
(1998) 06 GAU CK 0018
In the Gauhati High Court
Case No : Misc. First Appeal No. 62 of 1998

National Airport Authority and Others	APPELLANT
Vs	
Paradise Hotel and Restaurant	RESPONDENT

Date of Decision : 16-06-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 151
Easements Act, 1882 — Section 52

Citation : (1998) 2 GLT 425

Hon'ble Judges : B.N. Singh Neelam, J

Bench : Single Bench

Advocate : K.N. Choudhury and P. Bhowmik, for the Appellant; A.R. Borthakur, P. Barthakur and B. Acharyya, for the Respondent

Judgement

B.N. Singh Neelam, J.—This Misc. First Appeal is so preferred by the Appellants, National Airport Authority and others under Order 13 Rule 1(r) read with Section 151 of the CPC against the impugned order dated 18.4.98 so passed by the learned Civil Judge, Senior Division, Jorhat in Misc. Case No. 12 of 1998, arising out of Title Suit No. 42 of 1994 (in the Title Suit, the present Appellants being the Defendants).

2. This appeal is heard along with Civil Rule No. 2159 of 1998, so preferred by M/s. Guddi Enterprises, 62, Bentinck Street, Calcutta-700069, as the Petitioner, against the Airports Authority of India particularly in the said Civil Rule challenging the notice inviting tender dated 6.4.98. Since both the matters were heard together, they are disposed of today by separate orders.

3. Heard Mr. K.N. Choudhury, the learned Sr. Central Govt. Standing Counsel, representing the Appellants and Mr. A.R. Borthakur, the learned senior counsel representing the Respondent, M/s. Paradise Hotel and Restaurant.

4. It transpires that in connection with Title Suit No. 42 of 1994, so preferred by M/s. Paradise Hotel and Restaurant, the respondent/Plaintiff filed a petition on

23.2.98 before the learned Assistant District Judge at Jorhat under Order 39 Rules 1 and 2 read with Section 151 of the CPC making a prayer to pass an ad interim order of injunction directing the Defendant/opposite party, figuring here as Appellants, to act in accordance with their promise and assurance as referred to in the minutes of the meeting dated 24.11.94 and 25.11.94, which has been recorded and communicated by the Deputy Director of Aerodrome (OPS) for Director, NER, NAA, Guwahati, as well as the letters dated 6/7.6.96, 12.6.96 and 28.6.96, and pending finalisation thereof, as to direct to maintain the status quo with regard to the running of the Airport Restaurant at Gauhati Airport by the Plaintiff/Petitioner until further order and to pass any such order as the Court may deem fit and proper, on the grounds mentioned in the petition which need not be repeated. It further transpires that when such petition was so filed, it was so registered as Misc. Case No. 12 of 1998, the Court was pleased to pass the order in the Misc. case directing the parties to maintain the status quo till 31.5.98 for the ends of justice. It was also mentioned that the matter would be heard on 21.5.98 after filing of the objections.

5. Thereafter, another petition was filed on 6.4.98, which was numbered as petition No. 1031/98 and still another petition was so filed on 18.4.98 in the said Misc. Case No. 12/98, which was so numbered as petition No. 1071/98, by the Petitioner/Plaintiff, figuring here as Respondent, and in the said petitions the prayer was as to pass ad-interim order of injunction restraining the Defendants/opposite parties (the present Appellants) and their agents and servants from proceeding with or selling tender documents as published in the Assam Tribune on 6.4.98 and restraining them further from accepting tenders from the intending tenderers and opening the same and also restraining the Defendants/opposite parties from awarding work/bussiness in terms of the NIT dated 6.4.98 until further orders. It further transpires that on 18.4.98 these petitions were so considered by the learned Court below in Misc. Case No. 12/98 and the learned Court below has passed the order after hearing the learned Counsel for the Petitioner of that since the learned Advocate for Defendants. Opposite parties (figuring here as Appellants) had submitted for a reasonable time to give reply to the petition filed on that day and as 24.4.98 has been fixed by the Defendants/opposite parties in the NIT for opening of the tenders, 21.5.98 was fixed for submission of reply in the petition by the Defendant/opposite party, the Court below, however, felt it necessary as to mention that in view of the order dated 6.4.98 ordering maintenance of status quo by the parties, any action by either of the parties to sell tender or opening and processing the same shall amount to violation of the order of the Court passed on 6.4.98 and in that light the Court on 18.4.98 in the said Misc. Case No. 12/98 directed the opposite parties/their agents not to proceed further with regard to issue and opening or processing any tender in terms of the NIT published on 6.4.98 till 31.5.98, or until further order. It is against this order dated 18.4.98 that the Appellants have filed this Misc. First Appeal under Order 43 Rule 1(r) of the Code of Civil Procedure.

6. Mr. K.N. Choudhury, the learned Counsel representing the Appellants has

submitted that as per the arbitration award, the Respondent was given licence as to run the restaurant only till 31.5.98 and that being the position, the Appellants were perfectly justified in issuing notice inviting tenders (NIT) and in such circumstances, the learned Court below has erred as to pass the ad interim order of injunction restraining the Appellants as to proceed with the tenders so received in connection with the said NIT dated 6.4.98. It is also submitted that some of the letters sent by the Airport Authority to M/s. Paradise Hotel and Restaurant dated 6.6.96 and 12.6.96 got withdrawn. He has also referred to Section 52 of the Indian Easements Act, 1882, and submitted that licence is already defined under this Act and that the Airport authorities have proceeded according to law and that being the position there was no question of granting interim injunction in favour of the Respondent/Plaintiff. Mr. K.N. Choudhury, the learned Counsel in this connection has also claimed himself to be fortified with some of the reported cases, firstly, the decision of this Court reported in 1994 (1) GLJ 447, State of Assam and Anr. v. Ms. Associates, New Delhi and has particularly referred to its paragraphs 9 and 10. It is pointed out that the three essential ingredients for the grant of injunction, if so claimed, are to be established by the person claiming orders in his favour under Order 39 Rules 1 and 2 of the Code of Civil Procedure, which in the instant case has not been done.

7. The second reported case so relied upon on behalf of the Appellants is the decision of this Court in (1994) 1 GLR 259, M/s. Contemporary Target Pvt. Ltd. and Ors. v. M/s. M.B. Enterprises and Ors., and the learned Counsel has submitted that a caveat petition was also so filed, but in case an order is passed without notice to the caveator, it can well be said to be a flagrant violation of the principle of fair play.

8. By referring to another reported case, The Oil and Natural Gas Commission and another Vs. The Association of Natural Gas Consuming Industries of Gujarat and others, etc. etc., the learned Counsel for the Appellants in that background has submitted that the Court would not direct the authority to give a chance to M/s. Paradise Hotel and Restaurant in the present case as to run the Airport Restaurant at Guwahati for an indefinite period even after lapse of the term of the contract. In this connection, particularly, paragraph 16 of this judgment is referred. lastly, on behalf of the Appellant, a decision of the Madhya Pradesh High Court in National Airport Authority and Others Vs. Vijaydutt, is also relied upon and the learned Counsel for the Appellants has submitted that the authorities cannot be restrained from initiating proceedings for eviction under the Act after the expiry of the term of licence, which is so done in the instant case by issuing notice inviting tender because of the licence given to the Respondent lapsing on 31.5.98. On these grounds, hence the prayer is that the impugned order under challenge dated 18.4.98 so passed in Misc. Case No. 12/98 be thus set aside.

9. Mr. A.R. Barthakur, the learned senior counsel representing the Respondent, on the other hand, has submitted that by the plain reading of the impugned

order dated 18.4.98, it will transpire that the said order was not passed in the back of the Appellants/Defendants, rather, the learned Counsel for the Defendants had appeared and had submitted making a prayer for reasonable time to file objection to petition No. 1071/98 with that of petition No. 1031/98, and in such circumstances, the learned Court below vide its order dated 18.4.98 has simply directed as to maintain the status quo, which was so even passed in the said Misc. Case on 6.4.98, giving an opportunity to the opposite party, figuring here as Appellants, as to file objections, if any, and leaving all the matters open for consideration on the next date. That being the position, it is vehemently argued that this Misc. First Appeal, so filed under Order 43 Rule 1(r) of the CPC has no leg to stand. It is further submitted that after hearing the parties the learned Court below, vide its order dated 18.4.98, has left the matter open as to decide whether the three essential ingredients for grant of ad interim injunction has been made out by the Petitioner/Respondent or not and, therefore, since this Misc. Appeal has got no merit, the same be dismissed with a direction to the learned Court below as to decide the matter in connection with the prayer so made by the Respondent/Plaintiff in petition Nos. 1031/98 and 1071/98, after receiving the objection, if any, and hearing the parties. It has also been brought to notice that not only the NIT dated 6.4.98 has been challenged, rather in the petition No. 1031/98 there are other matters, as detailed in the petition, under challenge, for which ad interim injunction was sought for. Casually, Mr. Barthakur, the learned senior counsel, has also mentioned that prior to this, ad interim injunction was also passed in favour of the Respondent/Plaintiff in Misc.(J) Case No. 40/94 on 2.6.94 and in the Civil Revision petition bearing No. 376 of 1996, this Court while disposing of the matter on 14.8.97, was pleased to direct the learned Court below as to dispose of the Title Suit bearing No. 42/94 preferably within a period of six months from the date of the order (14.8.97). That being the position, hence the prayer is that this Misc. First Appeal so preferred be thus dismissed, the learned Court below be directed to dispose of the petitions of the present Respondent/Plaintiff so filed in Misc. Case No. 12/98, bearing petitions Nos. 1031/98 and 1071/98, according to law. so filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, after hearing both the sides may be by giving opportunity to the present Appellants, figuring there as opposite party, also to file objections, if any.

10. After hearing both the sides lawyers, taking into consideration the facts discussed above, particularly, after going through the order so passed in Misc.(J) Case No. 12/98, in the background of the two of the petitions so filed by the Respondent/Plaintiff, I find that there is much of substance in the arguments so advanced by Mr. A.R. Borthakur, the learned senior counsel representing the Respondent. In the instant case, the Court below which has first to decide the matter, has not even proved into the facts with regard to the Petitioner/Plaintiff meeting the three ingredients for grant of ad interim injunction, rather the same was left open to be considered on the next date after hearing the parties, and the next date was so given particularly on 18.4.98 at the instance of the learned

Counsel for the present Appellants, figuring there as opposite party, who sought for reasonable time as to file objection to the petitions.

11. In that light, this Misc. First Appeal so filed has got no merit, which is hereby dismissed. The parties to appear before the learned Court below in Misc.(J) Case No. 12/98. The present Appellants have to file objection, if any, as per the direction of the learned Court below and the learned Court below is to dispose of the said Misc. Case within a period of one month from the date of appearance of both the parties. No separate order is passed as to cost, which be rather borne by the parties themselves.

12. Before parting with, it will also not be out of place to mention that while disposing of the Civil Rule No. 2159/98, the NIT dated 6.4.98 only has been declared invalid; but, while disposing of Misc.(J) Case No. 12/98, the learned Court below is to pass necessary orders giving full opportunity to both the sides to be heard relating to petitions No. 1031/98 and 1071/98 so filed by the Respondent/Plaintiff, figuring as Petitioner in the said Misc.(J) Case. This will also not be out of place to mention that since in Civil Revision No. 376 of 1996 (disposed of on 14.8.97), this Court was pleased to direct the learned Court below as to disposed of the main Title Suit No. 42 of 1994 within a period of six months from the date of disposal of the said Civil Revision, the learned Court below will keep in mind as to dispose of the same also expeditiously.

13. The matter stands accordingly disposed of. The interim order, however, if any, passed in connection with this appeal, also stands vacated.