

(2012) 12 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61305 of 2012

Rajesh Jaiswal and Another

APPELLANT

Vs

Amit Shyam and Another

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 43 Rule 1, Order 43 Rule 2, 104

Citation : (2013) 3 ALJ 67

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Saurabh Raj Srivastava, for the Appellant; Sudeep Dwivedi, for the Respondent

Judgement

Pankaj Mithal, J.—Heard Sri Saurabh Raj Srivastava, learned counsel for the petitioners and Sri Sudeep Dwivedi, learned counsel appearing for respondents and with their consent the petition is being finally decided at this stage itself. On the petitioners' interim injunction application in the suit initially an ex parte injunction was granted but subsequently the injunction application was rejected. The petitioners have challenged the aforesaid order dated 12.11.2010 by means of Miscellaneous Appeal No. 162 of 2010 before the Court below in appeal.

2. In appeal they filed an application 15C alongwith an affidavit to take on record certain new documents which were not part of the record of the trial Court for the purposes of disposal of the injunction matter. The said application has been rejected by the impugned order dated 24.9.2012.

3. The submission of learned counsel for the petitioner is that the rejection of the above application on the ground that there is no provision in CPC for permitting additional evidence in a miscellaneous appeal is totally erroneous.

4. Ordinarily, an application of grant of interim injunction is decided on the basis of affidavits and the material documents produced with them without waiting for

the evidence to come in the regular manner. Therefore, any relevant document which may have been left out from production initially can be brought on record subsequently with the leave of the Court provided it is found to be material for the purposes of effective adjudication of the injunction matter. Such material can also be produced in a miscellaneous appeal preferred against the order of the trial Court refusing or allowing interim injunction.

5. Order XLIII. Rule 2. C.P.C. provides that rules of Order XLI, C.P.C. shall apply to appeals from orders also which means appeals preferred against orders as specified u/s 104 read with Order XLIII, Rule 1 including one arising from grant or refusal of interim injunction. It means Order XLI, Rule 27, C.P.C. can be applied to miscellaneous appeals as well and there is no bar in taking new material on record at the appellate stage in appeals arising out of orders. Therefore, also the appellate Court has full authority to accept affidavits/ documents in addition to those filed in the Court below, if necessary for the purposes of deciding the injunction matter subject to certain limitations.

6. In the above legal scenario the appellate Court below is not right in refusing to accept the documents in appeal and erred in refusing them on the ground that the provisions of Order XLI, Rule 27, C.P.C. are not applicable. In view of the above, the impugned order dated 24.9.2012 is unsustainable and is hereby quashed and the Court below is directed to consider the application 15C afresh and to decide the appeal itself in accordance with law, as expeditiously as possible, preferably within a period of four months from the date of production of a certified copy of this order.