
(2011) 07 AHC CK 0360
In the Allahabad High Court
Case No : Writ Petition No. 3784 of 2011

Jamuna Prasad and another	Vs	APPELLANT
Civil Judge (J.D.), West Hardoi and others		RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2011) 114 RD 548

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Judgement

Anil Kumar, J.—Heard Sri Ram Bux Rawat, learned Counsel for petitioner, Sri Anurag Shukla, Advocate holding brief of Sri Manish Kumar, learned Counsel for O.P. No. 1. As the controversy involved in the present case is trivial in nature so with the consent of learned Counsels for the parties present today, the present writ petition is finally disposed of at the admission stage.

2. Facts in brief as submitted by the learned Counsel for the petitioner are that for redressal of his grievances, petitioner filed a suit for permanent injunction, registered as Regular Suit No. 230 of 2011 in the Court of Civil Judge (Jr. Div.), Hardoi/O.P. No. 1.

3. As per submission of learned Counsel for petitioner, in the said suit, an application for grant of temporary injunction under Order XXXIX Rule 1 & 2 CPC moved and Court below passed an order that before granting injunction, it is appropriate to hear respondents, accordingly notices issued and the next date fixed is 27.7.2011.

4. Accordingly, present writ petition filed by petitioner with following main prayer:

(1) Issue a writ, order or direction in the nature of mandamus commanding the opposite party No. 1/court below to consider and decide the application for interim injunction under Order-XXXIX Rule-1&2 CPC on or before date fixed pending in the civil suit No. 230 of 2011 before opposite party No. 1, contained

as annexure No. 4 to the writ petition.

(2) Issue a writ or direction in the nature of mandamus the opposite parties not to disturb the possession of the petitioners over the land in dispute during pending application for interim injunction under Order-XXXIX Rule 1&2 CPC in civil suit No. 230 of 2011 before the Court below.

5. In view of the above said factual background the question which immediately arises is that what principles should be followed by the Courts in the matter of grant of an ad-interim injunction. The answer is contained in the decision of the Hon"ble Apex Court in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, a Bench of three Judges of Apex Court has held that:

It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course, grant of injunction is within the discretion of the Court and such discretion is not to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injection is, thus, to maintain the status quo. The Court grants such relief according to the legal principles- *ex debito justitiae*. Before any such order is passed the Court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and that the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

6. In the case of Dalpat Kumar v. Prahlad Singh, 1992 RD 210 (SC) a Bench of two Judge of the Apex Court held that the phrases "*Prima facie* case", "*balance of convenience*" and "*irreparable loss*" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The Court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused.

7. In Woodroffe's Low Relating to Injunctions, 2nd revised and entarged Edn., 1992. at page 56 in para 30 01,. it is stated that :

An injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law) existing in favour of the applicant who must have personal interest in the matter. In the first place, therefore, an interference by injunction is founded on the existence of a legal right, an applicant must be able to show a fair *prima facie* case in support of the title which he asserts.

8. In The Law Quarterly Review Vol. 109, page 432 (at p. 446), A.A.S. Zuckerman under the title "*Mareva* Injunctions and Security for Judgment in a

Framework of Interlocutory Remedies" has stated:

The Court considering an application for an interlocutory injunction has four factors to consider; first, whether the plaintiff would suffer irreparable harm if the injunction is denied; secondly, whether this harm outweighs any irreparable harm that the defendant would suffer from an injunction; thirdly, the parties' relative prospects of success on the merits; fourthly, any public interest involved in the decision. The central objective of interlocutory injunctions should therefore be seen as reducing the risk that rights will be irreparably harmed during the inevitable delay of litigation.

9. In view of the abovesaid fact, so far as the relief No. 2 as claimed by the petitioner cannot be granted at this stage because the matter in respect to same is sub-judice before the Court below.

10. So far as the relief No. 1 is concerned for early disposal of the application for grant of temporary application, as the prayer made by the learned Counsel for the petitioner is trivial in nature, so the interest of justice will sub-serve in the present case that the same may be considered.

11. Accordingly, a direction is issued to the Civil Judge (Jr. Div.), Hardoi/O.P. No. 1 to decide the matter in question on the next date i.e. 27.7.2011 if not possible on the said date then within a period of two weeks thereafter after hearing Counsel for the parties on merit.

12. With the above observations, the writ petition is disposed of finally.

13. It is clarified that the this Court has not adjudicated the claim of the petitioner on merit.