

(1992) 01 AHC CK 0103

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23076 of 1991

Nainital Bank Ltd.

APPELLANT

Vs

Munsif Nainital and Others

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 14, 41

Citation : (1992) 1 AWC 427

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : V.B. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Bhat, J.—This writ petition arises out of a civil proceeding pending in the Court of the Munsif at Nainital. The parties have filed their pleadings and a request was made to decide the petition at the admission stage itself. Therefore. I am deciding this writ petition at the admission stage in accordance with the Rules of the Court and in response to the request of the learned Counsel for the parties.

2. The Respondent No. 3 appears to have filed a suit for perpetual injunction against the Petitioner in the trial court praying for permanent injunction restraining the Petitioner from terminating the contract, by which the Respondent No. 3 had agreed to provide security service to the Petitioner, otherwise than in accordance with law. The Respondent No. 3 and the Petitioner seem to have agreed by a written instrument dated 28-2-1985, which was to come into force on 1-3-1985, that security services will be provided to the Petitioner for various branches of the Bank on the terms of conditions mentioned in the said instrument. The Respondent No. 3 was responsible to make arrangement for protection of life and property including cash, records,

installation, fixtures and other movable property within the branches of the Bank premises, where the security was to be posted. The security gunmen were to be chosen from ex-servicemen, ex-para military, ex-Border Security Force or other duly trained personnel. The gunmen had to carry gun-licence and gun, which was to remain with the gunman while on duty. The gunmen were restrained to join Trade Unions or interfere with the working of the Bank in any manner. Numerous duties, which were to be discharged by the gunmen, were assigned to them. Clause 13 of the instrument provided that the services of gunmen could be terminated by either side on three month's notice or payment in lieu thereof. The Petitioner seems to have issued a notice to the Respondent No. 3 on 30-10-1987 informing him that in exercise of the option contained in para 13 of the instrument the contract of service of security arrangement was terminable with effect from 31-1-1988. On receipt of this notice the Respondent No. 3 seems to have filed a civil suit in the court of the Munsif at Nainital.

3. It is averred in the plaint that the Petitioner had approached the Respondent No. 3 to arrange security for various branches of the Bank- The Respondent No. 3 accordingly made necessary arrangements and the Petitioner had made increase also in service charges of the gunmen by 15%. The Petitioner is said to have served a notice on the Respondent No. 3 through its new Chairman by which he proposed to terminate the services of gunmen with effect from 31-1-1988. The notice was replied but the Petitioner, Bank was adamant to terminate the services of gunmen from 1 -2 1988. The Petitioner's action was challenged as being malafied and to harm the Respondent No. 3 and the Respondent No. 3 has claimed that he was to suffer an irreparable loss if the written instrument was cancelled. Therefore the petitioner was sought to be prevented to terminate the instrument by which the services of the gunmen were employed.

4. In response to this writ petition the Respondent No. 3 has stated in his counter affidavit that there was an understanding with the Bank that the services of gunmen will be terminated only if these were found unsatisfactory. Notwithstanding Clause 13 of the instrument the services of the gunmen could not be terminated unless these were found to be unsatisfactory.

5. The munsif, Nainital had first granted an exparte injunction on 27-1-1988, which was later on confirmed on 5-5-1989. On 29-5-1988 the said order of injunction was amended to make the order dated 5-5--1989 more effective. The Petitioner seems to have filed two appeals before the District Judge, Nainital, which came to be registered as Appeals, No. 38 of 1989 and 47 of 1989. Both the appeals have been dismissed by the appellate court on 29-5-1991. The result is that the two civil courts have granted temporary injunction in favour of the Respondent No. 3 restraining the Petitioner from terminating the written instrument by which services of gunmen were provided to it by the Respondent No. 3 on the conditions mentioned in the instrument. The Petitioner has challenged the interim order passed by the Civil Courts in civil Proceedings

through the medium of this writ petition. It is contended that the suit is not maintainable and is barred by Section 14(c) read with Section 41(e) of the Specific Reliefs Act. No permanent injunction can be granted, therefore, temporary injunction also cannot be granted. If the Respondent No. 3 is aggrieved by the termination of services of gunmen provided by him to the Petitioner, his remedy is not a suit for permanent injunction but he can claim damages. The order of injunction is, therefore, said to be without jurisdiction and void. The suit is not maintainable and is liable to be dismissed.

6. As stated, counter affidavit was filed by the Respondent No. 3 in which the contents of the writ petition have been denied and a plea is raised that the services of the gunmen cannot be dispensed with unless these were found unsatisfactory. It is stated that immediately before the issuance of notice the security was provided to the Petitioner's branch at Pithoragarh also at his instance. The services of the gunmen posted on security duty are said to be efficient and there was not complaint about the dereliction of their duties. Rejoinder affidavit also has been filed in which the Petitioner has repudiated all that is said by the Respondent No. 3 and has reiterated and elucidated the grounds on which his writ petition is based. The Petitioner seems to have filed a written statement also before the trial court. In the written statement among other things it is stated that the services rendered by the gunmen were not satisfactory from the very beginning. Some complaints have been made against the security personnel about unsatisfactory performance of their duties. The Petitioner has refuted all the allegations made by the Respondent No. 3 in his plaint. However, issues have not yet been framed in the suit.

7. Mr. V.B. Singh has vehemently argued that the suit is not maintainable under the provisions of the Specific Relief Act. He submits that the instrument signed by the Petitioner and the Respondent No. 3, which is termed as contract of service is not enforceable. By its very nature it is determinable. Therefore, u/s 14(c) of the Specific Reliefs Act it cannot be enforced. He has also referred to the provisions of Section 41(e) of the Specific Reliefs Act. It is stated that injunction cannot be granted because injunction cannot be claimed for breach of contract, performance of which would not be specifically enforced. He has referred to certain authorities also to show that the contract of personnel service could not be enforced. The only remedy available to the person aggrieved is a suit for damages and not for specific performance of the said contract. If necessary, I will advert to these authorities later on.

8. A preliminary objection has been raised by the Respondent No. 3 that writ petition under Article 226 of the Constitution is not maintainable because the writ petition seeks to quash the interim order passed by two civil courts in a civil proceedings, which cannot be made the subject matter of the writ. Reliance is placed on the case of Qamruddin v. Rasul Baksh 1990 AWC 308, wherein the Supreme Court has observed as under:

The question whether an interim injunction should be granted or not is

discretionary in nature, although the exercise of discretion is regulated by the principles set out in Order 39, Rules 1 and 2 of the Code of Civil Procedure. If the order of injunction is passed by a competent court having jurisdiction in the matter, it is not permissible for the High Court under Article 226 of the Constitution to quash the same by issuing a writ of certiorari.

9. In the case of *Ganga Saran v. Civil Judge Hapur Ghaziabad* 1991 ALJ 159 a Full Bench of this Court also held that the order passed by a civil court refusing injunction cannot be challenged in a writ petition under Article 226 of the Constitution unless it is shown that there is some fundamental or jurisdictional error.

10. The contention of Mr. V.B. Singh is that the civil suit is not maintainable and, therefore, temporary injunction could not have been granted. It is stated that the suit for permanent injunction is not maintainable under the provisions of the Specific Relief Act and the contract of service is not enforceable. Therefore, no temporary injunction can be granted.

11. The contention raised by Mr. V.B. Singh about the non-maintainability of the suit is to be raised by the Petitioner before the trial court. The objection by Mr. L.B. Singh goes to the root of the civil suit pending in the Munsif's Court at Nainital. If this contention is upheld by the trial court, it can dismiss the suit as not maintainable or it may allow the Plaintiff to amend the plaint so as to claim the damages or mould the relief in such a manner, which would not be hit by any of the provisions of the Specific Relief Act. The trial court will be within its right to frame issues about the objections which are raised by the Petitioner in the written statement about the non-maintainability of the suit. If the plea raised by the Petitioner succeeds, the Plaintiff is likely to be non-suited and with that order of temporary injunction also will disappear. In this writ petition it is not possible for the court exercising its jurisdiction under Article 226 of the Constitution to go into the factual aspect of the controversy raised by the parties. The Respondent No. 3 has stated that an assurance was given to him that the services of the security personnel would not be terminated unless these were found unsatisfactory. If that plea is raised by the Respondent before the trial court, the trial court is bound to go into this aspect of the matter also so as to find out what is the effect of this assurance on the rights of the Respondent No. 3. If the Respondent No. 3 succeeds in proving that the services of the security men arranged by him for the Petitioner could be dispensed with only on the ground of their services being unsatisfactory, then a procedure is to be followed by the Petitioner for invoking Clause 13 of the written instrument. This question also rests on the facts which may be brought before the trial court so as to enable it to arrive at a just conclusion in an objective manner. In its writ jurisdiction this Court will not be able to go into the factual controversy raised by the Respondent No. 3 of the Petitioner.

12. Ex facie Civil Court has a jurisdiction to prevent breach of a contract and pass such interim orders as would secure the ends of justice. The order of

temporary injunction granted by the Munsif, Nainital does not appear to be without jurisdiction nor is there any bar for a Civil Court to pass such an order. The order of the appellate court also does not appear to be without jurisdiction. The appellate court has considered the validity of the trial court's order and confirmed the same. There is no fundamental error in the orders passed by the courts below which could be corrected by the High Court in its writ jurisdiction under Article 226 of the Constitution.

13. Mr. V.B. Singh has relied on some authorities and has tried to convince the court that the civil suit, out of which temporary injunction has been granted, was not maintainable as the suit essentially related to the enforcement of a service contract. No permanent injunction could be granted. The Respondent No. 3 could sue for damages if he was aggrieved by the termination notice of services of security men issued by the Petitioner. This argument is to be tested by the trial court in the light of the contention of the Respondent No. 3 with regard to the alleged assurance extended by the Petitioner to the Respondent No. 3 that the services of the security men would be dispensed with in case these were found unsatisfactory. Which of the pleas will prevail in the trial court will depend on the quality of proof which the parties may adduce before the trial court. It is, therefore not necessary to go into the controversy in this writ petition as to which of the contracts is enforceable and which is not enforceable. Enforceability or otherwise of a contract is to be determined by the trial court because it involves determination of facts.

14. In Qamaruddin's case (Supra) the Supreme Court has sounded a note of caution to interfere with the order of temporary injunction passed by the Civil Court in the writ jurisdiction under Article 226 of the Constitution by the High Court. I, therefore, decline to interfere in this writ petition with the interim orders passed by the courts below. As held, there is no fundamental error of jurisdiction committed by the courts below in passing temporary injunction nor is there any error apparent on the fact of record of the courts below which needs to be corrected by the High Court in its writ jurisdiction. The writ petition, therefore, is not maintainable. The preliminary objection raised by the Respondent No. 3 about the maintainability of the writ petition shall, therefore, prevail.

15 As a result of the aforesaid discussion the writ petition dismissed. The trial court is directed to determine the controversy expeditiously after allowing the parties to file additional/further pleadings, if they so like. The trial court shall decide the issue of maintainability or otherwise of the suit expeditiously without delaying the proceedings. The parties may obtain certified copy of this order on payment of charges within a week.