
(2009) 11 RAJ CK 0052
In the Rajasthan High Court

Sanwarmal Joshi and Others

APPELLANT

Vs

Indus Tower and Others

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2010) 1 WLN 311

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Judgement

Narendra Kumar Jain, J.—Heard the learned Counsel for the parties.

2. The plaintiff-respondent No. 1 filed a suit for permanent injunction along with an application for temporary injunction in the trial court. The defendant appeared in the trial court on 11th August, 2009 and sought time to file reply to T.I. application. The trial court allowed time for filing reply to T. Lapplication till 21st August, 2009 and till then passed an order of status quo and not to obstruct from using tower already erected at the spot.

3. The plaintiff filed another application on 1st September, 2009 u/s 151 C.P.C. to provide police aid to comply with the injunction order -passed by trial court on 11th August, 2009. The trial court allowed the said application vide order dated 16th September, 2009. Being aggrieved with the aforesaid orders, the defendants have preferred the present writ petition.

4. The learned Counsel for the petitioners contended that the trial court passed an interim order maintaining the status quo only whereas the trial court vide subsequent order dated 16th September, 2009 while allowing police aid to plaintiff also passed an order that the defendants may not make any hindrance in using the tower erected. Therefore, subsequent order dated 16th September, 2009 is without jurisdiction and is liable to be set aside by this Court.

5. The learned Counsel for the respondents contended that it was the suit filed

by the plaintiff-respondent wherein an injunction order was passed against defendants vide order dated 11th August/2009. So far as subsequent order dated 16th September, 2009 is concerned, the same is only a consequential order of the earlier order. It is also contended that there is no illegality in both the orders passed by court below so as to interfere with the same under Article 227 of the Constitution. Hence writ petition be dismissed.

6. I have considered the submissions of learned Counsel for both the parties and examined both the impugned orders passed by the trial court. The learned Counsel for the petitioners admits that defendants have already filed a reply to the application for temporary injunction in the trial court. The application for T.I. is still pending in the trial court and final order is still to be passed on it. During course of arguments, the counsel for petitioners admitted that defendants will not interfere or make any hindrance in the use of tower already erected at the spot till disposal of the T.I. application and the trial court be directed to decide the application at the earliest.

7. In view of above discussions, the writ petition is disposed of with a direction to the trial court to decide the application for temporary injunction within a period of one month from the date of filing of certified copy of this order and till then the defendants will maintain the status quo in respect of the tower already erected at the spot and they will not make any hindrance in using the same by the plaintiff. However, it is also directed that plaintiff will not erect any other tower or raise any construction over it till the final disposal of the application for temporary injunction.