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SAMARIAS TRADING CO. PVT. LTD.

v.

B

S. SAMUEL & ORS.

November 9, 1984

[O. CHINNAPPA REDDY, A. P. SEN & E. S. VENKATARAMIAH, JJ.]

C

Practice and Procedure—Oral application made to a Judge in Chambers—No. written application filed—Orders passed—Neither facts nor question of law reasons given in the order—Propriety of.

A sitting in Chambers—When should be held.

D

A single Judge of the Calcutta High Court, on an oral application made in his chamber on behalf of a person professing to be respondent No. 1, and on giving an oral undertaking to make a written application within 4 days, issued an interim order directing maintenance of status quo in regard to an auction of a liquor shop held in favour of the appellant. The said order did not make any attempt to indicate even briefly the facts, the question of law, if any, raised before the Judge and the reasons which prompted him to make such an interim order. On receiving the information about the said order, the appellant contacted the High Court and got the information that the subsequent writ petition

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filed by respondent No. 1 under Article 226 would be taken up for orders at 2. 30 p.m. on 3. 4. 1984. While the representatives of the appellant and their advocate were waiting in the court, they came to know that the matter had been mentioned in the chamber of the learned Judge who had earlier granted stay and that the order of statues quo had been extended until further orders. The appellant told the learned Single Judge that they were waiting in the Court and

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were not informed that the matter was going to be mentioned in his chamber and in view of this they requested the learned Judge to reconsider his order. But, the Judge declined to do so. Thereupon the appellant filed a Writ Appeal. The Writ Petition filed by respondent No. 1 alongwith the Writ Appeal of the appellant were heard together by a Division Bench which set aside the auction and directed that a fresh auction be held on 19th April 1984. Aggrieved by the said order, the appellant has filed the present appeal.

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Disposing of the appeal,

HELD : There is hardly any justification for the entertainment of an oral application and the issuance of an interim order with no record whatever of what was submitted to the court of the reasons for the order made by the court. To permit a procedure by which oral applications may be made and interim orders obtained without any petition in writing, without any affidavit having been sworn to as *prima facie* proof of allegations and without any record being kept before the court may lead to very serious abuse of the process

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of the court. Therefore, this Court expresses its disapprobation and forbids the

practice of entertaining oral applications by any court in matters of consequence without any record before it. [29E-G] A

(2) This Court does not mean to suggest that oral application may never be made. Often during the course of the hearing of a case it becomes necessary to make applications of a formal nature and such application are permitted by the Presiding Judge. But in all such cases the court is already seised of the principal matter or dispute and there is a record pertaining to it before the B court. Again, this Court does not mean to suggest that other urgent oral applications may never be made. If urgent interim orders are imperative, at least skeletal applications setting out the bare facts and the questions involved should be insisted upon. A detailed application could be permitted to be filed later. If the matter is so urgent as not even to brook any insistence upon a written application, the judge should at least take the trouble and the care to record in his order the facts mentioned to him and the submissions made to him. It is C essential that there be a contemporaneous record. Otherwise the court ceases to be a court of record. [29G-H; 30A-B]

(3) A sitting in chambers could be held when both sides are represented and the sittings are held openly so that members of the public, if they desire to attend, may have access even in the chamber. To grant interim orders on oral D applications in chambers when the judge is otherwise sitting in open court for other matters would seriously reflect on the fairness of the procedure adopted by the courts and may have the unpleasant effect of undermining public confidence in courts. A public hearing is one of the great attributes of a court, and courts of this country are therefore required to administer justice in public. Otherwise, there is a risk that justice may even be undone. It is not 'as a matter of policy but as a matter of law' that the hearing of a cause be public E except in the limited class of cases. That rule was violated by the learned Single Judge in this case. [31E;H; 32A-B]

Naresh Shridhar Mirajkar & Ors. v. *State of Maharashtra & Anr.* [1966] 3 SCR 744. & *McPHERSON* v. *McPHERSON* AIR 1936 PC 246 referred to.

(4) In the instant case the Court allowed the reauction to be held on 19th F April 1984. Since the highest bidder in the reauction did not deposit the necessary amount in time as required under the Rules the Court set aside the reauction. As the appellant offered to take the shop on lease for a sum of Rs. 30 lacs and the Additional Solicitor General appearing for the administration of Andaman and Nicobar Islands accepted the offer. The Court sanctioned the lease in favour of the appellant on the condition of making the necessary deposit G within 10 days from that day. [36B; F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4416 of 1984

Appeal by Special leave from the Judgment and Order dated 4th April, 1984 of the Calcutta High Court in F. M. A. T. No. 992 of 1983 H

A *Vasanta Pai, Ms. S. Vaidalingam* and *P. J. George* for the Appellant.

Bina Gupta for the respondent.

K. G. Bhagat' Addl Sol. General. *R. N. Poddar* and *M. N. Krishnamani*, for the Respondent.

B

R. Karanjawala and *Miss M. Karanjawala* for the applicant in Intervention appln.

K. Parasaran, Atty. General and *D. N. Sinha* at request of Court.

C The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. "Curiouser and curiouser", Alice would have certainly exclaimed with us had the mischievous state of affairs of the present case come to her notice. We confess that the state of affai is but the inevitable consequence of a most curious D procedure sai to be followed over the years by the Calcutta High Court, a practice which we are happy to say, no other High Court in the country follows, a practice which do put in the mildest terms is unhealthy and likely to lead to harm and abuse and a practice which we now propose to forbid in the exercise of our powers E under Art. 141 of the Constitution. The practice, the consequences and our preeept will reveal themselves as we proceed to state the facts. We may mention at the Cutset Act in responee to our invitation the learned Attorney General very graciously addressed us and indeed made forceful submissions. We are grateful to him to his valuable assistance.

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An auction of the right to sell liquor at Rangat, Andaman Islands was held on 15. 2. 84 by the Deputy Commissioner, Port Blair. One B. K. Hariwat was the highest bidder. M/s Samarais Trading Co. Pvt. Ltd. having an office at Port Blair, the petitioner before us in the Special Leave Petition, was one of the participants G in the auction but not S. Samual, S/o Swami Das Pillai, 12, Cathral Road, Madras, who figures before us as the first respondent. As B. K. Hariwat did not deposit fifty per cent of the licence fee as clause 14 of the terms and conditions of the auction, the sale was not confirmed and the shop had to be auctioned again. The second auction was held on 28. 3. 1984. At this auction M/s Samarias H Trading Co. Pvt. Ltd. was the highest bidder. The bid was for a

sum of Rupees 25 lakhs. S. Samuel also praticipated in the auction but his bid was just over Rupees 17 Lakhs only. The highest bidder (M/s Samarias Trading Co. Pvt. Ltd.) deposited sum of Rs. 10,000, 2,50,000] and 9,90,000 on 29. 3. 1984. 28. 3. 1984 and 29. 3. 1984 respectively. The sale was confirmed and shop was awarded to M/s Samarias Trading Co. Pvt. Ltd. The licence was to enure for the period 1. 4. 1984 to 31. 3. 1985. In the meanwhile, things moved at Calcutta on 30. 3. 1984. When the Court was about to rise for the day Shri Shankardas Banerjee Senior Advocate mentioned to a learned Single Judge of the Calcutta High Court (Shri Justice Pyne) that he desired to move an application before the judge in his chambers after the court rose. The learned judge granted leave and accondingly Sarvashari S. D. Banerjee, Ashoke Kumar Ganguly and K. K. Bandopadhyay, learned Advocate purporting to appear on behalf of a person professing to be S. Samuel moved the learned Single Judge of the Calcutta High Court in his chambers under Art. 226 of the Constitution and obtained an ex-parte order in the following terms :—

> "On the oral application of Mr. S. D. Banerjee and upon his undertaking to move application by Tuesday next there will be an order as follows.
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> The respondents are directed to maintain status quo in respect of the liquor shop at Rangat in Middle Andaman and not to proceed on the basis of the alleged liquor auction held on 28. 3. 1984. The order will remain in force till Tuesday next. Let a plain copy countersigned by Asstt. Registrar (Court) be given to the learned Advocate to the petitioner.
>
> Sd/R. N. Pyne."

The remarkable fact worthy of immediate attention is that there was no written application before the learned Judge. The order of the learned Judge was made on an oral application and makes not the slightest attempt to indicate even briefly the facts told him, the question of law, if any, raised before him and the reasons which prompted him to make the interim order that he did. All that we can gather from the proceedings and the record of the court is that some oral application was made, an oral undertaking was given to make a written application within four days and an interim order was issued by the court-directing the maintenance of status quo in regard to an auction of liquor shops already held.

A The order does not disclose that the learned Single Judge was aware that the bid was for such a large amount as Rs. 25 lakhs, that at least Rupees Twelve and half lakhs would have been deposited by the time the order was made and that the licence itself was to take effect from 1. 4. 1984. What was to happen to the amount already deposited ? Who was to run the liquor shop from 1. 4. 1984 ? What B security had been taken from the petitioner to protect the revenue and the other respondents ? We get no indication from the order. In fact the order made no provision to protect any one from any resulting mischief. And all this on an oral undertaking given by an advocate that a petition would be filed on behalf of a party whose C very existence we now find is doubtful, as we shall have occasion to point out hereafter. No record, not a scrap of paper, was filed into court at that stage and no contemporaneous record was prepared by anyone containing the barest allegations constituting the foundation of the oral application that was actually made, the written appli- D cation that was proposed to be filed and the interim order issued. A most curious procedure indeed for a court of record to follow ! And, a situation where a judge would have to turn witness if any dispute arose subsequently as to what the allegations were and shy the judge made the order ! Shri S. S. Ray, who appeared before us at some stages of the case, informed us that a practice of this nature E of obtaining interim orders on oral applications subject to undertaking being given proposing to file written applications later, had always been in vogue in the Calcutta High Court. It was a matter of great surprise to us that a court of justice and at that, a court of record, should have been following such a practice, The learned F Attorney General informed us that such a practice was not followed in any other High Court and he placed before us substantial and compelling reasons vigorously deprecating such a practice, reasons which have found favour with us. Shri Lal Narain Sinha, former Attorney General, who practised for a considerable length of time in the Patna High Court which generally inherited, if we may use G such an expression, the practice and procedure of the Calcutta High Court and who happended to be present before us at another stage of the hearing of the case and whose assistance we sought and for which we are grateful to him told us that in his long experience he was not aware of any such-practice and that such a practice was never followed in the Patna High Court.....

We our selves are personally familiar with the practice followed in H the Madras, Karnataka, Andhra Pradesh, Madhya Pradesh and

Rajasthan High Courts and we can assert that such a practice is not heard of in these courts. Some counsel from Bombay who were present before us also told us that no such practice is followed in their High Court. We do not have the slightest doubt that, if the practice exists any where, it is a most unwholesome practice, likely to lead to vicious and pernicious results. It is a practice to be strongly deprecated, a practice reminiscent of the feudal days when the French nobility could procurea lettre de cachet under the Sovereign's seal authorising a subject's imprisonment with out trial and without mention of any reason. It is a practice which strikes at the very root of the system of open and even handed justice as we know it and the sooner it is abandoned the better for the administration of justice. We express our disapprobation and forbid the practice of entertaining oral applications by any court in matters of consequence without any record before it. We do not mean to suggest that oral application may never be made or entertained by a Court. Far from the contrary. For example, all applications for adjournment are generally made orally. Often, during the course of the hearing of a case it becomes necessary to make applications of a formal nature and such applications are permitted by the Presiding judge. But in all such cases the court is already seised of the principal matter or dispute and there is a record pertaining to it before the court. But we hardly see any justification for the entertainment of an oral application and the issuance of an interim order with no record whatever of what was submitted to the court or the reasons for the order made by the court. To permit a procedure by which oral applications may be made and interim orders obtained without any petition in writing, without any affidavit having been sworn to as *prima facie* proof of allegations and without any record being kept before the court may lead to very serious abuse of the process of the court. In fact, we have come across instances in the past where the Calcutta High Court had exercised jurisdiction in matters in which no part of the cause of action arose within its jurisdiction, a situation which would surely not have arisen if a written and not an oral application had been made. Again, we do not mean to suggest that other urgent oral applications may never be made. If someone is going to be deported in a few minutes or if some grossly inenquitous act is about to be perpetrated and any delay would result in the fait accompli of a monstrosity, urgent oral applications may be moved and urgent interim order issued. If urgent interim orders are imperative, at least skeletal applications setting out the bare facts

A and the questions involved should be insisted upon. A detailed application could be permitted to be filed later. Surely a Court would be in a more advantageous position with something in writing from a party who can take responsibility for the statements made than an oral submission based on oral instructions from "God knows B who". If the matter is so urgent as not even to brook any insistence upon a written application, the judge should at least take the trouble and the care to record in his order the facts mentioned to him and the submissions made to him. It is essential that there be a contemporaneous record. Otherwise the Court ceases to be a court of record. After all there are always two sides to a picture. C In the absence of a petition in writing, in the absence of an order containing a narration of the facts and the reasons for the orders, what is an affected person to do ? What allegation is he supposed to meet ? How is he to avert the mischief and damage which may result from the order ? Is he to await the pleasure of the petitioner who having obtained an interim order is naturally interested in not D filing his written petition till the very last minute so as to prolong the life of the interim order and the mischief. One may very well imagine a case where a party instructs an Advocate to move an oral application before a Judge, obtains an interim order and disappear from the scene without filing any regular petition. What is the under taking worth in such an event ? The facts of this very case, E we shall presently point out, have led to such an abuse.

To resume the Stranger-than-fiction story, on 30th March 1984 itself, Shri K.K. Bandhopadhyay, Advocate, Calcutta sent a telegram to the Deputy Commissioner, District Andaman, Port Blair. F informing him about the order of stay granted by the Calcutta High Court. The Deputy Commissioner duly informed M/s Samerias Trading Co. Pvt. Ltd. about the stay granted by the Calcutta High Court. Immediately on receipt of the information, the representative of M/s Samarias Trading Co. Pvt. Ltd. and their Advocate went to Calcutta on 2.4. 1984 where they obtained G confirmation that a learned Single Judge of the Calcutta High Court had made an order such as claimed by Shri K.K. Bandhopadhyay in his telegram. M/s Samarias Trading Co. Pvt. briefed a senior Advocate, Shri Saktinath Mukherjee to appear before Shri Justice Pyne on 3.4.1984. The information was that the writ petition would be taken up for orders at 2.30 P.M. on 3.4.1984. While the representa- H tive of M/s. Samarias Trading Co. Pvt. Ltd and their advocate

were waiting in the court, they came to learn that the matter had been mentioned to Shri Justice Pyne in his chamber by Shri Bhola Nath Sen the Senior Advocate representing Mr. S. Samuel and that the order of *status quo* had been extended until further orders. The representative of M/s Samarias Trading Co. Pvt. Ltd. and their advocate and the Deputy Commissioner of Andamans, all of whom were waiting in the Court were not told that the matter was going to be mentioned in the learned Judge's chamber. As soon as they came to know about the continuance of the order of *status quo*, they requested Mr. Justice Pyne to re-consider the order but the learned Judge declined to do so.

Interrupting our narrative here for a momemt, we are once again constrained to comment on the peculiar procedure that was adopted in the case. The reason, we are told, for moving the application in the chamber of the learned judge instead of in open Court was that Mr. Justice Pyne was sitting on the Original Side in Court and so the application which had to made on the Appellate Side had to be moved in his Chamber. We are unable to understand why it should be so and why the application could not be moved in open court. A sitting in chambers could be held when both sides are represented and the sittings are held openly so that members of the public, if they desire to attend, may have access even in the chamber. To grant interim orders on oral application in chambers when the judge is otherwise sitting in open court for other matters would seriously reflect on the fairness of the procedure adopted by the courts and may have the unpleasant effect of undermining public confidence in courts. Sometimes when a learned judge is sitting in a Division Bench or a Full Bench, some application may have to be made to him individually in which case permission is always sought in open Court to move the application in the chamber. The Registry then prepares a special list, puts it up on the notice board and before and before the Judge's chamber and also circulates a copy to the Bar Association. This procedure is followed in some High Coutrs and if such a procedure is followed then alone can we keep up the high tradition of open justice. A public hearing is one of the great attributes of a court, and courts of this country are therefore required to administer justice in public. Otherwise, there is a risk that justice may even be undone. As most admirably expressed by Fletcher-Moulton L.J. in Scot' v. Scott Courts of Justice, who are the guardians of civil liberties, ought

to be doubly vigilant against encroachment by themselves. It is not as a matter of policy but as a matter of law' that the hearing of a cause be public except in the limited class of cases with which we are not now concerned. That rule was violated by the learned Single Judge in this case.

After all the administration of justice is a vital concern first of public more than any private party, The public has a right to present in court and watch the proceeding and its conduct except in the very rare cases where the very cause of advancement of justice requires that proceeding be held in camera. In *Naresh Shridhar Mirajkar & Ors.* v. *State of Maharashtra & Anr.*(1) it was observed by this Court as follows:—

> "It is well-settled that in general, all cases brought before the Courts, whether civil, criminal or others, must be heard in open Court. Public trail in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justiee is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. As Bentham has observed :
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> "In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity". (Scott *v.* Scott)

In *Mc pherson* v. *Mc pherson*, (2) the Judicial Committee observed :

(1) [1966] 3 S.C.R. 744.
(2) AIR 1936 PC 246.

"Moreover the potential presence of the public almost necessarily invests the proceedings with some degree of formality. And formality is perhaps the only available substitute for the solemnity by which, ideally at all events such proceedings,.....should be characterised. That potential presence is at least some guarantee that there shall be a certain decorum of procedure..... These are some of the considerations which have led their Lordships to take a more serious view of the absence of the public from the trial of this (divorce) action than has obtained in the Courts below. Influenced by them their Lordships have felt impelled to regard the inroad upon the rule of publicity made in this instance—unconcious thought it was—as one not to be justified and now that it has been disclosed as one that must be condemned so that it shall not again be permitted."

To resume the narrative M/s Samarias Trading Co. Pvt. Ltd. immediately filed a Writ Appeal under the Letters Patent before the Division Bench consisting of Mr. Justice M.M. Dutt and Mr. Justice Ajit Kumar Sen Gupta. The matter was mentioned before the Division Bench at 3.45 P.M. By consent of parties the Writ Appeal filed by M/s Samarias Trading Co. Pvt. Ltd. and the Writ Petition filed by Samuel were both directed to be listed for hearing before them on 4. 4. 1984. With great difficulty M/s Samarias Trading Co. Pvt. Ltd. were able to get a copy of the writ petition at that stage, The Division Bench disposed of both the writ petition and writ appeal finally on 4. 4. 1984 itself. The order of Division Bench was in the following terms :

"By consent of parties, we treat the appeal as on day's list. As prayed for by the learned Advocates for the parties, we also treat the Writ Petition as on day's list.

After hearing the learned Advocates for the parties and after considering the facts and circumstances of the case, we are of the view that the auction for vending of liquor that has been held should be set aside. Accordingly, we set aside the auction and direct the Deputy Commis-

sioner of Andaman and Nicobar Islands to hold a fresh auction on the basis of the new terms and conditions that have already been circulated, being annexure F to the Writ Petition. The auction will be held on the 19th, April, 1984 at 11 A. M. at the Conference Hall, Deputy Commissioner's office, at Port Blair. The reserved price for the auction of the liquor shop is fixed at Rs. 30,00000 (thirty lacs). It must be made clear that the period for which the auction of the liquor shop will be held will be from 22nd April,1984 till 31st of March, 1985.

The auction will be advertised once in the Stateman in Calcutta and once in the Indian Express in Madras at least five days before the auction.

In the event the reserved price of rupees thirty lacs is not bid, in that case, the writ petitioner undertakes to this Court that he will take the licence at the reserved price of rupees thirty lacs and in that event the appellant undertakes to this Court not to carry on the business of liquor after the 21st of April, 1984.

The participants in the bid will be at liberty to take with them their respective Advocates.

The appellant shall be liable to pay to the Administration the proportionate licence fee for the days in the month of April upto 21st of April, 1984 during which he will carry on the business of liquor on the basis of his offer already made, that is, Rs. 25,00000 (Twentyfive lacs) for one year. The Deputy Commissioner is directed to refund to to the appellant the amount of the deposit which he has made in respect of the disputed auction loss the proportionate licence fee for the days for which he will carry on business in the month of April upto 21st April, 1984 immediately the day on which the appellant starts vending liquor. Further, the Deputy Commissioner shall issue necessary orders enabling the appellant to carry on the liquor business till 21st April, 1984.

The appeal and the writ appeal are disposed of as above. There will be no order for costs.

The appellant does not admit the allegations made in the writ petition.

Let plain copies of this order countersigned by the Assistant Ragistrar (Court) be given to the learned Advocates for the parties".

On the next day, the order was modified as follows :—

"This matter has been mentioned by both the parties for the purpose of rectifying one clerical mistake. It is directed in modification of our order dated April, 4 1984 that in the event the reserve price of Rs. 30,00000 (thirty lacs) is not bid, in that case, the writ petitioner undertakes to this Court that he will take the licence at the reserved price of 30, 00000 and, in that case, the appellant undertakes to this Court not to carry on the business of liquor at Rangat, Middle Andmans, pursuant to the existing licence after the 21st April, 1984. If, however, any new licence is granted to the appellant pursuant to the auction that will be held on the 19th April, 1984, the appellant will, of course, be able to carry on the business of liquor at that place upto 31st March, 1985.

Our order dated 4th April, 1984 is modified to the above extent and the rest of the said order will stand".

Aggrieved by the order of the Calcutta High Court M/s Samarias Trading Co. Pvt. Ltd. filed the special leave petition out of which the present appeal arises on 11. 4. 1984. One George Joseph claiming to be "working for gain with Respondent No. 1, Shri Samuel" filed a counter-affidavit purporting to be on behelf of Respondent No. 1. At the first hearing of the special leave petition on 17. 4. 1984, Shri S. S. Ray, Senior Advocate, appeared for the respondent No. 1. On that day, the learned counsel appearing for the M/s Samarias Trading Co. Pvt. Ltd. produced before us an affidavit dated 16. 4. 1984 purporting to be that of S. Samuel in which he disclaimed that he ever instructed any one to file any writ peti-

A tion in the Calcutta High Court on his behalf. This affidavit appeared to destroy the very foundation of the order of the Calcutta High Court. The genuineness of the affidavit was however, disputed by Shri George Joseph, who was present in court and S. S. Ray, senior advocate appearing on behalf of S. Samuel. In that situation we directed the issue of notice to all parties and bound over George B Joseph to appear before us at the next hearing. We directed that S. Samuel should be present before us at the next hearing. We also directed that the re-auction, as ordered by the Calcutta High Court, should be held on April 19, 1984, but that the sale should not be confiirmed. The matter came before us again on April 26, 1984. We were told that the re-auction had fetched a bid of Rs. 36 C lakhs and 80 thousand . We were also told that because of our direction that the sale should not be confirmed, the amount required to be deposited within 48 hours could not be deposited. We, therefore, directed the highest bidder to deposit the amount required to be deposited under the rules on or before April 30, 1984. Fresh D notices were issued to S. Samuel and we instructed the Registry to mention in the notice that if Samuel failed to appear at the next hearing, a non-bailable warrant would be issued for his arrest. We also issued a notice to Dr. D. K. Banerjee, Advocate who prepared the affiidavit filed by Mr. S. Samuel, in the Calcutta High Court to appear before us on may 3, 1984. George Joseph was bound over E to appear before us. He was also directed to file an affidavit setting out the full facts of the case which were within his knowledge. At the next hearing on May 3, 1984, we were informed that Subramaniam had breached the undertaking given to us on April 26, 1984 that he would deposit the amount required to be deposited by the rules before April 30, 1984. We, therefore, had no option F but to set aside the auction.....Fortunately the petitioner, M/s. Samarias Trading Co. Pvt. Ltd. offered to take the shop on lease for a sum of Rs. 30 lakhs and the Additional Solicitor General appearing for the administration of the Andaman and Nicobar Islands accepted the offer. The lease was sanctioned by us subject to the petitioner making the necessary deposit within 10 days from G that day.

On August 7, 1984, George Joseph failed to appear before us notwithstanding that he had executed a bond undertaking to be present before us. We therefore, directed the issue of a non-bailable warrant against him for his production before us on August 23, 1984. H Mr. Samuel was also bound over to appear before us on August

23, 1984. On that day, Shri K.K. Bandopadhyay filed a statement before us seeking to explain the circumstances under which he appeared before Mr. Justice Pyne to assist Shri Ashok Kumar Ganguly. He is a junior advocate working in the chambers of Shri Mahitosh Majumdar at whose instance it was that he was asked to assist Shri A.K. Ganguly. He was told that Shri S.D. Benerjee, senior advocate, would make an oral application. He met a group of people, one of whom claimed to be S. Samuel. A consultation was held by Shri A.K. Ganguly and the gentleman holding himself out as Samuel with Shri S.D. Banerjee in his presence in the court premises at about 3.15 p.m. on the same day. Thereafter Shri S.D. Banerjee entered the court room of Mr. Justice Pyne and moved an unlisted motion before the hon'ble judge at 4.00 p.m. when the court was about to rise. Shri S.D. Banerjee sought the permission of the hon'ble judge to move the matter in the chamber of the hon'ble judge by way of an oral application. Leave was granted and the application was moved before the learned judge in his chamber at 4.10 p.m. Shri A.K. Ganguly and Shri K.K. Bandyopadhyay appeared along with Shri S.D. Banerjee. That evening the gentleman who held himself out as S. Samuel and two or three others met Shri K.K. Bandyopadhyay and the latter requested Shri M. Lahiri, advocate to draft a writ petition. The two of them prepared the writ petition and got it ready for filing on April 3,1984. S. Samuel also handed over a Vakalatnama to him. On 3rd, the said gentleman appeared before the Oath Commissioner and the papers were duly lodged as Mr. Justice Pyne was sitting on the original side on April 3,1984 according to Shri Bandyopadhyay. The oral application had to be moved in the chamber of the learned judge. Accordingly, Shri B.N.Sen, senior counsel, moved the application assisted by Shri Lahiri and Shri Bandyopadhyay. Later the matter was mentioned in court on behalf of M/s. Samarias Trading Co. Pvt. Ltd. before the Division Bench and an oral prayer was made for suspending the order of Mr. Justice Pyne. Both the writ petition and the appeal were directed to be listed on the next day.

As we thought it imperative that George Joseph should be present before us, we adjourned the matter to August 23,1984 for his production. On August 23,1984, when the matter was next taken up, George Joseph continued to be absent and a non-bailable warrant was issued for his arrest and production on September 11, 1984. Mr. Samuel was also bound over to be present in the court

on September 11, 1984. We also now have before us the affidavits of S/Shri S. D. Banerjee, B. N. Sen, M. Mazumdar and A. K. Ganguly of the Calcutta Bar explaining the facts and circumstances pertaining to the proceedings that took place in the Calcutta High Court. Their affidavits while confirming the facts already narrated by us, disclose that none of them personally knew Samuel, as indeed one may not expect an advocate to know every client of his personally. They were like others, taken for a ride, if one may be permited to use so common an expression. Their affidavits only emphasise what we have already said about the undesirability of making oral applications of consequence before courts with nothing placed in the court's record to vouch for the authenticity of the facts forming the basis of the representations made to the court, etc. So far as this appeal is concerned, there is nothing further to be done by us we have now sanctioned the lease of the liquor shop in favour of the appellants for the year April 1, 1984 to March 31, 1985. We are, however, informed by the petitioner that though the lease has been confirmed in their favour from April 1, 1984 to March 31, 1985 for a sum of Rs. 30 lakhs, the administration of the Andaman Nicobar Islands, is demanding from them a sum of Rs. One lakh and odd towards the lease for the few days that they ran the liquor shop after April 1, 1984 under the orders of Calutta High Court, calculated at the rate of Rs. 25 lakhs per year. We are unable to see any justification for the demand since the lease as sanctioned and as confirmed is admittedly for the entire period April 1, 1984 to March 31, 1985 for Rs. 30 lakhs. The demand is directed to be withdrawn. The appeal is allowed in the terms indicated. A notice will however issue to George Joseph to show cause why he should not be committed for contempt of court for breaching the undertaking given by him. A nonbailable warrant will also issue for his production before us. Since the real Samuel has disclaimed all responsibility in the matter and since we do not know who was the person who represented himself as Samuel before the Calcutta High Court, we are unable to award costs against anyone.

M. L. A. *Appeal disposed of accordingly.*