

(2004) 05 AHC CK 0173
In the Allahabad High Court
Case No : C.M.W.P. No. 20055 of 2004

Keshaw Kumar and Another	Vs	APPELLANT
U.P. Khadi and Village Industries and Others		RESPONDENT

Date of Decision : 24-05-2004

Acts Referred:

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

Citation : (2004) 3 AWC 2765

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : K.D. Tripathi, for the Appellant; Rajendra Prasad Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard Sri K. D. Tripathi learned counsel appearing on behalf of the petitioners-plaintiffs and Sri Rajendra Prasad Singh, learned counsel for the respondent Nos. 1 and 2.

2. Petitioners-plaintiffs by means of present writ petition has challenged the order passed by the trial court, whereby the trial court has refused to grant temporary injunction to the plaintiffs to the effect that no recovery shall be made by selling or auctioning the property in question which was admittedly mortgaged with the defendants, who have advanced a loan of Rs. five lacs, forty thousand and odd to Sri Pratap Singh. Aggrieved thereby, the petitioners approached the lower appellate court. The lower appellate court maintained the order passed by the trial court and dismissed the appeal. These two orders impugned in the present writ petition, which have been challenged by the petitioners in this petition.

3. The petitioners case is that they are neither the loaner, nor guarantor and that the property in question, which was mortgaged with the defendants has been inherited by them by virtue of a Will. The petitioners, therefore, contended that

the trial court as well as the lower appellate court has committed an error of law in refusing to grant temporary injunction to the petitioners. Order XXXIX. Rule 2 of the Code of Civil Procedure, as amended by State of U. P., whereby the proviso has been added, particularly, Clause (g), which is reproduced below :

"Order XXXIX, Rule 2 of Code of Civil Procedure

"(g) Provided that no such injunction shall be granted to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished."

4. Learned counsel appearing on behalf of the petitioners on being put a question whether they have deposited, or are willing to deposit the amount, they have submitted that they may be granted an opportunity to deposit the money in easy instalments, which is not permissible under the aforesaid law and in this view of the matter. I do not find any error committed by the trial court as well as the lower appellate court in refusing to grant temporary injunction to the petitioners.

5. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. However, the parties shall bear their own costs.