
(2013) 07 RAJ CK 0116

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3103/10

M/s. Bhandari Brothers

APPELLANT

Vs

Kailash Agrawal and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

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

Citation : (2013) 3 WLN 459

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : R.K. Salecha, for the Appellant; Parag Rastogi for Respondent No. 12 and Ms. Sukriti Kasliwal, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present appeal was filed by the appellant-plaintiff challenging the order dated 15.11.10 passed by the Addl. District Judge No. 1, Kota (hereinafter referred to as "the trial court") in Civil Misc. Application No. 10/10, whereby the trial court had dismissed the application of the appellant-plaintiff under Order XXXIX Rule 1 and 2 of CPC. The relief sought in the said application by the appellant-plaintiff for restraining the defendant No. 1 and 2 from alienating or disposing of the goods lying in the godowns of defendant Nos. 4 to 7 and to appoint receiver to take possession of the said goods etc. During the pendency of the appeal, the appellant-plaintiff had filed an application before this court being No. 31484/11, stating inter alia that during the course of proceedings, the respondents-Banks have taken recourse to the sale of goods and it is in the interest of justice that the Banks are given necessary directions to disclose the material which have been sold out by them. Relying upon the said statement made by the appellant-applicant on oath, the learned counsel Ms. Sukriti Kasliwal for the respondent No. 12-Bank and the learned counsel Mr. Parag Rastogi for the respondent No. 9-Bank have submitted that the present appeal has become infructuous in view of the statement that the goods have

already been sold out and there is no question of either appointing any receiver or granting any injunction as prayed for in the present appeal. The learned counsel Mr. Salecha submits that since various proceedings were pending before the various authorities, the goods in question were sold out. According to him, necessary orders be passed in the facts and circumstances of the case.

2. In view of the above, it appears that even according to the appellant-plaintiff, the goods for which the application under Order XXXIX Rule 1 and 2 was made before the trial court have been sold out by the respondents-Banks and that the relief as claimed in the present appeal could not be granted. Hence, the present appeal appears to have become infructuous. In any case, the appellant-plaintiff shall be at liberty to file appropriate application before the trial court seeking appropriate reliefs, if advised to do so, taking into consideration the subsequent event of selling of the goods by the respondents-Bank. In view of the above, the appeal stands dismissed as having become infructuous.