

(1973) 01 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 849 of 1972

Bisheshwar Singh

APPELLANT

Vs

A.G. and Others

RESPONDENT

Date of Decision : 31-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1974 Patna 16

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Advocate : Brajkishore Prasad, No. 2, Yogesh Chandra Verma and Sabita Gupta, for the Appellant; Ashwini Kumar Sinha for Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Madan Mohan Prasad, J.—This is an application in revision against an order rejecting a prayer made by the petitioner to serve interrogatories on defendant No.] and to produce documents in his custody.

2. The petitioner is a Divisional Accountant in the Public Works Division at Monghyr. An order has been passed transferring him to the Drainage Investigation Division of the Kosi Project at Ban-makhi in the district of Purnea. The petitioner's grievance is that he is a senior officer and officers like him are posted to a "heavy division"; in other words, where the work is heavy and juniors in service are posted in light division." Further his case is that all senior accountants are posted in proper places and the petitioner has been singled out for a different treatment. According to him, he was posted so far at places which were not good from different points of view and the present order of transfer is malicious and without jurisdiction. It is also his case that the transfer order was passed by the Assistant Accountant General, who had no jurisdiction to do so, the proper authority in this respect being the Deputy Accountant General. With these allegations, he filed Title Suit No. 116 of 1972 in the court of the Subordinate Judge at Monghyr for a declaration that the order of transfer

aforesaid is without jurisdiction, unjust, discriminatory, punitive, arbitrary, an act of victimisation and violative of the principle of natural justice. He also prayed for an injunction restraining the defendants from taking any step towards the implementation of the order of transfer.

3. During the course of the suit, the petitioner prayed for an ad interim injunction which was granted. The defendants appeared and the matter relating to injunction was to be heard. Meanwhile the petitioner filed two applications before the court; one for serving interrogatories and the other for production of certain documents for the purpose of the hearing of the injunction matter. The learned Subordinate Judge held that the documents and the interrogatories were not necessary for the disposal of the matter relating to injunction and he rejected the prayer. Hence this application.

4. Learned counsel for the petitioner has urged that the court below has not applied its mind to the relevant issue because it does not appear to have given reasons in its order showing how the documents or the interrogatories were not necessary and, therefore, it has acted with material irregularity in the exercise of jurisdiction.

5. Copies of the two petitions filed before the court below have been produced as annexures to the present application. It appears that the petitioner wanted the defendants to produce the service-books of the petitioner and defendant No. 3 (the person who is said to have been posted in the vacancy likely to be caused by the transfer of the petitioner), letter from the Accountant General relating to the transfer of the plaintiff, letters exchanged between defendant No. 2, Executive Engineer of Monghyr and defendant No. 3 aforesaid regarding the joining report etc., and representation made by the Divisional Accountants' Association to the Accountant General. The interrogatories related to the question as to whether certain persons named therein were continuing in their posts, whether they were continuing as such for more than three years, whether any Divisional Accountant having two years' experience like defendant No. 3 had been posted in any P. W. D. Division and whether copy of the order of transfer of the petitioner was given to the office-bearers of the Association aforesaid. Some of them asked for information as to how many qualified accountants are at present posted in various divisions, heavy, medium or light, how many unqualified accountants are placed in construction division and how many other divisional accountants are transferred along with the plaintiff, etc.

6. The contention of learned counsel as stated above is that the learned Subordinate Judge has not applied his mind to the relevant question. I am afraid, this argument has no substance. He has dealt with each item of documents asked to be produced, considered the relevance of it and held that they were neither relevant nor necessary for the purpose of disposal of the injunction matter. Even so he has considered all the questions in the interrogatories and again held that these questions have no material bearing on the question relating to the injunction matter. The grievance that he has not applied his mind is

unjustified. Learned counsel tried to put in different words by suggesting that the learned Subordinate Judge has not given reasons for showing that they are not necessary or relevant. This contention is equally unfounded. He has given reasons for his conclusion. I cannot, therefore, accept this argument.

7. Learned counsel then made an effort to show with reference to each document and each question that they are relevant and necessary for the decision of the suit. Again, there is a fallacy. The learned Subordinate Judge has not held that these documents or interrogatories are unnecessary for the decision of the suit. What he has held by the impugned order is that they are not necessary or relevant to the question of injunction. It appears from the application filed" by the petitioner himself that he claimed that "the documents are necessary for hearing of the injunction matter."" The question which the learned Subordinate Judge had to decide at the present stage was exactly what he had decided. Besides that it is not open to this Court as a Court of revision to enter into the merits of the question of the documents and substitute its own view in the matter, in case there be any difference of view. That is not within the jurisdiction of this Court in view of the well established scope of the provision of Section 115 of the CPC (hereinafter referred to as "the Code").

8. In the present case, the learned Subordinate Judge had initial jurisdiction to decide the matter. That is not in dispute. During the course of exercise of that jurisdiction, it has not been pointed out that he has committed any illegality in the sense that he has violated any principle of natural justice or that he has violated the provision of any law or that there has been a breach of any provision of law or that there has been any violation of any procedure prescribed by law. Assuming that the decision of the learned Subordinate Judge is not correct, though not holding so, the learned Subordinate Judge still had the jurisdiction to decide the matter. It cannot be said that he has acted illegally in any of the manners aforesaid. The scope of Section 115 of the Code has been well explained in the decision of the Supreme Court in the case of Shri M.L. Sethi Vs. Shri R.P. Kapur, . The learned Judges have referred to the earlier cases of the Privy Council and the Supreme Court itself and have reiterated the principle which should govern the disposal of and how an application u/s 115 of the Code has to be dealt with by the High Court. This Court within its revisional jurisdiction has to see whether the order of the Subordinate Court is within jurisdiction, whether the case is one in which the court ought to have exercised its jurisdiction and thirdly whether in exercise of the jurisdiction, the court had not acted illegally, that is, in breach of some provisions of law, or with material irregularity, that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. Judged by these standards. it is quite apparent that in the present case, the order passed by the learned Sub-ordinate Judge does not suffer from any of the infirmities which would attract an interference by this Court.

9. Learned counsel for the opposite party has drawn my attention to the decision

in the case of *Raj Mohan Saha v. Mahara is Srila Surijukha Kirit Bikram Kishore Deba Barma Manikya Bahadur*. AIR 1961 Trip 23, where the circumstances were similar to those of the instant case and it was held that the subordinate court had not exercised its jurisdiction with material irregularity by disallowing the interrogatories. It was held that if a party was not allowed to serve interrogatories or if they were set aside as unnecessary, he was not materially affected as he could get the necessary answers in the cross-examination of the witnesses of the party sought to be interrogated and further that where the lower court considered the interrogatories to be unnecessary for the purpose of the case, the higher Court in revision u/s 115 of the Code will not go into the question and see whether on the pleadings of the parties they were material.

10. In the present case, as I have said earlier, these interrogatories and the production of the documents were intended merely for the disposal of the injunction matter. In my view by rejecting the prayer of the petitioner at this stage no ultimate right claimed in the suit stands affected. It is not even a "case decided" within the meaning of Section 115 of the Code. These applications were made as stated earlier, for the purpose of the decision of the question of making the rule of injunction absolute during the pendency of the suit. The learned Subordinate Judge has yet to decide that question. In case it is decided against the petitioner, he will have the right to go up in appeal. There is still another remedy open to him and this interlocutory order cannot, therefore, be said to have finally decided any right of the petitioner. It is well settled that such interlocutory orders do not come within the definition of the term "case decided". Learned counsel for the opposite party has placed before me a Full Bench decision in the case of *Purohit Swarupnarain Vs. Gopinath and Another*, which supports the proposition stated above.

11. In the result, I find no substance in this application and it is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.