
(1994) 01 CAL CK 0023
In the Calcutta High Court
Case No : C.O.2384 of 1993

Malati Santra and others

APPELLANT

Vs

Nanda Dulal Banik and others

RESPONDENT

Date of Decision : 13-01-1994

Acts Referred:

Arbitration Act, 1940 — Section 5
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 10, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 4

Citation : AIR 1994 Cal 229

Hon'ble Judges : R. Bhattacharyya, J

Bench : Single Bench

Advocate : Anil Kr. Chattopadhyaya, for the Appellant; Sudipta Maitra and Subhasish Pachhal, for the Respondent

Judgement

1. This revisional application has been preferred against an order No. 6 dated 13-10-1993, passed by the Id. 1st Asstt. Dist Judge, Howrah, in Misc Appeal No. 227 of 93, arising out of an order No. 6 dated 30-9-1993, passed by the Id. Munsif, 6th Court, Howrah, in Title Suit No. 174 of 1993.

2. To put it briefly, the plaintiff-petitioners instituted a title suit for declaration and permanent injunction being title suit No. 174 of 1993, along with an application under Order 39, Rules 1 and 2 read with S. 151 of the Code claiming ad interim temporary injunction restraining the defendant-opposite parties from appointing any new teaching staff till the disposal of the application coupled with a prayer to pass a direction on the defendants not to withhold the monthly salary.

3. In due course the defendant-opposite parties entered appearance and contested the claim of the plaintiff-petitioners. The Id. Court of the first instance allowed the application for ad interim temporary injunction in part against which an appeal arose being Misc. Appeal No. 227 of 1993. The appellant-petitioners also put in an application for temporary injunction as they did before the Id. trial Court below but the Id. 1st Asstt. Dist Judge did not find favour with the claim of

the appellant-petitioners of this revision.

4. Having heard the Id. Counsel for the parties, it appears that the Court of revision is not the competent Court to entertain a revisional application when an ad interim injunction was disallowed by the Court of the first appeal. The question arises in this way. On a suit being instituted by the plaintiff-petitioners seeking injunction which was allowed in part but on appeal to the Court of the Id. Dist Judge, the Asstt. Dist Judge did not accord the prayer for injunction which was refused in its entirety. The revisional application was hit upon by the appellant-petitioners to undo the order passed by the Court of Appeal. It is settled principle of law that an injunction when refused, the remedial measure is by way of an appeal. An Appeal lies from an order refusing, as well as from granting a temporary injunction.

5. If I walk through the bosom of Order 43, Rule 1 (r), it reveals that an order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order 39 is appealable. The refusal of injunction clearly verges on Order 43, Rule 1 Sub-rule (r) and, therefore, making room for the aggrieved to prefer a revision against the order impinged is impermissible.

6. In the light of the above, the present revision is incompetent. The Id. Counsel for the petitioner-revisionists has submitted that opportunity be given to convert the application into an Appeal. But I am unable to persuade myself to agree with the submission made by the Id. Advocate for the petitioner-revisionists.

7. To boost the claim, the petitioner-revisionists has relied on the *The Reliable Water Supply Service of India Vs. Union of India (UOI) and Others*, The facts of the case under reference are quite distinguishable from the case at hand. There, the trial Court was under the erroneous impression that the controversy before it fell within the scope of Section 5 of the Arbitration Act, 1940. Since the Court illegally exercised the jurisdiction, the conversion of a revisional application into an appeal was not permissible. But it is incomprehensible as to how the revisionists could seek to satisfy the requirements of law for converting the revision into an appeal. More so, revisional jurisdiction should not be so liberally exercised as to convert a revision into an appeal. When a revision is known to be incompetent from the outset, it should not be treated as appeal. It would not be proper to exploit or utilise the power of the Court in revision in order to treat a revision as an appeal when a revision is expressly prohibited by the C.P.C.

8. Therefore, the contention of Mr. Chattopadhyaya is of no avail.

9. Returning to examine the applicability of Section 115 of the C.P.C. there is hardly any scope to interfere with the order as the Id. Court below rightly exercised the power. It never acted illegally nor acted in breach of any provision of law nor acted with any material irregularity by committing some error of procedure in the course of the proceeding which turned to be material. Therefore, it would not be legitimate to interfere with the order within the realm of S. 115 of the C.P.C.

10. Accordingly the revision fails.

11. Petition dismissed.