

(1993) 11 PAT CK 0001

In the Patna High Court

Case No : Civil Revision No. 175 of 1993

Blue Chip Investment Consultants, Stock and Share Brokers	APPELLANT
Vs	
Tata Share Registry Ltd. and Others	RESPONDENT

Date of Decision : 03-11-1993

Acts Referred:

Citation : (1993) 11 PAT CK 0001

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—After I had heard Mr. Narendra Prasad, learned Counsel appearing for the petitioner, and Mr. K.K. Mishra, learned Counsel appearing for the opposite party Nos. 2 and 3, and expressed that I need not exercise my discretionary civil revisional jurisdiction since by the impugned order opposite party No. 1 alone was restrained and that this civil revision application is thus not maintainable and intended to dismiss this civil revision application summarily on account of its non-maintainability, Mr. Prasad insisted that I should pass a reasoned order, I proceed to do so.

2. The petitioner M/s. Blue Chip Investment Consultants Stock and Share Brokers prays to set aside an order dated 5-11-1992 passed by Sri Swaroop Lal, Additional District Judge IX, Patna in Misc. Appeal No. 31 of 1992 setting aside the order dated 8-5-1992 of Sri Narendra Mishra, Subordinate Judge III, Patna (wrongly stated in paragraph 1 of the revision application as Subordinate Judge 1st, Patna) in Title Suit No. 225 of 1992.

3. Firstly some intriguing apparent facts. This civil revision application has been filed through its consultant Ashish Bahadur son of A.K. Bahadur. The body portion of the Vakalatnama mentions Ashish Bahadur as well as the petitioner both. Its execution portion shows executant as "(Ashish Bahadur) Ashish Bahadur" and the rubber stamp of "Blue Chip Investment Consultant, Patna I" only. To the revision petition Ashish Bahadur, father's name not known and Sanjeev Bahadur, father's name not known have been impleaded as Opposite Party Nos. 5 and 4. The affidavit for this civil revision application has been sworn

by Sanjeev Bahadur describing him as son of Ajay Kumar Bahadur claiming in paragraph-1 of it (the affidavit) that he is the petitioner. The petitioner has been described as "Defendant-Opposite Party, without describing which defendant and respondent it was in the court below.

4. It appears from a copy of the plaint as shown to me by Mr. Prasad that one Nilam Jaiswal (opposite party No. 2 herein) has filed the suit in question for restraining (Tata Share Registry Limited-defendant No. 1 opposite party No. 1 herein) from transferring 100 shares registered in her name and for a declaration of her title regarding the share certificates and for possession of those share certificates. She also filed an application for grant of an interim injunction for restraining defendant No. 1 not to transfer the shares in question to any body else on the grounds mentioned therein and pressed her application. The learned Subordinate Judge after recording a finding that it would not be proper to pass an order of injunction in absence of the defendants at that stage issued show-cause notices to the defendants asking them as to why the prayer for injunction as prayed for should not be granted fixing 14-5-1992. The plaintiff against the order refusing to grant interim injunction at that stage under Order XXXIX, Rule 3 of the CPC went up in Misc. Appeal No. 31 of 1992. The appeal was admitted by the District Judge, Patna and notices issued granting maintainance of status quo. Respondent No. 3 to the appeal, who is the revision petitioner alone appeared, filed show cause asserting, inter alia that the appeal itself is not maintainable. The learned Additional District Judge IX, Patna to whom the appeal was transferred heard the appeal and by the impugned order, allowed it setting aside the order dated 8-5-1992 of the trial Court and also granted injunction restraining respondent No. 1, who is defendant No. 1 in that suit, from transferring 100 shares of Tata Iron & Steel Company Limited standing in the name of the Plaintiff appellant. The petitioner assails validity of this order on several grounds mentioned in the Revision petition but without stating that it would suffer any irreparable injury and/or that there would be failure of justice, if the impugned order is not set aside. In paragraph 2 of the application, however, it has been stated to the effect that the shares in question have transferred to Rajendra Agarwal (who is not party in the suit). From perusal of the Revision Petition and its counter-affidavit it appears that the petitioner and opposite party No. 2 are all variance as to whether there was any transfer of the shares in question which, however, is a question of fact and has to be examined at the trial of the suit in question itself.

5. Mr. Narendra Prasad learned Counsel for the petitioner, submitted as follows: (i) The appeal was not maintainable as the prayer for grant of interim injunction was not refused rather the granting of injunction was merely deferred till the appearance of the defendants. His submission stands supported by a decision of Orissa High Court in Bidulata Das Vs. Braja Bihari Palit and Others, . (ii). The findings of the learned Additional District Judge are also erroneous in law. The learned Additional District Judge has failed to appreciate that the claim set forth by the plaintiff was really a claim for money and accordingly the injunction ought

not to have been granted, (iii) Instead of remitting back the matter to the trial Court, the court of appeal below has erred in granting injunction in a mandatory form.

6. Mr. Kamal Kishore Mishra, learned Counsel for the plaintiff-opposite party No. 2, who alone has appeared, submitted as follows: (i) The petitioner is not entitled to have any relief u/s 115 of the CPC inasmuch as it has not come with clean hands. The civil revision application shows that the petitioner filed it through its consultant Ashish Bahadur impleading himself (Ashish Bahadur) as Opposite Party No. 5 and Sanjeev Bahadur its deponent as Opposite Party No. 4, describing both of them as father's name not known" and of Blue Chip Investment Consultants. By taking me through page No. 20 of the civil revision application, which contains affidavit sworn by Sanjeev Bahadur, he urged that the deponent described him as son of Ajay Kumar Bahadur and him as petitioner. (ii) Even though by the impugned order only opposite party No. 1 herein has been restrained, this civil revision application by defendant No. 5 is not maintainable, who has not stated in the application as to how it is prejudicial and that there would be failure of justice, if the impugned order is not set aside inasmuch as no order of injunction was passed against it. (iii) The appeal by the plaintiff was maintainable as the learned Subordinate Judge had erroneously refused to exercise his jurisdiction under Order XXXIX, Rule 3 of the Code of Civil Procedure. (iv) No error of law or fact was committed by the learned Additional District Judge IX while recording his findings. (v) This civil revision application be dismissed with costs. Mr. Mishra, learned Counsel for opposite party No. 2, also while placing reliance on a Division Bench decision of this Court in Shyam Behari Singh Vs. B. Biseswar Dayal Singh and Others, , holding that in the circumstances like present one, appeal lies, submits that this decision is binding on me.

7. I find that the petitioner not having been restrained by the impugned order, this civil revision itself is not maintainable.

8. Section 115 of the CPC is very clear that this Court may exercise its jurisdiction provided it is satisfied that there would be failure of justice if the impugned order is not set aside.

9. From the impugned order it is clear that defendant No. 1 of the suit, who is opposite party No. 1 herein, was only restrained. Though in paragraph of the revision application it has been stated that the petitioner was also sought to be restrained from the certified copy of the order it does not appear that the petitioner was also sought to be restrained. In the revision petition it has not been stated that the petitioner would suffer an irreparable injury or that there could be failure of justice, if the impugned order is allowed to stand. This application is liable to be dismissed on this account as well.

10. The form/manner as shown by me earlier, in which this application has been filed, also compels me to refuse to exercise my discretionary jurisdiction.

11. Mr. Prasad at this stage further insists that I must state that he had shown to me a copy of the plaint and the injunction petition in the form which is available with him.

12. For the reasons aforementioned, this civil revision application is dismissed but in the peculiar facts, without cost. I clarify that any finding recorded by the court of appeal below will not be taken to be settlor of the issues involved.

13. In the interest of justice, I direct the Subordinate Judge III, Patna to dispose of the suit in question expeditiously preferably within three months from the date when it becomes ready for its hearing, curbing all unreasonable adjournments which may be made by one or the other party. I also direct the trial Court to secure attendance of such parties who have not appeared so far before it.

14. Let a copy of this order be sent down forthwith.