

(1948) 02 PAT CK 0016
In the Patna High Court

Nasir Ahmed

APPELLANT

Vs

Lutf Ahmed and Others

RESPONDENT

Date of Decision : 13-02-1948

Acts Referred:

Citation : AIR 1949 Patna 496

Hon'ble Judges : Agarwala, C.J;Narayan, J

Bench : Full Bench

Judgement

Narayan, J.—These applications are directed against orders passed by the Subordinate Judge of Chapra in a pending suit for dissolution of partnership of a firm known as the Indian Sugar Works, Siwan, Opposite parties Nos. 3 and 4 are the plaintiffs in that suit and opposite party No. 1 has been appointed receiver to deal with the cash. Opposite party No. 2 has been appointed the manager of the factory. By an agreement between the parties, the factory was leased out to this applicant for two working seasons, namely 1945-46 and 1946-47 at a yearly rental of Rs. 2,10,100. This applicant paid the entire rent for the first season on 5th December 1945, but the rent for the second season which should have been paid on or before 1st November 1946 still remains unpaid. On 17th February 1946, the receiver filed a petition before the learned Subordinate Judge praying that the lessee be directed to pay up the dues of the partnership (including the price of store articles, seeds and manure) amounting to Rs. 2,50,413-2-3 with interest thereon at seven percent, per annum, and there was a further prayer to the effect that in the event of the failure of the lessee to pay up the dues, the entire stock of sugar in his possession be attached. The lessee expressed his willingness to pay the rent, but his prayer was that there should be an adjustment of account in view of the loss which he had sustained. On 12th April 1947, the matter was heard by the learned Subordinate Judge and he made an order that a letter be sent to the manager of the Central Bank, Siwan branch to which bank the lessee had mortgaged the entire sugar in his possession, directing the manager not to pay any amount of the sale proceeds of the sugar to the lessee without the permission of the Court. This order was subsequently

modified by the learned Subordinate Judge to this extent that the lessee was allowed to withdraw such sums from the bank as could be sufficient for making payments to the cane growers and to the employees and for making payment of the Government dues. This application which has been registered as civil Revn. No. 413 of 1947 is directed against this order of the learned Subordinate Judge, and the application which has been registered as Civil Revn. No. 691 of 1947 is directed against another order of the learned Subordinate Judge dated 6th August 1947, by which the lessee has been prevented from making any withdrawal from the Si wan branch of the Central Bank of India, and the manager of the said bank has been directed not to make any payment to him until further orders.

2. The contention of the lessee, who is the applicant before us, is that these orders are without jurisdiction inasmuch as either on account of forfeiture or by the efflux of time the lease terminated on 14th March 1947 and the lessors took possession of the mill on 21st March 1947. In this connection there are two important facts which ought to be noted. It appears that an application in civil revision had been filed by this petitioner against the order of the Subordinate Judge calling upon him to deposit the security money and also dealing with the question of delivering vacant possession of the entire premises to him. Sinha and Bennett JJ. directed that the Court below should determine the question whether the lessee had been given possession of the entire premises or not, but it is common ground that this direction has not yet been carried out. The second important fact is that according to the terms of the lease, the lessee is entitled to retain possession of the sugar godown molasses and tanks, etc., for preserving the sugar and the molasses till 6th October 1947, there being a further clause to the effect that in case the lessee's stock is not removed or disposed of till 6th October 1947, then for the entire subsequent period the lessee will have to pay RS. 100 a month as rent for the godown, etc. The orders against which these applications have been filed were all made before 6th October 1947 and it is to be regretted that the directions of Sinha and Bennett JJ. in civil Revn. No. 447 of 1946 for determining the question whether the lessee had been given possession of the entire premises have not yet been carried out. But apart from these two facts, which are undoubtedly in favour of the opposite parties, I am of opinion that there is no substance in the contention that the orders that have been made by the learned Subordinate Judge are without jurisdiction. Even if the lease is taken to have terminated on 14th March 1947 or 21st March 1947, the orders that have been passed between 12th April 1947 and 6th August 1947 cannot be deemed to be without jurisdiction.

3. The case of *Walton v. Johnson* (1848) 60 E.R. 654, is an authority in support of the view that if a tenant enters into an agreement with the Court through the receiver, an injunction can be granted against him even though he is not a party to the suit.

4. In the case of *Casamjor v. Strobe* (1823) 57 E.R. 152, it was held that an

injunction may be obtained to restrain the purchaser under a decree, not a party to the cause, who has not paid his purchase money, from committing waste on the property purchased. The order of Sir John Leach, Vice-Chancellor, is important for our purposes in this case, because his Lordship observed that the purchaser under a decree does, by the Act of purchase, submit himself to the jurisdiction of the Court as to all matters connected with that character.

5. In *Hobson v. Sherwood* (1854) 52 E.R. 474, the Master of the Rolls, Sir John Romilly, made an order against the tenant who had not attorned to the receiver to pay up the arrears of rent, and further directed that an attachment would issue in default.

6. These English cases fully support the argument of the learned lawyer, who appeared for the opposite parties before us, that the Court was competent to pass orders against the lessee directing him not to withdraw money from the Central Bank of India. Mr. Sarjoo Prasad, who appeared for the applicant before us, felt satisfied, that these cases were good authorities in support of the contention that the orders were not without jurisdiction, but he asked us not to follow English cases in a matter like this. But I think it is not necessary for me to point out that the law relating to injunctions and receivers in this country is practically the same as that which prevails in England and therefore resort may be had to English case-law bearing on these subjects unless we find that there is any statutory enactment to the contrary.

7. These applications are, therefore, not fit to succeed and are dismissed with one set of costs. Hearing fee three gold mohurs.

Agarwala C.J.

I agree.