

(2010) 10 AHC CK 0253
In the Allahabad High Court

Ram Charitar and Ors.

APPELLANT

Vs

Civil Judge (Senior Div.) Ambedkar Nagar And Ors.

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Citation : (2010) 10 AHC CK 0253

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Virendra Kumar Shukla, learned counsel for the petitioner and Sri Nitish Kumar, Advocate holding brief of Sri Manish Kumar, learned counsel for the respondents.

2. In brief the facts of the present case are that the petitioner filed a suit for permanent injunction before the O.P. No. 1 registered as Suit No. 216 of 2010 Ram Charitar and others Vs. Hari and others, in the same he moved an application for temporary injunction under Order 39 Rule 1 CPC (application No. 7Ga2), came up for consideration before the O.P. No. 1 on 06.09.2010 and after hearing the learned counsel for the petitioner, the court below was of the opinion that before granting the exparte injunction in favour of the petitioner/plaintiff, it is necessary to hear the defendants. Accordingly notices were issued and the next date fixed was 22.09.2010.

3. Learned counsel for the petitioner submits that on 22.09.2010, the matter could not be taken up due to some unavoidable reasons, hence the present writ petition has been filed by the petitioner challenging the impugned order dated 06.09.2010 (Annexure1) passed by O.P. No. 1.

4. I have heard the counsel for the parties and gone through the record.

5. In view of the above said factual background the question which immediately arises is that what principles should be followed by the Courts in the matter of grant of ad interim injunction. The answer is contained in the decision of the Hon"ble Apex Court in the case of Shiv Kumar Chadha Vs. Municipal Corporation

of Delhi, (1993) 3SCC 161, a Bench of three Judges of Apex Court has held that:

" It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course, grant of injunction is within the discretion of the court and such discretion is not to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The Court grants such relief according to the legal principles *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and that the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him".

6. In the case of *Dalpat Kumar V. Prahlad Singh* (1992) 1 SCC 719 a Bench of two Judge of the Apex Court held that the phrases "*Prima facie* case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men's ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The court would be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused.

7. In *Woodroffe's Law Relating to Injunctions*, 2nd revised and enlarged Edn., 1992, at page 56 in para 30.01, it is stated that

"an injunction will only be granted to prevent the breach of an obligation (that is a duty enforceable by law) existing in favour of the applicant who must have personal interest in the matter. In the first place, therefore, an interference by injunction is founded on the existence of a legal right, an applicant must be able to show a fair *prima facie* case in support of the title which he asserts."

8. In *The Law Quarterly Review* Vol. 109, page 432 (at p. 446), A.A.S. Zuckerman under the title "*Mareva* Injunctions and Security for Judgment in a Framework of Interlocutory Remedies" has stated: :

"The Court considering an application for an interlocutory injunction has four factors to consider; first, whether the plaintiff would suffer irreparable harm if the injunction is denied; secondly, whether this harm outweighs any irreparable harm that the defendant would suffer from an injunction; thirdly, the parties' relative prospects of success on the merits; fourthly, any public interest involved in the decision. The central objective of interlocutory injunctions should therefore be seen as reducing the risk that rights will be irreparably harmed during the inevitable delay of litigation."

9. Accordingly, the legal position which emerges out is to the effect that in a suit

for injunction while disposing of an application for temporary injunction, the Court should inquire on affidavit, evidence and other materials placed before it to find a strong prima facie case, balance of convenience and irreparable loss before granting injunction in favour of a person/plaintiff. However, in case the Court has any doubt in its mind in spite of material evidence and documents placed by a person/plaintiff in support of his case for grant of temporary injunction, and prior to granting the same, issues notices to the defendant calling upon him to file objections, then the said action on the part of the court is neither illegal nor arbitrary rather the same is in conformity to the principles of natural justice and is in accordance with law.

10. Keeping in view the above facts, as in the instant case on the application for temporary injunction (7Ga 2) moved on behalf of the plaintiff/petitioner, the court below after going through the documents on record was prima facie of the opinion that before granting ex parte injunction order, defendant should be heard accordingly notices were issued for the said purpose so the said action on the part of the court below is perfectly valid rather in accordance with law as laid down by the Hon"ble Apex Court in the case of Kashi Math Samsthan and another Vs. Srimad Sudhindra Thirtha Swamy and others, JT 2009 (15) SC 33.

11. For the foregoing reasons, the writ petition lacks merit and is dismissed. Further the O.P. No. 1 shall make all endeavour to decide the application for temporary injunction at an early date after hearing the parties in accordance with law.

No order as to costs.