

(1992) 10 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 3927 of 1992 in Second Appeal No. 1402 of 1989

M.P. Srivastava

APPELLANT

Vs

S.C. Sinha

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 2, Order 45 Rule 13, 151
Limitation Act, 1963 — Article 133

Citation : (1993) 1 AWC 117 : (1993) RD 76

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; S.D.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—This second appeal, in which the present application has been moved, was dismissed by me on 27-8-1992. On 1st of September 1992, the present application under Order 41 Rule 2 read with Section 151 of the CPC has been filed praying therein:

It is, therefore, most respectfully prayed that the Hon'ble Court be pleased to grant atleast 3 months time to file the Special Leave to Appeal before the Hon'ble Supreme Court and obtained the stay order and justice be done.

The prayer as made in the application is patently misconceived. The time for filing the Special Leave to Appeal to the Hon'ble Supreme Court is provided under Article 133 of the Limitation Act The applicant's case is covered by Sub-clause (c) of Article 133 Limitation Act which provides 90 days" lime from the date of the judgment or order against the Special Leave to Appeal is sought to be filed As such there is no question of granting any time for filing Special Leave to Appeal in the Hon'ble Supreme Court. In the application there is no prayer for keeping in abeyance the decree passed by the High Court for the period the Petitioner files Special Leave to Appeal in the Hon'ble Supreme Court.

2. However, Sri. Sankatha Rai, learned Advocate appearing for the applicant, argued that the High Court's decree and judgment parsed in Second Appeal No. 1402 of 1989, decided on 27-8-1992 be kept in abeyance till the applicant files the Special Leave to Appeal in the Hon'ble Supreme Court. There is no such prayer in the application, neither anything is stated in the affidavit filed in support of the application. The application of the applicant can be rejected on this short ground.

3. Since the application has been argued on the basis that it is an application for keeping in abeyance the decree passed by the High Court in the second appeal, referred to above, I am dealing with the submissions made by the counsel for the parties on merits.

4. Sri. Sankatha Rai strenuously contended that this Court has jurisdiction u/s 151 of the CPC to stay the execution of the decree passed by it in exercise of its inherent powers u/s 151 Code of Civil Procedure. In support of the aforesaid contention, Sri. Sankatha Rai relied upon a decision in the case of Jewan Ram Gangaram and Co. Vs. Commissioners for Port of Calcutta, wherein a Division Bench of the Calcutta High Court in the facts of the said case held that since a certificate for Leave to Appeal to the Privy Council has been granted and it was impossible for the applicant to obtain stay order unless the Court reopens on 16-1-1939, stayed the execution of the decree for a period of fifteen days exercising its jurisdiction u/s 151 CPC though held that strictly speaking the matter did not come within the purview of Order 45 Rule 13 of the Code of Civil Procedure.

5. Sri. S.D.N. Singh, the counsel for the Respondent-opposite party opposed the said request and contended that this Court has no jurisdiction to stay the execution of the decree finally passed by it as there is no provision under the CPC under which such a stay can be granted. He also contended that firstly Section 151 of the CPC is not attracted in the case and secondly it is not a fit case where this Court should exercise its inherent jurisdiction u/s 151 of the Code of Civil Procedure.

6. Sri. S.D.N. Singh relied upon a Full Bench decision of this Court in the case of Kalyan Singh Vs. State of U.P. and Others, In this case, the Full Bench of this Court took the view that even where a certificate for Leave to Appeal to Supreme Court has been granted by the High Court, the High Court has no jurisdiction to grant interim relief to the Petitioner under Order 45 Rule 13 of the CPC or u/s 151 of the Code of Civil Procedure. The Full Bench dealing with the scope of Section 151 of the CPC held as under;

The other question which requires determination is whether the order prayed for by the Petitioner can be granted under the provisions of Section 151 Code of Civil Procedure. That Section merely preserves the inherent powers of the Court which it may possess and does not grant any new powers. There is good authority for the proposition that it does not apply where there is an express provision in the

Code dealing with the particular matter. Order XLV, Rule 13 has been enacted to give relief after a certificate has been granted. The powers that the Court has got in such matters is exhaustively dealt with in that provision and if there is anything which has been withheld and is not provided for in that provision, Section 151 cannot be used to provide for it.

The Full Bench further held:

Section 151 can only apply to cases where interference is required either in the interests of justice or to avoid an abuse of the process of the Court.

It will be impossible for this Court to say that it would be against the interests of justice or would amount to an abuse of the process of the Court if it allows the order passed by itself in the writ petition to operate. It is obvious that this Court would not have passed the final order in the writ petition that it did pass if it had considered it either to be unjust or to have amounted to an abuse of the process of the Court

7. In the present case while deciding the second appeal, I specifically recorded a finding that the Appellant entered into the house as caretaker of the Plaintiff-Respondent and taking undue advantage of his position, he wants to grab the house and as such the equities are totally against the Appellant. In view of this finding, it is a clear case in which this Court should not exercise its inherent jurisdiction u/s 151 of the CPC in favour of the applicant.

8. The Full Bench also held that the power the Court has got in such matters is exhaustively dealt with under the provisions of Order 45 Rule 13 CPC and if there is anything which has been withheld and is not provided for in that provision, Section 151 CPC cannot be used to provide it. The applicant has not applied for leave to appeal under Order 45 Code of Civil Procedure, as such there is no occasion for exercising jurisdiction u/s 151 Code of Civil Procedure. In view of this decision also. I am of the opinion that no application u/s 151 CPC will lie for staying the decree passed by this Court in the second appeal giving rise to the present application.

9. The application is accordingly dismissed with costs.