

(1993) 09 AP CK 0023

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 1000 of 1993

M/s. Ultra Drytech Engineering Private Limited

APPELLANT

Vs

M/s. Niraj Petro-chemicals Limited

RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151

Citation : AIR 1994 AP 33 : (1993) 3 ALT 624

Hon'ble Judges : P. Ramakrishnan Raju, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : R. Vijayanandan Reddy, for the Appellant; M/s. E. Raja Rao and G.V.P. Radha Kumari, for the Respondent

Judgement

G. Radhakrishna Rao, J.—This civil miscellaneous appeal is filed against the order and decree made in I.A. No. 2368 of 1991 in O.S. No. 897 of 1991 on the file of the Second Additional Judge, City Civil Court, Hyderabad. The learned Judge allowed the said application filed by the respondent/ plaintiff thereby making the interim injunction granted on 24-9-1991 absolute, restraining the petitioner/ defendant from disposing of or alienating the petition schedule properties including the furniture, fittings, machinery, etc., till the disposal of the suit.

2. Original Suit No. 897 of 1991 was filed by the plaintiff against the defendant for recovery of Rs. 69,82,022-90 ps., with future interest thereon for the loss sustained by it for breach of contract by the defendant. Application for injunction was filed in the said suit, which was allowed as stated supra. Aggrieved by the same, the defendant preferred this appeal.

3. The main contention of the learned counsel for the appellant is that the learned Judge having held that all the three requirements under Order XXXIX, Rule 1 of the CPC for grant of injunction are not satisfied, erred in granting injunction in exercise of inherent powers conferred under S. 151 of the Civil Procedure Code. It is further contended for the appellant that there is no basis for the allegation of the respondent that it could not be possible to recover the

suit amount in the event of its success in the suit; that the properties shown in the petition schedule are not subject matter of the suit; that in the main suit there is no relief sought for injunction against the appellant preventing him from alienating the properties; and therefore, the petition for injunction is untenable. The learned counsel further contended that in spite of a detailed counter filed and the relevant material produced, the Court below failed to examine the matter in detail for arriving at the conclusion that prima facie case is made out.

4. We find from the order under appeal that the learned Judge stated that the prima facie case and balance of convenience, are in favour of the petitioner/plaintiff. He further held that in case if the interim injunction granted is not made absolute, the plaintiff would suffer irreparable loss. But having taken that view the learned Judge ultimately concluded by saying that as the claim of the plaintiff does not fall within the four corners of Order XXXIX, Rule 1 of the Civil Procedure Code, the Court can under its inherent jurisdiction, grant temporary injunction in favour of the plaintiff, and accordingly granted the same in favour of the plaintiff.

5. It is a settled proposition of Law that where there is specific provision for grant of the relief sought, Courts need not resort to exercise inherent powers vested u/s 151 of the Civil Procedure Code. The Supreme Court also laid down the Law stating that the Court shall exercise inherent jurisdiction only when they consider it absolutely necessary for the ends of justice. The Supreme Court also held that the said discretion has to be applied in cases with extreme caution and only in very rare cases. We are therefore of the view that the Court below in this case erred in exercising its inherent powers for granting injunction.

6. That apart, the plaintiff filed the present suit for recovery of about Rs. 70 Lakhs. It is represented that the defendant also had earlier filed another suit in Bombay High Court for recovery of about Rs. 48 Lakhs towards the expenses incurred by it due to the delayed retirement of documents and also demurrage charges for about three months. A specific plea is taken to the said effect by the defendant in its counter-affidavit stating that the present suit filed is a counter-blast to the one filed by the defendant in Bombay Court. When such is the situation, the Court below should have examined in detail with great care as to whether prima facie case is made out or not. On the other hand, the learned Judge observed in his order that prima facie case does not mean that the Court should examine the merits of the case closely and come to the conclusion that the plaintiff has a case in which he is likely to succeed, as that would be prejudicing the case on its merits. We are afraid, this view taken by the learned Judge is absolutely wrong. In a given case, it is the bounden duty of the Court to examine in detail with reference to the specific material on record to find out whether prima facie case is made out or not; in whose favour does the balance of convenience lie; and whether the petitioner suffers any irreparable loss if injunction is refused. In the present case, as many as twenty six documents for the petitioner and the same number of documents for the respondents were exhibited before the trial Court. But, the Court below without examining the

matter in detail, granted injunction in favour of the plaintiff merely saying that prima facie case is made out apart from stating that the two other requirements are also fulfilled. Therefore, in view of the foregoing, we allow the appeal and set aside the impugned order and remand the matter back for fresh hearing and disposal in accordance with Law. However, we direct that this case be transferred to the file of the IV Additional Judge, City Civil Court. Hyderabad. The said Court will dispose of the application afresh on its own merits and in the light of the observations made above and after hearing both the parties, within a period of two months from the date of receipt of this order. The counsel will be co-operative with the Court in disposal of the matter within the time stipulated.

7. In view of the settled principle that in cases of remand, the position as on the date of the impugned order shall be directed to be maintained, we direct that the interim injunction as granted by the trial Court, shall continue to operate, pending disposal of the application afresh by the trial Court on remand, in view of the orders passed now. No costs.

8. Order accordingly.