
(2006) 01 AHC CK 0223
In the Allahabad High Court
Case No : C.M.W.P. No. 43344 of 2003

Sanjay Paper and Chemical Industries Ltd.	APPELLANT
Vs	
District Judge and Others	RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Citation : AIR 2006 All 106 : (2006) 1 AWC 903 : (2006) 2 RD 502

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Arun Kumar Gupta and R.K. Mishra, for the Appellant; S.P.K. Tripathi, Tej Pratap Tewari and Vivek Kumar Birla, S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—Original Suit No. 119 of 2002 was filed by Shakuns Moterik Company Ltd. against the petitioner M/s. Sanjay Paper and Chemical Industries Ltd. Along with the suit, an injunction application was also filed, in which no ex parte injunction was granted and only notices were issued to the defendant fixing 14.3.2002. However, prior to the said date, on 26.2.2002, the plaintiff-respondent No. 3 filed an application for withdrawal of the said suit. Before any orders could be passed on the said application for withdrawing the suit, on 27.8.2003, the respondent No. 3 filed another Suit No. 518 of 2003 with the same prayer as in the earlier Suit No. 119 of 2002. In this Original Suit No. 518 of 2003 also no ex parte injunction was granted and on 27.8.2003, only notice was issued by the Civil Judge (Senior Division), Gorakhpur fixing 26.9.2003 for hearing on the injunction application. However, in the meantime on 3.9.2003 the application dated 26.2.2002 praying for withdrawal of Original Suit No. 119 of 2002 was allowed and the said suit was dismissed as withdrawn.

2. Against the order dated 27.8.2003, passed in the Second Suit No. 518 of 2003 by which merely notices to the defendant (petitioner herein) had been issued fixing 26.9.2003, the respondent No. 3 filed Revision No. 143 of 2003 before the District Judge, Gorakhpur, respondent No. 1. The said revision was finally

disposed of by the District Judge on 11.9.2003, itself and the injunction was granted, virtually allowing the injunction application. Aggrieved by the said order dated 11.9.2003, the petitioner has filed this writ petition.

3. I have heard Sri Arun Kumar Gupta, learned Counsel for the petitioner as well as Sri S. P. K. Tripathi on behalf of respondent No. 3. Counter and rejoinder-affidavits have been exchanged and with the consent of learned Counsel for the parties, this writ petition is being disposed of at the admission stage itself.

4. The contention of the petitioner is that the Second Suit No. 518 of 2003 filed by the respondent No. 3 with the same prayer, as made in the earlier Suit No. 119 of 2002 filed by him, would not be maintainable. It has also been submitted that the revision filed by the respondent No. 3 against the order dated 27.8.2003, whereby notices had been issued on the injunction application, was also not maintainable and even otherwise, the same could not have been finally disposed of without giving opportunity of hearing to the petitioner, against whom the injunction had been granted.

5. It is not denied by the respondent No. 3 that the revision was finally disposed of on the first date itself, i.e., 11.9.2003, without issuing notices to the petitioner. Allowing of the revision without affording an opportunity to the other side whereby injunction had been granted against the petitioner is against the well established principles of natural justice. The petitioner was entitled to be given an opportunity of being heard before any injunction could be granted against him. As such the impugned order dated 11.9.2003 is liable to be quashed on this ground alone.

6. Even otherwise no second suit, with the same prayer as in the earlier suit, would be maintainable, unless liberty has been granted by the Court to institute a second suit for the same cause of action. In the present case, the second suit was filed on 27.8.2003, during the pendency of the first Suit No. 119 of 2002 which was withdrawn only on 3.9.2003. As such it appears that the respondent No. 3 has abused the process of the Court by filing the second suit for the same cause of action.

7. Accordingly, for the foregoing reasons, the order dated 11.9.2003, passed by the revisional court is quashed. The writ petition stands allowed.