
(1988) 09 AHC CK 0002
In the Allahabad High Court
Case No : Civil Revision No. 107 of 1988

M/s. Deepak Oil Industries and Others	APPELLANT
Vs	
Allahabad Bank and Others	RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 7

Citation : (1989) 2 AWC 1359

Hon'ble Judges : Rajeshwar Singh, J

Bench : Single Bench

Advocate : D.K. Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

Rajeswar Singh, J.—This is a civil revision. It appears that the revisionists had taken some loan from Allahabad Bank had hypothecated some machinery to the Bank. Then they did not repay the loan on due dates. The Bank moved application saying that it was apprehended that some of the hypothecated machineries had been removed without consent of or intimation to the Bank; so the Bank prayed that a Commissioner be appointed to make inventory of the machinery. The application was allowed by the Civil Judge. It was said by the Civil Judge that there was great probability that the hypothecated machineries might be sold away and there was no harm if inventory was prepared. Against that order of the Civil Judge the revisionists have approached this Court and they say that the order of the Civil Judge be quashed because the Civil Judge had no jurisdiction to pass an order for making inventory because such an order did not fall within the purview of Order 26 of the CPC which related to subject of issuing commission; According to them the Court had not inherent power to issue such a Commission.

2. For the above proposition the learned counsel for the revisionists relied on the case of Padam Sen and Another Vs. The State of Uttar Pradesh, . In this case order appointing Commissioner for seizing account books of a party was held to

be without jurisdiction. In this case it was said that inherent powers are not powers over the substantive rights which any litigant possesses and a party had full rights over its books of account while the Court had on inherent power forcibly to seize the property of the other party and if the Court does it invades rights of the party. However, the matter before us is different because in this case no such property in which the Bank may have no right, is being seized from the custody of other party. Here the machinery is hypothecated to the Bank and so the Bank has some right in it to ensure that it is not wasted and it remains available for payment of amount due to the Bank. Order 39 Rule 7 CPC provides that the Court may make an order for inspection of any property which is the subject matter of the suit, or as to which some question may arise in the suit. Here regarding hypothecated property may arise in the suit and so it appears that the order for its inspection or preparation of inventory could be made.

3. It will not be out of place to say that in the case of Yapati Sambaiah Vs. Jasti Basavapurna, , in a suit for possession of lorry, there being apprehension about the security of lorry in the hands of the defendants, Court's power to appoint a Commissioner to seize the lorry was upheld. So this does not appear to be a fit case for interference.

4. The revision is dismissed.