the defendant do forthwith reconnect the plaintiff's water supply and/or alternatively the defendant be restrained whether by herself her servants or agents or howsoever from interfering with the plaintiff's right to reconnect the water supply to the plaintiff's over the defendant's property.

This application was supported by an affidavit alleging that the defendant had denied the plaintiff the use of water from the dam.

On the 1st of June 1995 Mr. Justice Sadal granted an ex-parte order in terms of the above Notice of Motion.

On the 20th of June 1995, the defendant applied by way of Notice of Motion to set aside that Order. In short, the defendant wished to discharge the injunction preventing her from stopping the plaintiff from drawing water from that dam.

In paragraph 4 of the Affidavit in support to that Notice of Motion (of 20th of June 1995) defendant deposed as follows:-

> "That the arrangement was that 16 consumers only were to receive water for domestic use but the plaintiffs have furtively and without any consent increased it to 22 consumers, and I believe the plaintiffs

> charge and collect money from them their members. Most of the members use water not only for domestic purposes but for irrigation and use water to grow vegetables and other crops."

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The defendant further repeated this allegation in Paragraph 4 of later Affidavit, filed against in support her Notice of Motion the 20th of June 1995, such Affidavit being filed on the 10th of July 1995.

Again by Summons filed on 29th of November 1995, the defendant brought another application to discharge the injunction ordered by Mr. Justice Sadal.

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On 8th of March 1996, I delivered my decision in respect of those applications. The applications were refused.

Now the defendant is back before the Court, not directly seeking that the injunction be discharged, but instead seeking an injunction in her favour. In other words, she wants an injunction to stop the plaintiffs from drawing water from her land.

C

The first thing to note from her Affidavit of 28th August 1996 is that she refers implicitly to water collected in the dam.

Paragraph 2 of her Affidavit of the 28th of August 1996 reads:-

D

> "That temporary licence was granted the 15 persons to use water for domestic use only but;
>
> i) the plaintiffs have lawfully increased numbers of consumers to 21.
>
> ii) the plaintiffs are using water for commercial purposes namely irrigate vegetable plantation to sell vegetables in the market, and also irrigate sugarcane crops contrary to the agreement.
>
> iii) the plaintiffs are levying water charges on consumers whereas I do not get paid anything."

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The defendant in that Affidavit confirms that the subject matter she refers to is a water project which was subsidised by the Government (Paragraph 3).

As I have said, Counsel for the plaintiff (respondent to this application), objects to the application on the ground that it is in substance a repeat of earlier applications in that it seeks, in effect, the same relief.

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Counsel for the defendant/applicant submits this is not the case, arguing that different factual circumstances apply and the previous application was to discharge an injunction but this application is to apply for an injunction.

On my reading of the application and supporting material and on reading the earlier applications and supporting material thereto, I am in little doubt that the

application before me now is one in which the defendant seeks substantially the same relief as earlier.

A

The defendant seeks to get an injunction preventing the plaintiff and others from drawing water from the dam. In earlier applications the defendant sought to discharge an injunction whereby the defendant was prevented from stopping the plaintiffs drawing water from the dam. Clearly, if the application for discharge of the injunction had been successful, then the plaintiff would have been prevented from drawing water from the land by virtue of the defendant's proprietory right.

B

Recent decisions of Supreme Court of New South Wales decided this point, i.e: as to whether one can keep making interlocutory applications on the same point as long as one likes.

In Collier v. Howard, McLelland CJ (In Equity, unreported decision 23rd of

C April 1996) enunciated the rule as follows:-

> 'Generally speaking, the interests of justice as between the parties, fortified by the public interest in the finality of litigation and the efficient employment of judicial resources, require that where an application for interlocutory relief has been made, heard on the merits and refused, a further application for substantially the same relief should not be entertained, unless it is founded on a material change in circumstances since the original application was heard, or discovery of new material which could not reasonably have been put before the Court on the hearing of the original application."

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In an earlier decision of Wentworth v Rogers, Mr. Justice Sperling gave detailed

E reasons with reference to authority for this rule. I do not propose to go into this in much greater deep save to say that I refer to the editorial notes of Mr. Justice Young in the Australian Law Journal under the heading "Recent Cases" in Vol. 70 ALJR (August 1996) at p.613. I am in little doubt that the general rule is that parties are not allowed to relitigate interlocutory applications unless there has been a material change in circumstances since the original application was

F heard, or the discovery of new material which could not reasonably been put before the Court on the hearing of the original application (as per McLelland CJ above).

As I have said the application before me is now substantially the same as the other applications in that it seeks the same practical relief. On reading all of the

G material there is no suggestion that there has been a material change of circumstances or the discovery of new evidence. In fact, the affidavit in support of the application now before the Court substantially repeats previously raised allegations.

To allow the application now before me to continue would be "a scandal to the administration of justice" (as per Lord Halsbury in Reichel v Magrath (1889) 14

App Cas 665 at 668 - 70.

I also do not consider this matter is one of such urgency as requires a speedy trial.

Accordingly, the application is dismissed as I see no reason why the general rule should not be applied in this case.

The defendant is to pay the plaintiff's costs which are summarily assessed as $75-00.

(Application dismissed.)