
(2013) 04 RAJ CK 0103

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3245 of 2013

Naresh Kumar Saini and Others

APPELLANT

Vs

Civil Judge (JD) and JM and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 2 WLN 595

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : Anil Kumar Sharma, for the Appellant; Anil Yadav on behalf of Mr. Ashwin Garg, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition has been filed by the defendants/ petitioners assailing one of the interim order dt. 12.12.2012 extending the interim order dt. 29.10.2012 which has been passed after hearing the parties. The plaintiffs/respondents filed a suit for permanent injunction against defendants/petitioners along with certain other proforma defendants along with the application for temporary injunction. The Id.Trial Judge taking note of the submissions made was of the view, vide his order dt. 29.10.2012, that it will be in the interest of justice to restrain the defendant No. 9 not to proceed or take any action on the application filed by the defendants 1-8 for their registration and status quo be maintained. However, the interim order dt. 29.10.2012 was for a limited period upto 05.11.2012. On 05.11.2012, as the Presiding Officer was on leave, the matter was posted on 21.11.2012 and on the said date of hearing, the defendants-petitioners sought time to file reply to the application and the matter was posted on 07.12.2012. On the said date also the Presiding Officer was on leave and the matter was posted for 8th January, 2013.

2. However, at this stage, when the respondent-plaintiff came to know that the interim order dt. 29.10.2012 has not been extended, he moved misc. application on which the Id.Trial Judge passed an order on 12.12.2012 to continue the

interim order dt. 29.10.2012 and fixed the matter for 08.01.2013, next date already fixed and thereafter the interim order is being extended in the presence of the parties.

3. The main thrust of submission of counsel for petitioners is that once the matter was posted for 08.01.2013 because of the fact that Presiding Officer was on leave, if at all there was any occasion arose to prepone the matter, they ought to have been served and interim order initially granted on 29.10.2012 could not have been extended in their absence.

4. Counsel for the respondents, on the other hand, submits that the order dt. 29.10.2012 was passed after hearing the parties and it escaped from their notice that interim injunction has not been extended and since the Presiding Officer was on leave and the matter was posted for 08.01.2013, immediately when the Presiding Officer resumed, application was filed on which impugned order was passed extending the interim order obviously for the date already fixed.

5. This Court finds substance in the submission that once the matter was adjourned for 08.01.2013, if any occasion arose to prepone the matter, it was required to inform the parties to participate in the adjudicating process but in the instant case, as it reveals from the record, the interim order dt. 29.10.2012 was extended for limited period and as the Presiding Officer was on leave, the interim injunction could not be extended which was beyond the control of the plaintiffs, for that he could not have been deprived of the legitimate right and by passing the order dt. 12.12.2012, no such prejudice, either way, could have been caused to the parties. More so, later proceedings after 08.01.2013 have been noticed in the presence of the parties having aware of the fact that the interim injunction has been extended on each day of hearing.

6. Taking note of what has been observed above, this Court does not find any apparent manifest error committed by the Id. Trial Judge, which may require interference. Consequently, the petition being devoid of merit stands dismissed. However, with the consent of parties, it is expected that the Id. Trial Judge would take steps to decide the application for temporary injunction expeditiously in accordance with law.