

(2016) 04 CHH CK 0019
In the Chhattisgarh High Court
Case No : Write Petition (227) No. 117 of 2016

Anil Kumar Dhurandhar

APPELLANT

Vs

Satish Jain

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1 (e), Order 7 Rule 11
Constitution of India, 1950 — Article 227

Citation : (2016) 3 CivilLJ 185

Hon'ble Judges : P. Sam Koshy, J.

Bench : Single Bench

Advocate : Shri Ashish Shrivastava and Shri Anurag Verma, Advocates, for the Petitioner; Shri Amrito Das, Advocate, for the Respondent No. 1; Ms. M. Asha, Panel Lawyer, for the Respondent No. 2

Final Decision : Dismissed

Judgement

P. Sam Koshy—Challenge in the present writ petition is to the order dated 11.12.2015 passed by the 9th Additional Sessions Judge, Raipur, in Civil Misc. Appeal No.39- A/2014 whereby the court below has affirmed the injunction granted by the trial court under Order 39 Rules 1 & 2 CPC preferred by the respondent No.1/plaintiff.

2. Learned counsel appearing for the petitioner submits that suit itself was not maintainable, and therefore, the trial court, at the first instance, granting injunction has committed an error of law. According to the petitioner, the appellate court has also erred in affirming the said injunction granted by the trial judge which is under challenge in this petition. The petitioner relies upon the judgment of Madhya Pradesh High Court in case of Nathu v. Dilbande Hussain & Ors (AIR 1967 MP 14).

3. Counsel for the respondent No.1/plaintiff submits that the said objection of maintainability of the suit was raised by the petitioner by an filing application

under Order 7, Rule 11 CPC before the court below which was rejected on 14.04.2014 against which the present petitioner filed a Civil Revision No.66 of 2014 which has also been dismissed by the co-ordinate Bench of this Court on 21.04.2016 with an observation that the defendant shall have an opportunity to raise this objection in the written submission and so far as the maintainability of the suit is concerned, the same would be decided after recording of the evidence by either parties.

4. Coming to the said factual background of the case, in the opinion of this court, ground for challenging the impugned order of maintainability of the suit cannot be raised by way of filing a petition under Article 227 of the Constitution of India when the challenge is to the granting of an injunction and the affirming of the same by the two courts below. Further, the petitioner has failed to show any illegality, infirmity or jurisdictional error committed by the court below.

5. In the opinion of this court, the case law cited and relied upon by the petitioner would not come to the aid of the petitioner in the instant case wherein challenge is only the affirming of the order of injunction granted by the trial court. It was not a case where challenge in the writ petition was rejection of the objection of the petitioner so far as the maintainability of the suit is concerned, and therefore, the said judgment would not be applicable in the factual background of the issue involved in the present writ petition.

6. Supervisory jurisdiction conferred upon the writ court under Article 227 of the Constitution of India is very limited. It is well settled principle of law that this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, should refrain itself from interfering with the order passed by the Court below which are based on finding of fact, except in such cases where perversity, illegality, irregularity or jurisdictional error is writ large on the face of the record, which is not the case of the petitioner in the present case. This court is not impressed upon the submission made by the petitioner and as there is no merit, the petition deserves to be dismissed.

7. For the foregoing reasons, the petition fails and is dismissed. No order as to costs.