

(2005) 03 J&K CK 0051
In the Jammu And Kashmir High Court
Case No : CIA No. 91 Of 1999

Chief Engineer and others	Vs	APPELLANT
Zeba		RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2007) ACJ 412 : (2005) 3 JKJ 38 : (2005) 1 SriLJ 311 : (2005) SriLJ 311

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : M.A.Beigh, M.A.Beigh, Advocates appearing for the Parties

Judgement

1. By the medium of this appeal, the appellants have assailed the exparte judgment and decree dated 18.08.1998 passed by Learned District

Judge, Budgam in suit titled Mst. Zeba Vs. State and Ors file No.80/numbri. Heard.

2. Learned counsel for the appellants argued that the impugned exparte judgment and decree has been passed illegally because exparte proceedings drawn against the appellants are illegal.

3. Mr. Bhat learned counsel for the respondent frankly conceded that the exparte proceedings have been drawn illegally. However, Mr. Bhat prayed that keeping in view the circumstances of the case, the interim compensation may be granted.

Perused. Considered.

4. The exparte proceedings have not been drawn rightly, which is reflected in the interim orders right from 22nd March, 1996 till 27* May, 1997.

In terms of the said orders Mr. Banday, advocate has caused appearance on behalf of the defendants 1 and 2 i.e. appellants 1 and 2 in the suit but

the power of attorney is signed by appellants 4 and 5 (defendants 4 and 5). The summons have also not been issued to appellants 1 to 3 either in

ordinary mode or by registered post. Thus ex parte proceedings drawn against the appellants/ defendants 1 to 3 are illegal. Accordingly the

impugned judgment and decree is illegal.

Viewed thus the appeal merits to be allowed.

5. Now, the question is whether interim compensation can be granted? It is profitable to give brief resume of the averments contained in the plaint

herein;

6. The defendants have installed 11000 K.W.H.Tension line from village Yachkoot towards village Bugroo and from this line electricity is supplied

to various villages. The poles erected by the defendants exist on the pathway connecting Ichgam and Yachkoot villages. On the said road there is

situated a kitchen garden of one of the villagers, Sabir Bhat, which is fenced with barbed wire. On 1st August, 1994 the high tension electric wire

fell down. The villagers approached the officials for restoring the electricity to the village by refixing the supply line. No heed was paid to the

requests of the villagers, with the result neither electric supply was restored nor the electric wire was removed from the spot which had touched the

barbed wire. Plaintiffs son, namely, Mohammad Iqbal Bhat aged 13 years, student of 7th class on 09.08.1998 came in touch with the barbed wire

thereby he got electrocuted which resulted in to his death on spot. The accident has taken place due to the negligence of the Electric Department.

7. Whether the interim compensation can be granted in terms of the Civil Procedure Code? It is necessary to notice Sections 94 and 151 of CPC.

8. While going through the provisions of Section 94 of CPC, this court can pass any order which is just in the given circumstances. But word

prescribed"" is used in the provision which means prescribed by the Rules. While going through the Rules, I have not noticed any Rule which can

be pressed into service for granting of interim compensation.

9. While going through the provisions of Section 151 CPC, this court can exercise inherent powers in order to do justice in between the parties

and can pass such orders which are warranted in the interests of justice.

10. Section 140 of Motor Vehicles Act mandates how to grant interim compensation. This remedy stands introduced in terms of the

recommendations made by Apex Court in the judgments reported in 1977 ACJ 134 (SC), 1980 ACJ 435 (SC) and 1981 ACJ 507 (SC). In

terms of the said judgments the legislation was made. The aim and object of the said provision is to save the victims/ sufferers from, starvation,

destitution and from other social evils. It is just to ameliorate the sufferings of the victims.

11. The Apex court has passed a judgment reported in AIR 1996 SC 922 titled Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, wherein

their lordships have granted interim compensation to the victims of a rape case. In terms of the said judgment the court is not powerless to come to

the rescue of victims and save them from social evils as discussed above. It is profitable to reproduce para18 of the said judgment herein;

18. This decision recognizes the right of the victim for compensation by providing that it shall be awarded by the Court on conviction of the

offender subject to the finalization of Scheme by the Central Government. If the Court trying an offence of rape has jurisdiction to award the

compensation at the final stage, there is no reason to deny to the

Court the right to award interim compensation which should also be provided in the Scheme. On the basis of principles set out in the aforesaid

decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall

jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental

Right of Personal Liberty and Life.

12. The Apex court has also held in the judgment reported in AIR 1986 SC 984 (Smt. Savitri v. Govind Singh Rawat) that the courts can grant

interim maintenance in the proceedings under Section 488 (Section 125 Cr.P.C) Cr.P.C. It is profitable to reproduce relevant portion of para6

herein;

.....If a civil Court can pass such interim orders on affidavits, there is no reason why a Magistrate should not rely on them for the purpose of

issuing directions regarding payment of interim maintenance. The affidavit may be treated as supplying prima facie proof of the case of the

applicant. If the allegations in the application or the affidavit are not true, it is always open to the person against whom such an order is made to

show that the order is unsustainable. Having regard to the nature of the jurisdiction exercised by a Magistrate under S. 125 of the Code, we feel

that the said provision should be interpreted as conferring power by necessary implication on the Magistrate to pass an order directing a person

against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to the

pending final disposal of the application. In taking this view we have also taken note of the provisions of S. 7(2)(a) of the Family Courts Act, 1984

(Act No.66 of 1984) passed recently by Parliament proposing to transfer the jurisdiction exercisable by Magistrates under S. 125 of the Code to

the Family Courts constituted under the said Act.

While going through the said provisions of law and while keeping in view the above discussion, I am of the considered view that civil court can

exercise inherent powers and can grant interim compensation at any stage even though not provided by any other provision of law. It is profitable

to reproduce relevant portion of para 4 of the judgment of Apex Court reported in AIR 1995 SC 350 (State of Maharashtra and Ors. Vs.

Admane Anita Moti and Ors).

.....Interim orders are granted by the Court as they are necessary to protect the interest of the petitioner till the rights are finally adjudicated

upon. Even where it is not provided in the statute this Court has held that the courts have inherent power to grant it.....

13. It is also profitable to reproduce paras 9 and 10 of the Apex Court judgment reported in AIR 2004 SC 3992 (Vareed Jacob Vs. Sosamma

Geevarghese and Ors.) herein;

9. In the case of M/s Ram Chand and sons Sugar Mills Pvt. Ltd. v. Kanhayalal Bhafigava reported in AIR 1966 SC 1899, it has been held by

this Court that the inherent power of the Court under Section 151, C.P.C. is in addition to and complimentary to the powers expressly conferred

under C.P.C, but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of

C.P.C. If there is express provision covering a particular topic, then Section 151, C.P.C cannot be applied. Therefore, Section 151, C.P.C.

recognizes inherent power of the Court by virtue of its duty to do justice and which inherent power is in addition to and complementary to powers

conferred under C.P.C, expressly or by implication.

10. In the case of Jagjit Singh Khanna v. Dr. Rakhal Das Mullick reported in AIR 1988 Cal 95 it has been held that temporary injunction may be

granted under Section 94(C) only if a case satisfies Order 39, Rule 1 and Rule 2. It is not correct to say that the Court has two powers, one to

grant temporary injunction under Section 94(C) and the other under Order 39, Rule 1 and Rule 2. That Section 94(C), C.P.C. shows that the Court may

grant a temporary injunction thereunder only if it is so prescribed by Rule 1 and Rule 2 of Order 39. The Court can also grant temporary injunction

in exercise of its inherent powers under Section 151, but in that case, it does not grant temporary injunction under any of the powers conferred by

C.P.C, but under powers inherent in the constitution of the Court, which is saved by Section 151, C.P.C.

14. In terms of the said judgments, the civil court can exercise inherent powers and, grant interim compensation in order to do justice, save victims

from social evils and just to ameliorate their sufferings.

15. Thus I am of the considered view that civil court can grant interim compensation in the cases, where the claimants/ plaintiffs have lost their

bread earner, son or daughter due to the negligence of the defendant/s and even in the cases where the plaintiff has sustained injuries due to the

negligence of the defendant/s which has rendered the plaintiff permanently disabled.

16. Now, question is whether interim relief can be granted without any motion?

I am of the considered view that interim relief can be granted only after a motion is made. But in the instant case, the parties are in lis from

24.01.1996 and the parties have been relegated back to 24.01.1996. Thus, I deem it proper to exercise inherent powers and grant interim relief in

favour of the petitioners without any motion in the given circumstances of the case but it is just an exception.

17. Now question is, whether prima facie proof is on the file in order to grant interim relief?

While going through the contents of the appeal, plaint and documents attached with the plaint, it can be prima facie held that the plaintiff has lost her

son due to electrocution because of the negligence of the appellants (defendants).

18. Now, the question which needs answer is what amount should be just interim compensation in the given case?

In terms of Section 140 of Motor Vehicles Act, an amount of Rs.50,000/ is to be awarded as interim compensation in death cases and Rs.25,000/

in permanent disablement cases.

Keeping in view the circumstances of this case and the above discussion, an amount of Rs.50,000/ is just and reasonable amount which can be

granted as interim compensation in this case.

19. Accordingly, an amount of Rs.50000/ is awarded as interim compensation in favour of the respondent/ plaintiff against the appellants/

defendants. The appellants /defendants are directed to deposit the same within one month from today before the court of learned District Judge,

Budgam who shall disburse the same to the plaintiff without any delay. Be it noted that granting of interim compensation shall not be construed that

defendants are liable to pay compensation and shall not prejudice the, rights of the parties in any way or, influence the mind of the trial court while

passing final judgment.

20. The learned Principal District Judge, Budgam is commanded to decide the suit within three months from today in the following manner:

The appellants herein shall file written statement on 25th March, 2005 before the trial court and the Learned Pr. District Judge shall frame issues

after the written statement is filed and provide only five opportunities to the plaintiff for leading evidence and thereafter shall also provide same

number of opportunities to the appellants/ defendants and then hear the case and after hearing the case shall pass the final judgment. The Learned

Pr. District Judge, shall list the case once in a week so that the suit can be taken to its logical conclusion within three months.

In the given circumstances, the appeal is allowed and impugned judgment and decree is set aside. The parties shall cause appearance in the trial

court on 25.03.2005. Registry to circulate the judgment. Send down the record.