

(1987) 03 OHC CK 0010

In the Orissa High Court

Case No : Miscellaneous Appeal No. 68 of 1984

Baman Panda

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 18-03-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 43 Rule 1
Specific Relief Act, 1963 — Section 41

Citation : (1987) 64 CLT 211

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : R.N. Naik, for the Appellant; N.C. Panigrahi, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—Being aggrieved by the order of the learned Subordinate Judge, Puri rejecting his application for temporary injunction the Appellant has filed this appeal under Order 43, Rule 1 (r) of the CPC Code.

2. The Appellant filed O. S. No. 143 of 1983 (III) in the Court of the Subordinate Judge, Puri, against the District Collector, Puri for realisation of Rs. 14,700/-" and to permanently restrain the Defendant from realising the balance bid amount of Rs. 5000/- with interest from him. The dispute arose in relation to fishery Sairat "Sunamuhin" which the Appellant had taken on lease during the year 1981-82. The State filed a certificate proceeding for realisation of the balance bid money amounting to Rs. 5000/- from the Appellant whereafter the suit was filed for the reliefs referred to above. During pendency; of the suit, the Appellant filed the application under Order 39, Rule 1, CPC praying to issue an ad interim order of Injunction against the Respondent restraining him to proceed with certificate case No. 698 of 1983 and not to realise Rs. 5739.70 from him till disposal of the suit. This application was rejected by the impugned order.

3. Perusal of the impugned order shows that the grounds for rejection of the

prayer of the Appellant by the trial Court were two fold; firstly, that the prayer for injunction was not available to be granted in view of the bar u/s 41 (b) of the Specific Relief Act, 1963 and secondly that the balance of convenience was not in favour of grant of injunction to the Appellant.

Shri R. N. Naik, the learned Counsel for the Appellant challenged the findings of the Court below on both the aforesaid points.

4. Both these questions are no longer res integra. They are settled by several decisions of the Supreme Court as well as of this Court. The position is beyond controversy that where there is a legal bar for grant of the prayer for injunction sought by the Plaintiff in the suit, relief of temporary injunction cannot be granted by the Court. See *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*, . The question therefore is whether the prayer for injunction in the present case is hit by the bar u/s 41 (b) of the Specific Relief Act. Section 41 enumerates the cases in which the prayer for injunction cannot be granted. Under Clause (b) thereof it is laid down that an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought. Under Clause (a) thereof there is a similar bar against restraining any person from prosecuting a judicial proceeding at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings. The apparent distinction between the aforesaid two provisions is that while the bar in Clause (b) is absolute that under Clause (a) is subject to the exception that injunction may be granted to prevent multiplicity of proceedings. In similar circumstances this Court in the case of *M/s. Udyogsilpa Private Ltd. v. State of Orissa and Ors.* 55 (1983) C.L.T. 549 held that injunction restraining the Defendant not to proceed with certificate proceeding for realisation of money due from the Plaintiff is hit by both Clauses (a) and (b) of Section 41. In that case reliance was placed on an earlier decision of this Court reported in *Narayan Prusti Vs. State and Others*, , wherein Hon'ble R. N. Mishra, J (as he then was) held that a case of this nature squarely comes under the provisions of Order 39. Rule I, CPC and the bar u/s 41 (b) of the Specific Relief Act, 1963 applies to it.

5. In view of the position of law as discussed in the foregoing paragraphs, it admits of little doubt that the Court below tightly refused the Appellant's prayer for injunction. It may be noticed here that in addition to the legal position discussed above, the trial Court held, in my view rightly, that the balance of convenience was not in favour of restraining the Defendant from proceeding with the certificate case on facts and in the circumstances of the case.

6. On the discussions in the foregoing paragraphs, there is no merit in this appeal which is accordingly dismissed. Both parties will bear their respective costs of this appeal.