
(1983) 11 OHC CK 0012
In the Orissa High Court
Case No : Civil Revision No. 173 of 1982

Laxidhar Behera

APPELLANT

Vs

Radhakrushna Enterprisers and Others

RESPONDENT

Date of Decision : 29-11-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1984) 1 OLR 131

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : R.K. Mohapatra, A.N. Misra, U.C. Panda and B. Routray, for the Appellant; A.G., A.S.C. and N. Prusty, Ashok Misra, R.N. Das, P.K. Misra and P.M. Rath, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—This revision is directed against the order of the District Judge, Cuttack in Misc. appeal no 132 of 1978 rejecting the prayer of the plaintiff-appellant to issue an order of mandatory injunction directing defendant No. 2 (opposite party No. 3 in this revision) to deposit in Court the amount withdrawn by him in the circumstances mentioned in the succeeding paragraphs.

2. The plaintiff had filed the suit for dissolution of partnership and for accounts on the allegation that he and defendants Nos. 2 to 4 constitute a partnership firm in the name and style of "Radhakrushna Enterprisers", impleaded as defendant No. 1 in this suit. It has been stated that defendant no 2 had undertaken a contract work under the State Government and the partnership was constituted as defendant No. 2 alone could not complete the execution of the work. According to the plaintiff, the partnership deed executed between the parties on 16-3-68 contain stipulations that defendant No. 3 would act as the Managing Partner and was authorised to withdraw the money due to the firm, maintain accounts and operate the same. The power of attorney was accordingly executed in his favour and the State Government was intimated about the authority of the

partnership firm vis-a-vis the stipulation as to the withdrawal of the money by defendant No. 3. It is also alleged that another agreement was executed on 8-10-71 between defendant No. 2 and the other partners of the firm in which it was agreed that it is defendant No. 3 alone who would withdraw all amounts from the State Government on account of the works executed by the firm. There was some dispute amongst the partners for which the matter was referred to the Arbitrator in terms of the clause of the partnership deed. The Arbitrator passed an award that defendant No. 2 would withdraw a sum of Rs. 2,27,458/- on behalf of the firm. The plaintiff has thereafter filed the suit for the aforesaid reliefs and made an application for issue of temporary injunction restraining defendant No. 2 not to withdraw the amount in pursuance of the award and to direct the State Government to deposit in Court the amount awarded. The said application was rejected by the learned Subordinate Judge against which Misc. appeal No. 132 of 1978 was filed by the present petitioner. The learned District Judge found that the reasoning of the learned Subordinate Judge for refusing injunction was misconceived. He further found that even if the matter would not come under Order 39 Rules 1 and 2 C. P. C. the Court had Jurisdiction to issue an order of injunction u/s 151 C. P. C. to avoid the abuse of the process of the Court. In his ultimate analysis, the learned District Judge has found that there is material on record to show that the amount under the award is due to the firm and not to any individual partner and that it is a fit case where the Court should have granted injunction to secure the amount pending decision of the suit. The learned District Judge has also held that the order of the learned trial Court is palpably wrong and cannot be supported.

3. After the filing of the appeal, the District Judge had passed an order of temporary injunction and restrained the State of Orissa not to make any payment in terms of the award to defendant No. 2. But before the order had reached its destination, payment of the amount appears to have been made to defendant No. 2. It was therefore prayed on behalf of the plaintiff-appellants before the learned District Judge that in view of the subsequent development, it is appropriate that the Court should direct defendant No. 2 by way of mandatory injunction to deposit the amount in Court. The learned District Judge considered this prayer of the plaintiff and came to the conclusion that the amount under the award had not been received by defendant No. 2 when the suit was filed and that the status quo ante would be maintained if a direction to defendant No. 2 is given to deposit the amount. As a matter of law, he agreed with the plaintiff that it was permissible to pass such an order of injunction and in the circumstances, a direction to defendant no- 2 to deposit the amount would be an appropriate order. But in view of the fact that the amount had been withdrawn by defendant No. 2 more than three years back, he declined to interfere observing that such an order would be fruitless and that the status quo ante in such a case cannot be restored easily.

4. The aforesaid reasoning of the learned District Judge does not appear to be correct. The justification for deposit of the amount withdrawn by defendant No. 2

having been rightly found by the District Judge, the order for directing deposit of the amount in Court should have been passed as a necessary consequence. Any order passed by Court, if not complied with, is enforceable in law. The execution of an order is a mode of enforcement with which the District Judge was not concerned at the stage when he was to pass an order. As a matter of fact, the appeal before him was filed in the year 1978 which came to be disposed of in the year 1982. The delay in disposal of the appeal in the appellate court was certainly not a fault of the appellant. If in law, appellant was entitled to a relief, which has not become infructuous by lapse of time, the delay in disposal of the appeal would not take away that relief. In the circumstances, it is expedient in the interest of justice that defendant No. 2 should be directed to deposit in Court the amount withdrawn by him.

5. I, therefore, allow this revision, set aside the impugned order of the learned District Judge and direct defendant no- 2 to deposit the amount withdrawn by him in Court within four months from today failing which the order shall be enforced by execution. There will be no order for costs of this revision. The order of injunction passed by this Court on 19-3-82 shall remain in force till the expiry of four months from the date of this order.