

(2014) 05 SHI CK 0051
In the High Court Of Himachal Pradesh
Case No : LPA No. 4002/2013

Sarvjeet Singh (deceased) through LR.	APPELLANT
Vs	
Punjab and Sind Bank	RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

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

Citation : (2014) 05 SHI CK 0051

Hon'ble Judges : Mansoor Ahmad Mir, Acting C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Ajay Sharma, Advocate for the Appellant; I.P. Singh and Janesh Mahajan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, Actg. C.J.

1. This Letters Patent Appeal is directed against the order dated 17th April, 2013, made by the learned Single Judge in Civil Suit No. 24 of 2003, whereby Original Miscellaneous Petition No. 198/2012 was disposed of and whereunder the Assistant Commissioner-cum-Land Acquisition Collector (Railway), Una was directed to deposit the compensation amount of the acquired land of the appellant alongwith up-to-date interest before the Registrar General of this Court and the Registrar General was directed to deposit the same in fixed deposit, with a further direction that release of the said amount shall abide by the decision in the civil suit, supra, for short "the impugned order".
2. The Registry had wrongly diarized this appeal as Letters Patent Appeal, is an appeal in terms of Order 43 Rule 1(r) of the Code of Civil Procedure, for short the "CPC". The Registry is directed to diarize the same accordingly.
3. It is necessary to give brief facts of the case, the womb of which has given birth to the present appeal.

4. The respondent-plaintiff had filed a suit against the appellant-defendant for recovery of Rs. 36,67,933/- with interest @ 18% per annum from the date of filing of suit till its recovery, on the basis of the averments contained in the memo of plaint.

5. Alongwith the suit, the respondent-plaintiff had moved Original Miscellaneous Petition No. 360/2003 in terms of the provisions of Order 39 Rules 1 & 2 and Order 38 Rule 5 read with Section 151 of the CPC, for attachment of the property of the appellant-defendant.

6. After noticing the pleadings and reliefs, contained in OMP No. 360/2003, the learned Single Judge, vide Order dated 28.11.2003, had directed the parties to maintain status quo in respect of the property, particulars of which are contained in the said application. It is profitable to reproduce the said order herein:

Learned counsel appearing for the defendant prays for and is granted two weeks time to file reply.

In the meanwhile, status quo as of today in respect of the property to be attached shall be maintained by the parties. Replication to the written statement shall also be filed within four weeks. List thereafter.

Dasti copy on usual terms.

7. Thereafter, vide order dated 11th March, 2004, order dated 28.11.2003 was made absolute and OMP No. 360/2003 was finally disposed of. It is apt to reproduce the said order herein:

OMP No. 360/2003:

Heard learned counsel for the parties.

Order dated 28th November, 2003 is made absolute till the disposal of the suit. The application is disposed of.

CS No. 24/2003:

Be listed before the Registrar (Vigilance) for admission and denial of the documents.

8. During the pendency of the suit, the respondent-plaintiff had moved Original Miscellaneous Application No. 198 of 2012, in terms of the provisions of Order 39 Rule 4 read with Section 151 CPC, for modification of order dated 11.3.2004, supra.

9. Notice was issued to the appellant-defendant vide order dated 19th June, 2012 and in the meantime, the appellant-defendant was restrained from receiving the compensation amount from the Land Acquisition Collector, Railway, Una.

10. The appellant-defendant had filed objections to the said application on 1st

January, 2013 and the respondent-plaintiff had filed rejoinder to the said objections on 18th March, 2013.

11. After hearing the learned Counsel for the parties, the learned Single Judge had made the impugned order.

12. Feeling aggrieved, the appellant-defendant has questioned the same by the medium of this appeal. The order came to be made in terms of the provisions of Order 39 Rules 1, 2, 4 and Order 38 Rule 5 of the CPC, while hearing the case in original civil jurisdiction, is appealable in terms of Order 43 Rule 1(r) of the CPC.

13. The learned Counsel for the appellant-defendant argued that the impugned order is bad on the ground that the amount of compensation awarded by the Land Acquisition Collector, in terms of the acquisition proceedings, is not liable for attachment in terms of the provisions of Section 52-A of the Land Acquisition (Himachal Pradesh Amendment) Act, 1986, for short "the Act". He further argued that the property, description of which has been given in OMP No. 360/2003, was not the subject matter of the suit, thus compensation amount was to be released in favour of the appellant-defendant.

14. The learned Counsel for the respondent-plaintiff argued that the appellant-defendant has defrauded not only the bank but also the employees of the bank and the other persons, OMP No. 360/2003 was for restraining the appellant-defendant from alienating the property in order to prevent him from causing obstruction and delay in execution of the judgment and decree, that may be passed against him in the said suit. Status quo order dated 28.11.2003 was made absolute vide order dated 11th March, 2004, has attained finality. He further argued that the landed property of the appellant-defendant was acquired by the Land Acquisition Collector despite the entries made in the relevant revenue record relating to the said interim direction.

15. On noticing the acquisition proceedings and passing of award, the plaintiff-respondent had filed OMP No. 198/2003 for restraining the Land Acquisition Collector from releasing the compensation amount in favour of the appellant-defendant and restraining him from receiving the same, which was granted to him in ex-parte order dated 19.6.2012 and thereafter, it was made absolute in terms of the impugned order.

16. The appellant-defendant has not denied the factum of ownership of the said land, the description of which is given in OMP No. 360/2003. Thus, it cannot be said that the order is bad or the property to the lis belongs to some other person. The order was made in terms of Order 39 Rules 1 & 2 and Order 38 Rule 5 read with Section 151 of the CPC, which has attained finality and the purpose of the order was just to restrain the appellant-defendant from making alienation in order to give a slip to the law and to render the judgment/decrees useless.

17. Before we deal with the merits of the case, it is profitable to discuss that while making an order under Order 39 Rules 1 & 2 of the CPC, Court has to keep

in mind three principles, as under:

- (i) Prima-facie case;
- (ii) balance of convenience; and
- (iii) irreparable loss and injury.

18. All the three principles, which are required for making an order in terms of Order 39 Rules 1 & 2 of the CPC, are in favour of the plaintiff-respondent. The question is, whether it is the same property, description of which has been given in OMP No. 360/2003, or somewhat different property.

19. While going through the abstract of revenue record, the OMPs No. 360/2003 and 198/2012, we find that the property is the same and belongs to the appellant-defendant, which is also admitted. Thus, the argument made by the learned Counsel for the appellant-defendant is devoid of any force.

20. The moot question is whether the amount of compensation can be attached.

21. It is apt to reproduce Section 52-A of the Act:

Protection of compensation-No compensation awarded or awardable under this Act-

- (a) before it is actually paid to the person entitled to receive the same; or
- (b) before or after it is actually paid to the person entitled to receive the same in respect of any land which is not liable, under the law for the time being in force, to attachment or sale in execution of a decree or order of any court; ;

shall be liable to seizure, attachment or sequestration by process of any court, at the instance of a creditor, for any demand against the person entitled to compensation, or in satisfaction of a decree or order of any court, and, notwithstanding anything to the contrary in any law for the time being in force, neither the official assignee nor any receiver appointed under any law shall be entitled to proceed against or to have any claim on any such compensation.

22. While going through the plain language of the aforesaid Section, it appears that the awarded amount in respect of the property, which cannot be attached in terms of Section 60 of the CPC, cannot be attached. It nowhere mandates that if the property which can be attached in terms of Section 60 of the CPC, is acquired, the awarded amount/compensation amount cannot be attached.

23. The purpose, aim and object of this provision, it appears to us, is only to provide protection to the judgment debtor in respect of the property which cannot be attached in terms of Section 60 of the CPC and protection cannot be extended in respect of the property which is liable to be attached in terms of Section 60 of the CPC. The words, as referred to in Section 52A of the Land Acquisition Act, "in respect of the land" have a significance and are to be interpreted, while keeping in view the provisions of Section 60 of the CPC.

24. The learned Counsel for the parties have not argued on these lines and even the learned Counsel for the appellant-defendant has not made any effort to distinguish whether Section 52-A of the Act can be pressed into service in respect of the property which is liable for attachment in terms of Section 60 of the CPC and in respect of any land which is not liable under the law for the time being in force for attachment or sale in execution of decree or order of any Court.

25. Applicant has to carve out that he/she has a prima-facie case, balance of convenience lies in his/her favour and in case restraint order is not made, he/she will suffer irreparable loss and injury. It is necessary to give details of the law laid down by the Apex Court and the Hon''ble High Courts and Privy Council while discussing the mandate of Order 39 Rules 1 & 2 of the CPC. The Hon''ble Supreme Court in cases titled as Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, , Hari Shankar and Others Vs. Satya Prakash and Another, , M. Gurudas and Others Vs. Rasaranjan and Others, , Skyline Education Institute (Pvt.) Ltd. Vs. S.L. Vaswani and Another, , Kashi Math Samsthan and Another Vs. Srimad Sudhindra Thirtha Swamy and Another, , Super Cassettes Industries Ltd. Vs. Music Broadcast Pvt. Ltd., , Jehal Tanti and Others Vs. Nageshwar Singh (dead) through L.Rs., and Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others, , has discussed all the three principles.

26. It is apt to reproduce paras 19 & 22 of M. Gurudas'' judgment, supra, herein:

19. While considering an application for injunction, it is well-settled, the courts would pass an order thereupon having regard to:

(i) Prima facie

(ii) Balance of convenience

(iii) Irreparable injury.

22. While considering the question of granting an order of injunction one way or the other, evidently, the court, apart from finding out a prima facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiffs if the prayer for injunction is to be refused. The contention of the plaintiffs must be bona fide. The question sought to be tried must be a serious question and not only on a mere triable issue. [See Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, , Dalpat Kumar and Another Vs. Prahlad Singh and Others, , United Commercial Bank Vs. Bank of India and Others, , M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , Bina Murlidhar Hemdev and Others Vs. Kanhaiyalal Lokram Hemdev and Others, and Transmission Corpn. of A.P. Ltd. (supra)]

27. The Hon''ble apex Court in Super Cassettes Industries'' case, supra, in paras 50 & 51 held as under:

50. Therefore, the jurisdiction and authority of only the Tribunals, but also the

Courts are structured by the statutory grants and limitations.

51. However, both the grant as well as the limitations could be either express or implied from the scheme of a particular enactment. The considerations relevant for ascertaining whether there is an implied grant of such powers, as can be culled out from the various judgments relied upon by the learned counsel appearing in these matters, which have been taken not of by my learned brother Justice Kabir, appear to be; (1) need to preserve status quo with respect to the subject matter of the dispute in order to enable the party, which eventually succeeds in the litigation, to enjoy the fruits of the success; and (2) need to preserve the parties themselves a consideration, which weighed heavily with this Court in implying such powers in favour of the Magistrates while exercising the jurisdiction u/s 125 of the Code of Criminal Procedure.

28. The Apex Court in another case titled Best Sellers Retail (India) Pvt. Ltd. Vs. Aditya Birla Nuvo Ltd. and Others, , also held that the plaintiff has not only to show prima facie case, but also has to carve out a case for grant of relief by disclosing and indicating that all the said three principles not only exist but co-exist. It is apt to reproduce para 29 of the judgment, supra, herein:-

29. Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable.

29. Recently, the apex Court has developed another principle and has held that while granting or refusing interim relief, during the pendency of the suit, in terms of provisions of Order 39 Rules 1 & 2 of the CPC, the conduct of the parties is also of vital importance. The Apex Court in Dalpat Kumar and Another Vs. Prahlad Singh and Others, , M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others, , Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others, and Makers Development Services Pvt. Ltd. Vs. M. Visvesvaraya Industrial Research and Development Centre, has held that in addition to three principles, the Court has also to take into consideration the conduct of the parties.

30. It is profitable to reproduce para 18 of Mandali's judgment, supra, herein:

18. While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the

interest of the parties. For the said purpose, application of mind on the part of the Courts is imperative. Contentions raised by the parties must be determined objectively.

31. The apex Court in Makers Development's case, supra, in para 11 held, as under:

11. It is settled law that while passing an interim order of injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, the Court is required to consider three basic principles, namely, a) prima facie case, b) balance of convenience and inconvenience and c) irreparable loss and injury. In addition to the above mentioned three basic principles, a court, while granting injunction must also take into consideration the conduct of the parties.

32. While examining the pleadings, orders and Original Miscellaneous Petition, one comes to an inescapable conclusion that the interim orders have been made in order to ensure that plaintiff if succeeds, must enjoy the fruits of the success.

33. The impugned order is discretionary one, has been passed legally and rightly, warrants no interference.

34. Having glanced the aforesaid discussion and in view of the facts of the case, we are of the considered view that the order made by the learned Single Judge is legal one and needs no interference.

35. Accordingly, the impugned order is upheld and the appeal is dismissed.