

(2005) 01 AHC CK 0140

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29454 of 2003

Gazanand Sharma

APPELLANT

Vs

11th Additional District Judge/Sessions Judge, Civil Judge
(Senior Division) and Hindustan Coca-Cola Beverages Pvt.
Ltd.

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 14, 14C, 14D, 41, 41(41)(E)

Citation : (2005) 3 AWC 2143

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : S.M.A. Kazmi, Jafar Imam Naqvi and Arvind Srivastava, for the Appellant; Navin Sinha, Yashwant Verma, Manu Khare and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Arvind Srivastava on behalf of the petitioner and Sri Navin Sinha Senior Advocate, assisted by Sri Yashwant Verma, on behalf of the respondent.

2. Petitioner Sri Gazanand Sharma, who was employed as Junior Account Officer in the employment of Hindustan Coca-Cola Beverages Pvt. Ltd., Sagra, Mahmoorganj Road, Mahmoorganj, district Varanasi, filed Original Suit No. 807 of 2001. The relief prayed for in the said suit read as follows:-

"a) That by means of a decree of permanent prohibitory injunction, the defendant, their servants, officers and representatives be restrained from putting any obstruction, interference in the working and functioning of the plaintiff as Manager Finance in the factory of defendant No. 1 and they be also restrained from dismissing, terminating, removing the plaintiff from his service without

complying the principle of natural justice, any style of manner.

b) That by means of a decree of permanent mandatory injunction, the defendant be directed to pay the actual salary package prescribed to the grade of the plaintiff in its right letter and spirit and they be also directed not to withhold any item of the salary package in any style of manner.

c) That cause of the suit be levied against the defendant.

d) That any relief also be granted to the plaintiff of which plaintiff is found entitled in the eye of this Hon"ble Court. "

3. Along with the plaint allegations the plaintiff filed an application for grant of temporary injunction under Order XXXIX C.P.C.

4. On behalf of the defendant preliminary objection was filed with regards to maintainability of the suit and amongst other it was contended that the contract of employment between the petitioner and the respondent stood terminated in accordance with the terms of the contract vide letter dated 10th February, 1999. It was therefore contended that the suit as filed by the plaintiff petitioner for injunction virtually amounts for grant of relief for enforcement of a contract which by its very nature is determinable and in fact was determined. Further a contract which involves performance of continuous duty can not be enforced in view of the provisions of Section 14 of the Specific Relief Act. It was further submitted that temporary injunction as prayed for by the plaintiff was hit by the provisions of Order XXXIX Rule 2 as amended in the State of U.P. and Section 41(41)(E) of Specific Relief Act. Lastly the temporary injunction prayed by the plaintiff cannot be granted in view of Section 41(41)(E).

5. The trial court after hearing the parties by means of the order dated 20.11.2001 rejected the temporary injunction application. Feeling aggrieved by the aforesaid order of the trial court, the plaintiff filed first appeal from order, which was registered as Misc. Appeal No. 175 of 2001. The XI Additional District and Sessions, Judge, Varanasi by means of the judgment and order dated 21st February, 2003 dismissed the appeal so filed by the plaintiff. The aforesaid two orders have been challenged by means of the present writ petition.

6. On behalf of the petitioner it is contended that both the courts below have failed to take into consideration (a) that the rights of the parties are to be determined on the basis of the facts as were existing on the date the suit was instituted (b) the order terminating the contract of employment was null and void and therefore liable to be ignored inasmuch as necessary one month notice/ salary in lieu thereof had not been paid to the petitioner before terminating his employment, (iii) in the facts of the case, damages in terms of money cannot be said to be adequate compensation inasmuch as the entire family and future progress of the children of the petitioner will be jeopardized in case he thrown out of employment.

7. In support of his contention the petitioner has relied upon the legal

propositions namely that damages are granted for the purposes of supplementing the relief, which the plaintiff may be entitled, is not the only remedy. It is further contended that the courts below have to safeguard the plaintiff against the acts of defendants of over reading the court proceedings as has been done in the facts of the present case inasmuch as on coming to know of the filing of the suit the defendant decided to terminate the contract itself without following the procedure prescribed. Lastly it is submitted that both the courts below have failed to take into consideration the order of termination being void was liable to be ignored and therefore none of the rights of the plaintiff are adversely affected because of the termination of order. Counsel for the petitioner placed reliance upon the judgment of the Hon''ble Supreme Court reported in 1997 Supreme Court 2284 Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, Supreme Court 527.

8. On behalf of the respondent it is contended that admittedly the petitioner has not been in the employment of the defendant since 2001. This Court for the first time by means of interim order cannot alter the situation, which has been in existence for last more than three years. The legal position in that regard has been clarified by the Hon''ble Supreme Court in the judgment reported in U.P. Junior Doctors'' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others, . It is further submitted that the courts below have rightly placed reliance upon the provisions of Section 14(C) and (D) read with Section 41(E) of the Specific Relief Act as also upon the provisions of Order XXXIX Rule 1 and 2 for refusing the interim injunction prayed for by the plaintiff petitioner. The order passed by the courts below are based on the principles which have been enunciated by the Hon''ble Supreme Court and the Hon''ble High Court. This Court under Article 226 of the Constitution of India may not sit in appeal over the reasons so assigned by the courts below inasmuch as the this Court is only exercising supervisory jurisdiction.

9. I have heard counsel for the parties and have gone through the records of the writ petition.

10. From the facts, which are not in dispute, it is apparently clear that the plaintiff is not in the employment of the defendant since September, 2001. The suit proceedings were initiated in the year, 2001 itself and the temporary injunction applications was rejected by the trial court as well as the appellate court with reference to provisions of Order XXXIX Rule 1 and 2 Section 14 and Section 41 of the Specific Relief Act.

11. In such a fact situation, in the opinion of the Court, no purpose would be served by requiring the court below to re-examine the matter with regards to grant of temporary injunction on the facts and grounds as has been pleaded on behalf of the petitioner nor any interim order directing reinstatement of the plaintiff by this Court at such a belated stage would be justified.

12. It would be fair and just in the circumstances of the case that the suit itself

may be decided at the earliest possible. Therefore, without entering into the merit of the order passed by the courts below, it is provided that the Original Suit No. 807 of 2001 be decided by the trial court at the earliest possible, preferably within six months from the date a certified copy of this order is filed before the court. It is made clear that trial court shall not grant any unnecessary adjournment to any of the parties.

13. In view of the aforesaid, writ petition is dismissed subject to observation made hereinabove. Interim order, if any, stands discharged.