
(1980) 04 CAL CK 0012
In the Calcutta High Court

Nadia Zila Parishad and Another

APPELLANT

Vs

Santimay Biswas and Another

RESPONDENT

Date of Decision : 09-04-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 151

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 340, 341, 439, 476

Citation : (1980) CriLJ 531

Hon'ble Judges : N.C. Mukherji, J

Bench : Single Bench

Judgement

N.C. Mukherji, J.—This Rule arises on an application under Article 227 of the Constitution of India and is directed against the order dated 21st of February, 1979 passed by Shri S. N. Banerjee, District Judge Nadia in Misc. Case No. 20 of 1978 arising out of Misc. Appeal No. 35 of 1977. The facts of the case may be briefly stated as follows:

Opposite Party No. 1 filed Title Suit No. 131 of 1974 in the Court of Munsif, Krishnagar for a declaration that he is a permanent staff of the petitioner No. 1 and permanent injunction to the effect that the petitioners and opposite party No. 2 have no authority to change and/or in any way deal with or modify the conditions of service of the said opposite party No. 1. The plaintiff obtained an order of ad interim injunction, but the same was ultimately vacated. He preferred an appeal against the said order. In the said appeal an application was filed for ad interim injunction. The said application was supported by an affidavit sworn on 2-6-77 in which the plaintiff asserted that he apprehended that he may be placed under suspension on any day. Hence a restraint order should be passed against the petitioners, although he was fully aware of the fact of his order of suspension which was served on him by registered post with A/D on 30th May or 1st June, 1977. An application was filed on behalf of the petitioners before the District Judge for investigation and proceedings u/s 340 of the Code of Criminal Procedure for using and/or swearing a false affidavit and for reference to the

Judicial Magistrate giving rise to Misc. Case No. 57 of 1977.

2. Opposite Party No. 1 duly filed his objection to the said application, but did not appear on 16-1-78, when the matter was fixed for hearing. The matter was adjourned till 3-2-78 when the matter was finally heard and an ex parte order was passed to the effect that a complaint should be lodged before the Judicial Magistrate. On 12-2-78 the opposite party No. 1 filed an application under Order 9 Rule 13 of the CPC read with Section 151 of the Code for rehearing of the proceeding u/s 340 of the Code of Criminal Procedure. The petitioner filed objection. The learned District Judge allowed the application filed by the opposite party No. 1 holding that all proceedings arising out of the Misc. Appeal are of a civil nature and hence the provisions of Order 9, Rule 13 of the Code are attracted. Being aggrieved by the aforesaid order the petitioners have come up to this Court.

3. Mr. Soumendra Nath Mukherjee, learned Advocate appearing on behalf of the petitioners, in the first place, contends that the Misc. Case was started on an application for investigation and proceeding u/s 340 of the Code of Criminal Procedure. It is true that this Misc. Case arose in connection with Misc. Appeal No. 35 of 1977 which was preferred against the order vacating ad interim injunction, which was granted by the learned Munsif in favour of the plaintiff. Mr. Mukherjee submits that as the application was filed for investigation and proceeding u/s 340 of the Code of Criminal Procedure, the provisions of Order 9, Rule 13 and Section 151 has no manner of application and the District Judge ought to have found that such an application was not maintainable. The District Judge was of the opinion that the application u/s 340 of the Code of Criminal Procedure though of a criminal nature was registered as a Civil Miscellaneous Judicial Case under the Civil Rules and Orders. Therefore Order 9 of the CPC is applicable to set aside an order passed ex parte in the application u/s 340 of the Code of Criminal Procedure. The learned District Judge also noted that according to the provisions of Section 141 of the CPC the procedure prescribed in regard to suits shall be followed in all proceedings in any Court of civil jurisdiction and the expression "proceedings" includes proceedings under Order 9. In that view of his findings the learned Judge found that the application is maintainable.

4. Mr. Mrinmoy Bagchi, learned Advocate appearing on behalf of the opposite party No. 1, supports the judgment of the learned District Judge saying that the District Judge was quite right to hold that the application is maintainable. In support of his contention, Mr. Bagchi relies on the decision reported in E.P. Kumaravel Nadar Vs. T.P. Shanmuga Nadar and Others, , In this case it has been held that a Civil Court does not cease to be a Civil Court when it is considering an application made to it u/s 476 and if for the purposes of that application it remains a Civil Court it must be governed by the provisions of the CPC and not by those of the Code of Criminal Procedure. It was further held that where an order has been passed by a Civil Court u/s 476, Criminal Procedure Code,

Section 439 has no application. Their Lordships relied on several decisions including that of our High Court reported in ILR (1913) Cal 477 (Emperor v. Har Prasad Das) Full Bench. The same view was taken in a case reported in AIR 1942 73 (Nagpur) .

5. Mr. Mukherjee draws my attention to the provisions of Section 341 of the Code and submits that the position has been changed after the amendment of the Code and decisions relied on by Mr. Bagchi have no application in the present case. I am afraid the provisions of Section 341 do not help the petitioners.

6. The only point to consider is whether the application filed by the opposite party is maintainable. I accept the arguments advanced by Mr. Bagchi and hold in agreement with the learned District Judge that the application is maintainable.

7. With regard to the merits, Mr. Mukherjee submits that the opposite party No. 1 though filed written objection denying the allegations and was contesting the proceedings, in his evidence deposed that he did not file any objection, That being so the petitioner ought to have been disbelieved by the learned District Judge. The learned District Judge has considered the evidence on record and was satisfied that the petitioner had sufficient cause for not attending the Court on 16th of January, 1978 and on 3rd of February, 1978 when the case was called on for hearing. I do not find anything to interfere with the said finding.

8. In the result the application fails and the Rule is discharged.

9. Let the records go down early.