
(1971) 08 PAT CK 0017
In the Patna High Court
Case No : Misc. Judicial Case No. 188 of 1970

J.V. Bhawe

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 80
Constitution of India, 1950 — Article 228

Citation : AIR 1972 Patna 158

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : Bishwanath Agarwal, for the Appellant; T.K. Jha and Debeshwar Prasad Jha, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—This application under Article 228 of the Constitution of India read with Section 24 of the CPC (hereinafter referred to as "the Code") is filed by the sole petitioner who is the sole plaintiff in the court below, for transferring Title Suit No. 43 of 1970 pending before Shri S. K. Prasad, Additional Subordinate Judge, Second Court. Dhanbad, to this Court, on the ground that the constitutionality and validity of Section 80 of the Code would be required to be decided in the said suit.

2. In order to appreciate the contention of learned counsel for the petitioner as well as of the opposite party, it will be necessary to state briefly some relevant facts. On the 13th of March, 1970 the petitioner instituted the said title suit impleading opposite party Nos. 1 to 4 as defendants. In the said suit the petitioner sought relief for declaration that he was entitled to be promoted to the post of Deputy Coal Mines Welfare Commissioner on which post opposite party No. 4 was promoted. The petitioner also prayed for injunction restraining opposite party Nos. 1 to 3 from giving effect to their order and restraining opposite party No. 4 from joining the said post. On the same date when the suit

was instituted the learned Subordinate Judge granted ad interim injunction as prayed by the plaintiff-petitioner and restrained the opposite party.

3. On the 31st of March, 1970, opposite Party No. 4 appeared and filed show cause and prayed for early date for hearing the injunction matter. On the 16th April, 1970, opposite party Nos. 1 to 3 also filed their show cause. The Court below fixed 23rd of April, 1970 for hearing the injunction matter. However, it was heard on various dates, viz., 24-4-1970, 25-4-1970, 1-5-1970, 2-5-1970 and 6-5-1970. Further hearing of the injunction matter was fixed on 9-5-1970 on which date the petitioner filed a petition informing the court that he had filed an application u/s 24 of the Code before the District Judge for the transfer of the suit from his Court to some other court, which gave rise to a miscellaneous case. After hearing counsel for the parties, the case was transferred to the court of Shri S. K. Prasad, Additional Subordinate Judge, Second Court, Dhan-bad. The next date in the suit was 14-8-1970. On that date the plaintiff-petitioner filed an application for adjournment which was allowed and the case was adjourned to 25-8-1970. On 26-8-1970 the petitioner filed an application u/s 113 of the Code before the said Subordinate Judge. On 16-9-1970 opposite party Nos. 1 to 3 filed a petition before the court below under Order VII, Rule 11 of the Code for rejecting the plaint of the petitioner on the ground that notice u/s 80 of the Code was not served. The court granted time till 18-9-1970 to the petitioner to file rejoinder to the application, if required. The petitioner filed a rejoinder to the effect that he had already filed an application u/s 113 of the Code before the court for referring the matter to the High Court. The trial court ordered that the petition filed by opposite party Nos. 1 to 3 would be heard along with the injunction matter. Thereafter the petitioner has filed the present application on 17-12-1970 in this Court.

4. Learned counsel for the petitioner has submitted that on the facts and in the circumstances of the case this Court should transfer the suit from the court below to this Court for disposal- He submitted that in the instant case since the petitioner has not served notice u/s 80 of the Code, his suit is bound to be dismissed on the application filed on behalf of opposite party Nos. 1 to 3. Therefore, the constitutionality of Section 80 of the Code has to be decided in that suit. He also referred to a decision in the case of *The State of Bihar and Another Vs. Jiwan Das Arya*, where Untwalia and Mukharji, JJ., while dealing with the provisions contained u/s 80 of the Code, in paragraph 7 of their judgment doubted the constitutionality of Section 80 of the Code. But in that case their Lordships have not decided one way or the other. Rather, their Lordships have held that since the point had not been raised nor it was argued, they did not think it proper to decide that matter.

5. In my view, the above observation of their Lordships is not of much assistance to the contention advanced on behalf of the petitioner. It may be seen that in the instant case in the main suit itself the constitutionality of Section 80 of the Code is not challenged directly or indirectly, nor at present any issue is framed on the

pleadings of the parties. Therefore, in that case also no issue is raised on the point of constitutionality of Section 80 of the Code.

6. Mr. Jha, Standing Counsel No. 2, appearing on behalf of opposite party Nos. 1 to 3, has advanced further grounds for rejecting the application of the petitioner. He has urged that from the facts and circumstances stated above it is clear that the application of the petitioner is not bona fide. The petitioner himself is trying to delay the disposal of the injunction matter on some ground or the other after obtaining ad interim injunction in his favour.

7. He also referred to Article 228 of the Constitution of India, the relevant portion of which reads as follows :--

"If the High Court Is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case....."

On the basis of this, he submitted that the determination regarding the notice as required u/s 80 of the Code, does not involve interpretation of any Article of the Constitution. Therefore, it does not come under Article 228 of the Constitution.

To repel this contention, learned counsel for the petitioner has pointed out that he has challenged Section 80 of the Code because it is violative of Article 19 of the Constitution of India. Therefore, that may come under the provision of Article 228 of the Constitution of India. But for the reasons already discussed above, I am not inclined at this stage to allow the application of the petitioner. Therefore, it is rejected. In the circumstances of, the case, however, there will be no order as to costs.