

(2003) 03 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 143 of 2001

Prakash Manav and Another

APPELLANT

Vs

Ajay and Another

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2003) 3 MPHT 137

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : S.C. Bagdiya, instructed by Sunil Jain, for the Appellant; M.L. Agrawal, for the Respondent

Judgement

A.K. Gohil, J.—This order shall also govern the disposal of Misc. Appeal No. 144 of 2001 (Prakash Manav s/o Kantilalji Jain and another v. Mangilal s/o Sujanmalji Pamecha and another).

2. Misc. Appeal No. 143 of 2001 has been filed by appellants/defendants against the impugned order dated 23-1-2001 passed by IInd Additional District Judge, Neemuch, in Regular Civil Suit No. 22-A/2000, whereby allowed the application filed under Order XXXIX Rules 1 and 2 of the CPC (for short "the Code") which was filed by the respondents/ plaintiffs.

3. The brief facts of the case are that the respondents/plaintiffs filed a suit for recovery of some amount against the appellants/defendants and also filed an application under Order XXXIX Rules 1 and 2 read with Section 151 and also under Order XL Rule 1 of the Code. The reply of the application was also filed. The learned Trial Court by impugned order dated 25-1-2001 allowed the injunction application and directed the appellants/defendants that they will not transfer or otherwise create any charge over Gyanoday Printing Press, its graphic system and machines and other hypothecated material. It is further directed that the appellants/defendants shall also submit an undertaking and also security for the sum of Rs. 8,00,000.00 and in default they would be liable to pay the said

amount and rejected the prayer of appointment of receiver.

4. I have heard learned Counsel for the parties and perused the record. I have also perused the composite application which was filed for grant of injunction as well as for appointment of receiver. It is a very evasive application. It was contended in the application on behalf of the respondents/plaintiffs that the appellants/defendants have taken loan; they are earning money from the press but they are not re- paying the amount of loan with interest and it was further contended that there is apprehension that the appellants/defendants may at any time either sell or transfer the same, therefore, by an interim direction the said press be called and be kept in the Court and receiver be also appointed. On this very short evasive application, without any particulars of loan or the nature of the apprehension, the Trial Court passed a detailed order and also directed for furnishing security. The objection of Shri Bagdiya, learned Senior Advocate for appellants/defendants is that such an application was out rightly liable to be dismissed as the respondents/ plaintiffs have failed to make out a case either for grant of any injunction or for furnishing security in addition to the direction not to transfer or not to create any charge over the property, was sufficient.

5. I have also perused the reply of the injunction application in which the appellants/defendants have stated that they are not transferring either the press or the hypothecated property nor creating any charge thereon.

6. It is true that under Order XXXIX Rule 1 of the Code where in any suit it is proved by affidavit or otherwise that any property in dispute, in a suit, is in danger of being wasted, damaged or alienated by any party to the suit or that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, the Court may by order grant a temporary injunction to restrain such act. Under Rule 2 of Order XXXIX the plaintiff may apply to the Court for temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, the Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

7. In view of the aforesaid provisions it is necessary for the plaintiff to prove on affidavit or otherwise that the property in dispute, in a suit, is in danger of being wasted, damaged or alienated, or the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors and in such a situation if Court found that a reasonable case is made out on sound judicial discretion then the Court may grant injunction and may also order for taking security for the same. Here in this case from the bare reading of the application it appears that the application was filed in a very cursory and casual manner and there were no proper pleadings that either the property is in danger of being wasted, damaged or alienated. Even I do not find any sufficient pleadings in the application about any sound apprehension pleaded for the relief.

8. It is well settled law that for granting temporary injunction, plaintiff is required

to make out a prima facie case and also to satisfy to the Court that he is also having balance of convenience in his favour and if the injunction is not granted he shall suffer from irreparable loss which cannot be compensated in terms of money. It is too well settled that all the aforesaid three pillars must co-exist in the case. It is further more required to prove that he has come in the Court, with clean hands, and he has not suppressed the material facts. This can only be done by pleading the facts independently in the temporary injunction application which should also be supported by proper affidavit. Relief of injunction is a discretionary relief. Therefore, it is the duty of the plaintiff to make out an arguable case on the facts, for grant of temporary injunction.

9. By the impugned order the Trial Court has granted the relief to the plaintiffs which was not even prayed or pleaded for. That too in a suit for recovery of money, where plaintiff cannot prove a case of irreparable injury, which cannot be compensated in terms of money. The Court has directed that the appellants/defendants shall not transfer the printing press and its machinery and shall also not create any third party charge thereon. It was further directed that they will also furnish security for a sum of Rs. 8,00,000.00 and shall also furnish an undertaking that till the final disposal of the suit they will not either transfer or create any charge on the suit property and further directed that in case of default, they should be ready to pay the said amount under the direction of the Court.

10. From the perusal of the language of Para No. 29 of the impugned order, it is clear that the Trial Court travelled beyond the law for granting temporary injunction and also the relief even not prayed for by the respondents/plaintiffs. Even if the Trial Court was satisfied that an injunction is necessary even in a case for recovery of money or the plaintiff has made out a case, the Trial Court should have simply directed the parties to maintain status quo or not to transfer the property or to create any third party charge thereon. Asking for security, undertaking and in advance writing that in case of breach, they should be ready to pay the amount of Rs. 8,00,000.00 was absolutely unwarranted. This is more than the attachment of property under Order XXXVIII of the Code. It is expected from the Trial Court to properly understand the difference between two provisions of Order XXXVIII and XXXIX of the Code. Thus looking to the aforesaid discussion, this appeal is allowed. The impugned order is set aside and the case is remanded to the Trial Court to decide the application of the plaintiff after hearing the parties, in accordance with law. No order as to costs.

11. In Misc. Appeal No. 144 of 2001, in a suit for specific performance of the contract, for possession and also for permanent injunction and alternatively plaintiffs have also claimed a decree of Rs. 19,00,000.00. In this case also respondents/plaintiffs filed an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code and in that application prayed a relief of injunction as well as for appointment of receiver, and they also prayed for relief of interim possession and for damages also. In this application they have not prayed about

depositing a sum of Rs. 10,000.00 per month as a compensation for using the house and the plaintiffs have also not prayed for a security for Rs. 22,00,000.00 but the Trial Court granted the same. The Trial Court also granted injunction that during the pendency of the suit appellants/ defendants shall not transfer the suit House No: 329, situated at Tilak Marg, Neemuch, and shall also not create any charge thereon. In the impugned order Court has found that the plaintiffs have already paid a sum of Rs. 19,00,000.00 to the respondents/defendants without taking possession over the property in dispute. The Trial Court has further directed that the appellant shall also file undertaking to this effect and shall also furnish security to the extent of Rs. 22,00,000.00 and in default of undertaking they would be liable to deposit Rs. 22,00,000.00. The Trial Court has further directed that from June, 2000, the appellants/defendants are further directed to deposit a further sum of Rs. 10,000.00 up to January, 2001 and thereafter on 10th of every subsequent months and the respondents/plaintiffs would be entitled to recover the same.

12. In this case also the plaintiffs have filed application in a very cursory and casual manner without any proper pleadings. There are no pleadings about prima facie case, balance of convenience and about any loss or irreparable injury to the plaintiff. The impugned order of injunction passed by the Trial Court in this appeal on 25-1-2001 is vehemently opposed by the Counsel for appellants/ defendants.

13. Having heard learned Counsel for parties and after perusal of the injunction application, this appeal is partly allowed. The injunction granted against the appellants/defendants to the extent that they will not transfer or create any third party charge over the suit house is maintained. This part of the impugned order that the defendants shall also deposit a sum of Rs. 10,000.00 per month as a compensation is also maintained and to file undertaking is also maintained, but rest of the order for taking security etc. is hereby set aside.

14. In both the cases I find that the Court has not considered the pleadings in the applications. It is the duty of the Trial Court to see that the proper case is made out for grant of injunction. Proper apprehension should also be pleaded and proved. If any application is filed in a cursory and casual manner, in such cases Court is required to deal the same in legal manner and Court should not pass orders beyond the relief claimed or prayed for.

15. With the aforesaid observations, both the appeals are disposed of with no order as to costs. Records be returned.

16. Retain this order in the record of Misc. Appeal No. 143 of 2001 and place its copy in the record of connected Misc. Appeal No. 144 of 2001.