(2010) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 934 of 2010

Kalubhai Nankabhai Patgir APPELLANT

Vs

Manager, Afconc Infrastructure ltd. and Others RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2010) 02 GUJ CK 0009

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : S.P. Majmudar, for the Appellant; M.B. Parikh and V.S. Pathak, Learned Asst. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition, invoking the provisions of Articles 226 and 227 of the Constitution of India, has been filed, challenging judgment and order dated 11.01.2010, rendered by the learned Principal District Judge, Amreli, in Civil Misc. Appeal No. 42/2009, whereby the order dated 14.10.2009, passed by the learned Principal Senior Civil Judge, Amreli, below applications at Exh.5 (filed by the respondent No. 1/original plaintiff) and Exh.36 (filed by the petitioner/ original defendant No. 2), in Regular Civil Suit No. 83/2009, has been confirmed.

2. The relevant facts, sufficient for the decision of the petition, are that the petitioner (defendant No. 2 in the above mentioned suit), entered into a Lease Agreement with the respondent No. 8, Cross Link Infrastructure Limited (original defendant No. 8), in respect of agricultural lands owned by him, bearing Survey No. 194/P admeasuring 2-Acre and 0-Guntha, and land comprised in Survey No. 196/P admeasuring 1-Acre and 29-Gunthas, situated at Village Aadsang, Taluka Savarkundla, District Amreli. The Lease Agreement between the petitioner and respondent No. 8, was entered into on 06.08.2008, and by way of the said agreement, the petitioner had agreed to lease the said land for a period of one year, for a lease amount of Rs. 1,95,563/-. By way of the above agreement, the

petitioner agreed to permit respondent No. 8, to use the said land by installing certain machinery, for the purpose of crushing stone and for storage of stone. It was also agreed that the petitioner would not cause any obstruction to the agents and contractors of respondent No. 8, for carrying out their work, on the said land, as per the agreement. The parties agreed that in case the work of respondent No. 8 would not get completed within a period of one year, the petitioner was free to raise the rental amount, and conversely, if respondent No. 8 uses the said land for a period of less than one year, the petitioner would refund the excess amount to it. Accordingly, respondent No. 8 installed a stone-crusher on the agricultural land of the petitioner. As per the Lease Agreement, the petitioner has taken an amount of Rs. 1,95,563/- in advance from respondent No. 8 (which is disputed by the petitioner). The respondent No. 1, Afcons Infrastructure Limited, is the original plaintiff. The machinery belonging to respondent No. 1 has been installed by respondent No. 8 on the land of the petitioner, for carrying out the work of stone-crushing. The case of respondent No. 1 in the suit is that, the machinery belonging to it is worth Rs. 4,70,00,000/-, and as the said machinery is not suitable for the work undertaken, permission to remove the said machinery may be granted. A declaration is sought to the effect that respondent No. 1 is the independent owner of the said machinery. A permanent injunction, restraining defendants Nos. 1 to 7, including the petitioner (defendant No. 2), from obstructing respondent No. 1, in the removal of the machinery, has also been prayed for. The petitioner filed a counter-claim in the suit, wherein he has prayed that as respondent No. 8 has caused damage to his land due to which the petitioner has suffered losses of Rs. 4,00,000/- per agricultural season, the said amount may be directed to be paid to him, with interest at the rate of 18% per annum. The petitioner has also prayed that the land of the petitioner be restored to the condition in which it was, on the date of the agreement, that is on 06.08.2008, so as to enable him to take agricultural produce there from, and, further, respondent No. 8 may be directed to bear the expenses. The respondent No. 1 (original plaintiff) moved an application at Exh.5 in the suit, with a prayer for police protection at its cost, and for directions that when its machinery is being removed from the land in question, by its authorized representatives, the petitioner or its agents or servants may be restrained from causing any obstruction. The petitioner also filed an application at Exh.36, with a prayer to the effect that respondent No. 8 may be directed to remove the concrete from the land of the petitioner, and while lifting the machinery, respondent No. 8 may be directed to restore the said land, to its original condition. The second prayer made in the said application is that respondent No. 8 may be directed to deposit an amount of Rs. 20,00,000/- in the Trial Court, before machinery is lifted. Both the applications at Exh.5 and Exh.36, have been decided by a common order dated 14.10.2009, by the Trial Court, whereby Exh.5 of respondent No. 1 has been allowed, and Exh.36 filed by the petitioner, has been dismissed. Aggrieved thereby, the petitioner approached the District Court by filing the above-mentioned appeal, which has been dismissed by passing the impugned order, giving rise to the filing of the petition.

3. Mr. S.P. Majmudar, learned Counsel for the petitioner has submitted that the impugned orders passed by the Courts below, are erroneous, inasmuch as mandatory relief has been granted to respondent No. 1, which almost amounts to granting the main prayer in the plaint, and the suit stands partially decreed, without evidence being led. It is submitted that the Courts below could not have granted interim relief which is in the nature of final relief, and as the impugned orders of the Trial Court as well as that of the lower Appellate Court have been passed, without considering the factors of prima-facie case, balance of convenience or irreparable loss, that would occur to the petitioner, which is necessary for the grant of mandatory relief, the said orders are unmaintainable in law, and deserve to be quashed and set aside. The learned Counsel for the petitioner has further urged that permitting respondent No. 1 to take away the machinery from the land of petitioner, without assessing the damage, will adversely affect the counter-claim filed by the petitioner, who will be unable to establish the extent of the damage to his agricultural land. Referring to the impugned order of the lower Appellate Court, where it is observed that the petitioner is wrongfully restraining respondent No. 1 from removing its machinery, though there is no privity of contract between the petitioner and respondent No. 1, therefore, the petitioner cannot seek equity when he himself has not done equity; the learned Counsel for the petitioner has contended that this observation equally applies to respondent No. 1, who has installed the machinery on the land of the petitioner, by committing breach of the relevant provisions of law. It is urged by the learned Counsel for the petitioner that the findings of the Courts below that there is no privity of contract between the petitioner and respondent No. 1, strengthen the case of the petitioner that respondent No. 1 should not be permitted to remove its machinery from the land, as the matter of contractual obligation is required to be proved by evidence, during trial. It is further contended on behalf of the petitioner that the Panchanama of the land shows that extensive damage has occurred to the agricultural land of the petitioner, and respondent No. 8 is liable to compensate the petitioner, as per the prayer made in the counter-claim. The learned Counsel for the petitioner has further urged that there is no legal or justifiable reason in the impugned orders for rejection of the application at Exh.36, and in that sense, the impugned orders are unreasoned ones, therefore, this Court may grant interim relief in the form of an order of status-quo. In support of his submissions regarding grant of mandatory injunction, the learned Counsel for the petitioner has placed reliance upon the following judgments:

(i) Metro Marins and Anr. v. Bonus Watch Co. Pvt. Ltd. and Ors. reported in AIR 2005 Sc 1444.

(ii) Dorab Cawasji Warden Vs. Coomi Sorab Warden and others,

4. The grant of interim relief has been contested by Mr. M.B. Parikh, learned advocate appearing for the Caveator (respondent No. 1). It is submitted by him

that the Lease Agreement dated 06.08.2008, entered into between the petitioner and respondent No. 8, makes it clear that it is for a period of one year only. It also shows that respondent No. 1 (original petitioner) is not a party to the said agreement. The petitioner has already taken an amount of Rs. 1,95,563/- as lease money for a period of one year from respondent No. 8, with whom he has entered into an agreement, permitting said respondent to install machinery such as a stone-crusher, on the land of the petitioner, in order to carry out the work of crushing and storing stone, upon his land. The learned Counsel for the caveator has submitted that the petitioner is very well aware of the terms of the agreement. The respondent No. 1 started removing its machinery on 08.12.2008, meaning thereby, that the land has hardly been used for four months, though payment of Rs. 1,95,563/- has been made to the petitioner for a period of one year. The learned Counsel for the caveator has submitted that the machinery belongs to respondent No. 1, which is admitted by respondent No. 8, with whom the petitioner has entered into a Lease Agreement. There is no dispute regarding this aspect that the machinery, which is very expensive, will deteriorate, if it is lying idle on the land, for an indefinite period of time. Respondent No. 1 has been constrained to file the suit for a declaration that the machinery belongs to the said plaintiff, who may be permitted to remove the same from the land of the petitioner, as the petitioner and other villagers are threatening the employees of the plaintiff (respondent No. 1) with dire consequences. It is submitted that the prayer for police protection has been made in the application at Exh.5 for this reason and the same has been rightly granted by the Courts below. The learned Counsel for the caveator has further submitted that, in the counter-claim the petitioner has prayed for damages suffered by him during the agricultural season, and also for restoration of the land, to its original condition. If respondent No. 1 is not permitted to remove its machinery from the said land, it cannot be understood how the land can be restored to its original condition, therefore the stand taken by the petitioner is contradictory. Taking the Court to the prayers made in the application at Exh.36 filed by the petitioner, it is emphasized by learned Counsel for the caveator that there is no objection, whatsoever, to the lifting of the machinery by respondent No. 1, but, on the contrary it is submitted by the petitioner that the machinery may be permitted to be lifted, only after respondents Nos. 1 and 8 give an undertaking to restore the land to its original position. The second prayer is for directions to respondent No. 1 to deposit an amount of Rs. 20,00,000/- before the machinery is lifted. In this context, it is submitted by Mr. M.B. Parikh, learned Counsel for the caveator that the petitioner has not objected to the lifting of the machinery, rather has made a prayer for compensation and deposit of an amount of Rs. 20,00,000/-, which is far beyond the amount of compensation, prayed for in the counter-claim, itself. On the basis of the above submissions, the learned Counsel for the caveator has submitted that the court may not grant interim relief or entertain the petition.

5. I have heard the learned Counsel for the petitioner and the learned Counsel

for the caveator, perused the averments made in the petition and contents of the impugned orders and other documents on record. Both the learned Counsel have argued at length, and the petition itself can be decided at the threshold.

6. The admitted position that emerges from a perusal of the material on record is that, the petitioner has entered into a Lease Agreement with respondent No. 8, and there is no privity of contract between the petitioner and respondent No. 1. It is also not disputed that the machinery lying on the land of the petitioner belongs to respondent No. 1. From the impugned order of the lower Appellate Court, it emerges that, before entering into the Lease Agreement with respondent No. 8, the petitioner has not taken the permission of the competent authority (the Collector, Amreli), before using his agricultural land for non-agricultural purpose. It is in this context that the lower Appellate Court has made the observation that a person who seeks equity must also do equity, and as the petitioner has entered into an agreement with respondent No. 8, without taking the permission of the Collector, and as there is no privity of contract between the petitioner and respondent No. 1, the petitioner cannot prevent respondent No. 1 from removing its machinery from the land. The Trial Court, while allowing the application at Exh.5, filed by respondent No. 1 and dismissing the application at Exh.36 filed by the petitioner has, after meticulously discussing the material on record, arrived at the finding that there is a prima-facie case in favour of respondent No. 1 (original plaintiff) and the balance of convenience also tilts in its favour, as the machinery is very expensive and damage is likely to be caused to it. It is also found that irreparable loss is likely to be suffered by respondent No. 1, if the machinery is not permitted to be removed. From the discussion made in the order of the Trial Court, it is amply clear that the impugned order has been passed after properly taking into consideration the legal and factual position. In my considered view, there is no infirmity in the order of the Trial Court, which has been rightly confirmed by the lower Appellate Court.

6.1 In Dorab Cawasji Warden v. Coomi Sorab Warden (supra.), the Supreme Court has laid down general guidelines for grant of interim mandatory injunction. The relevant paragraphs are reproduced herein below:

16. 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 trail. 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.

17. 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 or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

6.2 It is mentioned in paragraph-17, that being essentially an equitable relief, the grant or refusal of an interlocutory, mandatory injunction, ultimately rests upon the sound judicial discretion of the court, in the light of the facts and circumstances of each case. Accordingly, looking to the facts of the present case, there is no doubt that there is no privity of contract between the petitioner and respondent No. 1, therefore, the finding of the courts below that respondent No. 1 (plaintiff) has a strong prima-facie case in its favour, as the petitioner is seeking to restrain it from removing its machinery, without being any contractual obligations between them, cannot be said to be erroneous. Equally, it is admitted that the machinery belongs to respondent No. 1 and not to respondent No. 8, with whom the petitioner has entered into a Lease Agreement. Nor is it denied that the machinery is worth over Rs. 4 Crores and will deteriorate, if it is permitted to stand idle and face the vagaries of the weather, for an indefinite period of time. In this view of the matter, the guidelines enumerated in the above-quoted decision, would favour the respondent No. 1 more than the petitioner. In Metro Marins and Anr. v. Bonus Watch Co. Pvt. Ltd. (Supra.), similar principles of law have been enumerated. As respondent No. 1 has succeeded in establishing before both the courts below that irreparable loss would be caused to it, if an injunction is not granted to him, no illegality or jurisdictional error has been committed by the Trial Court or the lower Appellate Court, in granting the same and by passing the impugned orders. The said orders are based on a thorough scrutiny of the facts and material on record and contain sound reasons.

7. In so far as the damage to the land of the petitioner is concerned, that aspect is to be determined by the Trial Court during trial, on the basis of the counter-claim filed by the petitioner.

8. There are concurrent findings of fact of both the courts below, against the petitioner, and in favour of respondent No. 1, based on clear and cogent reasons, after meticulous discussion of the material on record. This Court is not sitting as an Appellate Court and can exercise its supervisory power, if a manifest error of law and jurisdiction has been committed by the courts below. Such is not the

case, in the present petition. As the impugned orders of both the Courts below do not suffer from any illegality, or manifest error of law or jurisdiction, the interference of this Court is not warranted.

The petition fails, and is dismissed.

