
(1993) 05 PAT CK 0001
In the Patna High Court
Case No : Civil Revision No. 470 of 1990

Lakshmi Singh and others

APPELLANT

Vs

Prithivi Raj Prasad and others

RESPONDENT

Date of Decision : 12-05-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1993) 2 PLJR 303

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Shivanandan Roy, Devendra Pd. Singh and Brajesh Sharma, for the Appellant; S.C. Ghose and Kalyan Kr. Ghose for Opposite Party Nos. 1 to 6 and 9 and Mr. Gautam Bose for Opposite Party Nos. 7 and 8, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—This revision arises out of an injunction matter. The defendants-petitioners having lost in both the courts below have challenged the order restraining them from withdrawing money on the basis of bills in respect of the execution of certain contract work. It is true, as contended, by Mr. S. C. Ghose, Learned Counsel for the plaintiffs-opposite party, that this Court in exercise of revisional jurisdiction u/s 115 of the CPC normally does not interfere with the findings of fact in such matters. Reliance placed by the Learned Counsel on decisions of the Supreme Court in the cases of *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, and *The Municipal Corporation of Delhi Vs. Shri Suresh Chandra Jaipuria and Another*, cannot be said to be out of place. However, that is not the end-all of the matter. There cannot be any hard and fast rule that this Court shall in no case interfere with an injunction order in revision.

2. It is well known that court has jurisdiction to issue injunction only if it finds prima facie case, balance of convenience and irreparable injury in favour of the party applying for injunction. In the absence of any of these ingredients the court

has no jurisdiction to issue injunction. The plaintiffs have instituted the instant suit for dissolution of partnership firm, and rendition of accounts. The claim, in substance, is in the nature of money claim. The trial court while dealing with the question of irreparable injury held that if defendants are not restrained from withdrawing the money the plaintiffs may be put to inconvenience and harassment and may have to incur additional expenses. At the appellate stage, the aforesaid finding was challenged by the defendants. The appellate court rejected the contention in the following terms :

..... This aspect of the case cannot be ignored only on technical ground. As such, I find myself in agreement with the learned Munsif that the plaintiff's interest will be impaired irreparably if the temporary injunction is not issued.

It is difficult to appreciate the rationale of the courts below. The expression "irreparable injury" has got definite connotation. The "injury" must be such as cannot be compensated in terms of money. The claim being in the nature of money claim, it is difficult to appreciate how, in the event of success in the suit, the plaintiffs cannot be compensated monetarily.

3. Counsel for the plaintiffs stated that the defendants are not persons of status possessing sufficient assets and, therefore, it would be difficult for plaintiffs to recover the amount. In the instant case, that aspect of the matter does not arise for consideration. If the plaintiffs apprehends that even after their success in the suit, they cannot recover the money from the defendants they can take recourse to other remedies available to them. So far as the question of issue of temporary injunction is concerned, the matter has to be considered on the touch stone of Rules 1 and 2 of Order 39 of the Civil Procedure Code. Having regard to the nature of the claim and injunction sought in the instant case as well as in view of the finding recorded by them, the courts below could not have granted injunction in favour of the plaintiffs. That being the position, the ratio laid down by the Supreme Court in the aforementioned cases is not applicable on the facts of the case.

4. Counsel for the opposite first party challenged the maintainability of the appeal in the court below on the ground that the firm had not been made party. Reliance was placed on *Yadav Ram Vs. Laxman Singh Bisht*, . In view of the nature of defect in the order of the trial court, it is not necessary to examine the effect of non-impleadment of the firm as party respondent at the appellate stage.

In the result, this application is allowed and the orders of the courts below are set aside. There will be no order as to costs.