

**(2003) 09 UK CK 0008**

**In the Uttarakhand High Court**

**Case No :** Writ Petition No's. 864 to 866 (M/S.) of 2003

Dinesh Chandra Jaiswal and etc.

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

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**Date of Decision :** 09-09-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

**Citation :** AIR 2004 Utt 19 : (2004) 1 UC 229 : (2003) 1 UD 752

**Hon'ble Judges :** Rajesh Tandon, J

**Bench :** Single Bench

**Advocate :** P.C. Kandpal, for the Appellant; N.C. Gupta and S.S. Adhikari, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Rajesh Tandon, J.—Heard Sri P.C. Kandpal for the petitioners and Sri N. C. Gupta and Sri S. S. Adhikari for the respondent State.

2. The aforesaid three writ petitions have been filed against the order refusing to grant injunction by both the Courts-below. The brief facts giving rise to the aforesaid petitions are that the petitioners are running a small scale industries at Vikas Nagar, Dehradun and they have installed a woodcutter machine of 3 H.P. for the last 10 years. They have alleged that their industries were registered on 3rd of October 2001. According to the petitioners when they started the business there was no such restrictions and. as such. he has prayed for permanent injunction restraining the respondents not to interfere in the business of the petitioners in respect of three-horse power butter machine.

3. During the pendency of the suit applications for interim injunction under Order XXXIX. Rule 1 CPC were also filed in all the suits. The trial Court on the application of the petitioners passed the order on 7th of October 2002 rejecting the applications. The injunction has been refused on the ground that the petitioners have no cause of action to file the suit or claiming the injunction in as

much as at present they have no license and, as such, no injunction can be granted.

4. Aggrieved by the aforesaid order the petitioners went in appeal being appeal No. 16 of 2003 arising out of suit No. 725 of 2002. appeal No. 15 of 2003 arising out of O. S. No. 707 of 2002 and appeal No. 07 of 2003 arising out of Suit No. 727 of 2002.

5. The petitioners have filed the present writ petitions against the orders passed in appeal. The State has already filed a counter-affidavit. Counsel for the petitioners have stated that their saw mill was installed before coming into force of Aara Mill Rules. 1978, i.e., Aara Mill Stahapana Aur Viniyaman Niyamawali, 1978. However,, the amended Rule has been produced by the Standing counsel dated 26th June 1998 where the definition of Section 2 (a), which was amended, reads as under:

"AARA MILL" KA TAPTARYA IMARATI LAKARI AUR ANYS LAKAR1 KO KATANE, CHEERANE YA USE TUKARAUN ME PARIWARTIT KARNE YA TATSADRAYSA KARYAUN KO PRAYOJANARTHY VIDYUT. SHAKTI. 1DHAN SHAKTI YA JANSHAKTI SE PAHALE WALE KISEE YANTRIK SADHAN SE HAIN AUR ISME URAYUKTH BHEE SAMILIT HAIN KINTU ISMDE YASE YANTRIK SADHAN JISKE INJINE KEE SHAMTA 3 HORSE POWER TAK HO SAMLET NAHIN HONGE."

6. The injunction orders have been refused by the two Courts-below on the ground that the petitioners at present have no valid license to run the saw mill. Therefore, there is no prima facie case in favour of all the petitioners.

7. The principles contained under Order 39, Rule 1 CPC cannot be applied in such a case where the petitioners have no valid license at present. The Full Bench decision reported in, Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others, has interpreted the scope of Order 39, Rule 1 CPC. As well as interference under Article 226 of the Constitution of India.

"In our opinion, although every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved".

8. The grant of injunction as contained under Order 39, Rule I C.P.C. has been interpreted in Hindustan Petroleum Corporation Ltd. Vs. Sri Sriman Narayan and Another, where the Apex Court has held that it is while exercising discretion of the Court in the grant of interim injection the following test has to be applied. (Paras 7 to 9, 11 and 12).

"It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court normally applies the following tests :

i) Whether the plaintiff has a prima facie case;

ii) Whether the balance of convenience is in favour of the plaintiff;

iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need,.....:....." against another and determine whether the balance of convenience lies.

"In *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, this Court, discussing the principles to be kept in mind in considering the prayer for interlocutory mandatory injunction observed :

"The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm. Courts have evolved certain guidelines. Generally stated these guidelines are :

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury, which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute

rules, and there may be exceptional circumstances needing action, applying them as a pre-requisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

As has been held by this Court in *Dorab Cawasji Warden case* (supra), ordinarily the relief to be granted to a plaintiff in such a matter is awarding of damages and interim injunction of a mandatory nature is not to be granted.

On consideration of the entire matter, we are satisfied that the order passed by the High Court granting the prayer for interim injunction in the context of facts and circumstances of the case, is unsustainable."

9. As will appear from the judgment of Apex Court that the object of the injunction is to protect the plaintiff against violation of his rights where he cannot be compensated. In my opinion, therefore it is not a fit case for grant of injunction under Order 39, Rule 1 C.P.C.

The matter is pending before the Apex Court in *T.N. Godavarman Thirumulkpad v. Union of India*, (2002) 9 SCC 502 and from time to time directions have been issued in this regard.

10. Counsel for the petitioners have placed reliance on the judgment reported in *Jawahar Lal Sharma and Another Vs. Divisional Forest Officer, U.P. and Another*, where the Apex Court has observed that since the case of *T.N. Godavarman Thirumulkpad* is pending before the Apex Court, therefore, their Lordships have directed for consideration of fresh license. The observations of the Apex Court is quoted below (Paras 5 to 7) :

"It is not necessary for us to go into noticing further details of facts in view of the direction which we propose to make. It appears that a larger issue dealing with ecology, protection and conservation of forest (W.P. (C) No. 202/1995. *T. N. Godavarman Thirumulkpad v. Union of India*) is pending in this Court wherein from time to time direction are being issued. Two such- directions dated 12-12-1996 and 4-3-1997 are to be found reported as *T.N. Godavarman Thirumulkpad Vs. Union of India and others*, :

(AIR 1997 SC 1228) and *T.N. Godavarman Thirumulkpad Vs. Union of India and others*, :( *T.N. Godavarman Thirumulkpad Vs. Union of India and others*, ). On account of the Supreme Court of India being seized of the matter and monitoring the issue, there has been reluctance on the part of the Government officials to deal with saw mill licences and their renewals. In the cases before us the renewal fees have been deposited by the appellants but orders of renewal are not passed. A vague plea is raised on behalf of the respondents that the applications for renewal were not in prescribed pro forma. If that is so, the defect could have been pointed out to the concerned applicant and an appropriate application in the prescribed pro forma could have been called if or to be substituted in place of defective application, if any or such other particulars as may be necessary could have been called for. The relevant consideration for and the rights and obligations

flowing from a prayer for renewal of a pre-existing license are different rather substantially at variance from those for an application for the grant of a fresh licence. The learned counsel for the appellants submitted that an application for the grant of a fresh licence may not be entertainable at all those the appellants may be entitled to renewal subject to such directions. As the Supreme Court of India may be pleased to make. The orders made by the High Court do not, therefore, meet the ends of justice. Admittedly, the licence of any of the appellants has not been cancelled.

No order or direction made by the Supreme Court of India to the effect that even existing licences shall not be renewed, has been brought to our notice. On the contrary, the learned counsel for the appellants has invited our attention to orders dated 24-1-2000 passed in Civil Misc. Writ Petition No. 991 /2000, Gyaneshwar Prasad Singh v. Van Sanrakshak Varanasi Varanan Vritya Varanasi, order dated 19-2-2000 licences shall not be renewed, has been brought to our notice. On the contrary, the learned counsel for the appellants has invited our attention to orders dated 24-1-2000 passed in Civil Misc. Writ Petition No. 991/2000, Gyaneshwar Prasad Singh v. Van Sanrakshak, Varanasi Vritya Varanasi order dated 19-2-2000 in Civil Misc. Writ Petition No. 9148 of 2000 Kanwal Deen Chauhan v. Conservator of Forest dated 31 -3-2000 in Civil Misc. Writ Petition No. 15002/2000 Vishwa Bhandar Saw Mills v. Divisional Forest Officer. Wherein having noticed the directions made by this Court in T.N. Godavarman Thirumulkpad Vs. Union of India and others, : ( T.N. Godavarman Thirumulkpad Vs. Union of India and others, ), the High Court of Allahabad has: in similar circumstances, quashed the orders passed by the respondents and directed that on completing all the necessary formalities by the petitioners therein and depositing the licence renewal fee for all the previous years as well as the current years, licences to run the saw mill in favour of the petitioner therein shall be granted if there be no legal impediment. The learned counsel submitted that there is no reason why the same High Court should not have taken similar view in the cases of these appellants, We find merit in the submission" of learned counsel. For the foregoing reasons, the appeals are allowed and disposed of by directing the prayer for renewal of the licence made by each of the appellants shall be dealt with by the competent authorities of the State in accordance with law. In doing so, the authorities shall keep in view the directions issued or which may be issued by the Supreme Court of India from time to time."

11. As already observed aforesaid, it is not a fit case for invoking the provisions contained under Order 39, Rule 1 C.P.C. However, all the petitioners as mentioned aforesaid can very well apply for the grant of fresh licences as stated aforesaid and the competent authority shall dispose of the applications in accordance with law keeping in mind the directions of the Apex Court. The Authorities concerned are expected to dispose of such applications expeditiously.

12. Subject to the aforesaid Observations the writ petition lacks merit and is

dismissed. However, the petitioners are at liberty to approach the appropriate authorities.

13. Let a copy of this Judgment, be placed on the record of writ petition No. 865 of 2003 (M/S) and writ petition No. 866 of 2003 (M/S).