
(2009) 01 MP CK 0037

In the Madhya Pradesh High Court

Managing Director, Century Textile Industries Ltd. and Others

APPELLANT

Vs

Smt. Manju Gupta and Another

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 14, 41

Citation : AIR 2009 MP 124 : (2009) 2 MPHT 84 : (2009) 2 MPLJ 70

Hon'ble Judges : U.C Maheshwari, J;Ramesh Surajmal Garg, J

Bench : Division Bench

Judgement

R.S. Garg, J.

The petitioners being aggrieved by the order dated 15-11-2008 passed by the learned Second Additional District Judge, Ashoknagar, Guna in Misc. Appeal No. 20/08 granting injunction in favour of the respondents after setting aside the order dated 6-9-2008 passed by the learned Civil Judge Class-1, Ashoknagar in Civil Original Suit No. 14A/08 have filed this petition under Article 227 of the Constitution of India.

The short facts necessary for disposal of the writ petition are, that the plaintiff No. 1 Smt. Manju Gupta claiming herself to be the Manager of Abhinav Enterprises Ashoknagar pleaded that she was the agent and sales promoter of the defendant-company and was having the work of clearing and forwarding. The agency went on properly upto 2007 but thereafter to earn more profit and with the intention of improving the business the defendants without observing the terms of the agreement entered into between the parties, terminated the agency. The plaintiffs filed a suit for declaration and injunction and in the suit also filed an application for grant of ad interim injunction with a prayer that till disposal of the suit the defendants be restrained from terminating the sales promotership and agency of clearing and forwarding with a further injunction against the defendants not to appoint any other person or body for the said purpose. The defendants appeared in the Court below and contested the suit on various

grounds. The learned Court below after hearing the parties came to the conclusion that present is not a fit case for grant of any injunction and, therefore, the plaintiffs were not entitled to any injunction. In the appeal, learned Appellate Court granted the injunction. Therefore, the defendants are before this Court.

We have heard the parties at length and shall now consider the arguments in seriatum.

Learned Counsel for the petitioners submitted that an injunction cannot be granted either in temporary form or perpetual in nature just for the sake of asking. According to him, the interim injunctions or perpetual injunctions can be granted if the requirement as provided under the law is fulfilled. It is also submitted by him that a juxtapose reading of Sections 41 and 14 of the Indian Specific Relief Act, 1963 would make it clear that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced and when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. It is also submitted by him that the plaintiffs came with the case that the agreement has been terminated abruptly and the agency has been illegally terminated and if such were the pleadings then injunction restoring the sales promotership and clearing and forwarding agency cannot be granted.

Shri Singh, learned Counsel for the respondents, on the other hand, submitted that present is a case of breach of the agreement because the defendants without observing the conditions of the agreement abruptly terminated the agreement that too, without making payment of the earlier balance, without directing refund of the security and without observing the condition of issuing one month's notice. It is also submitted by him that the plaintiffs have present as the only business to earn their livelihood, an injunction certainly should have been granted in their favour. It is submitted by him that the Court below was not unjustified in granting the injunction.

Section 41 of the Specific Relief Act clearly provides that, an injunction cannot be granted,- (e) to prevent the breach of a contract the performance of which would not be specifically enforced and (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. In the present matter if clauses (e) and (h) of Section 41 are read in juxtaposition with Section 14 of the Act then it would become clear that a contract cannot be specifically enforced where for the non-performance of the contract compensation in money is an adequate relief and the contract is in its nature determinable. In the present case if the plaintiffs feel that because of illegal termination of the contract they are losing the business then they would certainly be entitled to sue the defendants for damages. They can also file a suit for settlement of accounts and recovery of their commission etc. and for refund of the security. It is not in dispute before us that the contract between the parties is determinable in nature despite submission of learned Counsel for the

respondents is that the contract was illegally determined. For application of Section 14 the termination whether is legal or illegal is not material, the question is whether the contract in its nature is determinable. If the contract can be determined then in view of Section 14, the contract cannot be specifically enforced and if the contract cannot be specially enforced then u/s 41 an injunction cannot be granted. Section 41 only says that an injunction cannot be granted, therefore, it would be for the Courts to decide that the injunction whether in the nature of temporary injunction, perpetual injunction or mandatory injunction in the circumstances can be granted. It is trite to say that if a final or mandatory injunction cannot be granted in favour of a party then it would be an illegal exercise of the power in granting temporary injunction which would stand determined with the determination of the suit.

On the legal question we are unable to hold that the Court below was justified in granting the injunction.

It is also to be seen from condition No. 4 of the agreement that in case of a dispute the matter is to be referred to the arbitration. Once it is held that the matter can be determined finally by the arbitrator then the Civil Court will be debarred from entertaining the suit or granting the interim injunction.

In our considered opinion, the learned First Appellate Court without looking into the pleadings of the parties, the terms of the agreement and even without appreciating the provisions controlling grant or refusal of the injunction erred in granting the injunction. Even otherwise the Court below less appreciating that it was trying to restore the status quo ante by directing that the sales promotorship and clearing and forwarding be not cancelled even though the plaintiffs had come to the Court with the case that the agency had been terminated illegally. If the agency was already terminated then the Court below should have seen that the agency cannot be restored by granting such an injunction.

The order passed by the learned First Appellate Court deserves to and is accordingly quashed and the order passed by the learned Civil Judge is restored.

It is however made clear that the observations made by this Court are for disposal of this petition and the Trial Court shall be obliged to decide the suit in accordance with law on the strength of the evidence and legal position. The Trial Court is hereby directed to dispose of the suit at its earliest.

There shall be no orders as to costs.