
(2004) 02 AHC CK 0242
In the Allahabad High Court
Case No : Civil Revision No. 11 of 2004

Rashid Ali

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, 115, 80

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 53A, 9A

Citation : (2004) 5 AWC 4465

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : R.G. Misra, for the Appellant;

Judgement

N.K. Mehrotra, J.—This is a civil revision u/s 115 of the CPC against the order dated 27.1.2004 passed by the Civil Judge (Senior Division), Lucknow in Misc. Case No. 23 of 2004 (Regular Suit No. 49 of 2004), Rashid Ali v. State of U.P. and ors.

2. The Plaintiff-revisionist filed a suit against the State of U.P. and four others for issuing a mandatory injunction against the order dated 27.5.2002 passed by the Defendant No. 2 granting mining lease to the Defendant No. 5 as null and void and for injunction directing the Defendant No. 1 to direct the Defendant No. 2 to auction the area in question in accordance with law. The Plaintiff-revisionist also sought a relief by way of permanent injunction restraining the Defendant No. 5 from his mining operation in pursuance of the order dated 27.5.2002. At the time of filing of the suit, the Plaintiff moved an application for exemption from serving notice u/s 80 of the CPC on the Defendant Nos. 1 and 2 and also moved an application under Order XXXIX, Rules 1 and 2 of the CPC for ad interim mandatory injunction directing the Defendant No. 2 to auction the area in question in accordance with law after suspending the order dated 27.5.2002 passed by the Defendant No. 2 granting mining lease in favour of the Defendant

No. 5.

3. The learned Civil Judge by the impugned order allowed the application for exemption from serving the notice u/s 80 of the CPC but instead of passing any order on application under Order XXXIX, Rules 1 and 2 of the CPC deferred the hearing for deciding the issue of territorial jurisdiction and fixed 28.1.2004. The Plaintiff-revisionist is aggrieved by the inaction on the part of the Civil Judge in not considering the application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure.

4. At the same time, the learned Counsel for the Plaintiff-revisionist has referred the provisions under Order XXXIX, Rules 1, 2 and 3 of the Code of Civil Procedure. The learned Counsel for the revisionist has argued that under Rule 3 of Order XXXIX of the CPC that in the cases where it appears that the object of granting injunction would be defeated by delay, the Court may grant an injunction without giving notice of the application to the opposite parties by recording reasons for its opinion. Therefore, at the time of disposal of the Civil Revision, the impugned order dated 27.5.2002 should be suspended till the disposal of the application under Order XXXIX, Rules 1 and 2 by the learned Civil Judge. In view of the averments made in the affidavit accompanied with an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, it appears appropriate to suspend the order dated 27.5.2002 passed by the Defendant No. 1 granting lease in favour of the Defendant No. 5 which is alleged to be not in accordance with the Full Bench judgment of this Court under Rule 9A and Rule 53A of the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 was declared ultra vires and the undertaking given by the Government before the Supreme Court at the time of withdrawal of the SLP against that judgment.

5. In view of the above, the Civil Revision is disposed of finally for expeditious disposal of pending application under Order XXXIX, Rules 1 and 2 of the CPC filed in Suit No. 49 of 2004 Rashid Ali v. State of U.P. and ors. with the directions that the order dated 27.5.2002 passed by the Defendant No. 2 granting lease in favour of the Defendant No. 5 shall remain suspended till the disposal of pending application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure. However, it is made clear that this order will not affect the order of the learned Civil Judge (Senior Division), Lucknow in disposing of the pending application on merit and deciding the plea of territorial jurisdiction.