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**(2003) 01 PAT CK 0083**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 12168 of 2002**

Shri Ashwani Dhir and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

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**Date of Decision :** 23-01-2003

**Acts Referred:**

**Citation :** (2003) 51 BLJR 417 : (2003) 1 PLJR 501

**Hon'ble Judges :** R.S. Garg, J

**Bench :** Single Bench

**Advocate :** Sunil Kumar Singh No. 1, for the Appellant; A.N. Singh, SC 8, for the Respondent

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## Judgement

R.S. Garg, J.—The petitioners who are producer and artists of serial known as "Ram Khelawan C.M. "N" Family" have come to this Court making manifold complaints.

2. The first of the complaint is that the question raised by them in their defence has not been decided by the learned Sub-Judge. The other complaint is that the question relating to fundamental right and relating to expression have also not been considered by the Sub-Judge, therefore, the petitioners cannot get proper justice even from the appellate Court. It is also the submission of the petitioners that as the question of fundamental right is involved in the present matter, this Court should hear the matter and decide whether the telecast of the said serial is in accordance with law or any objection against it violates or violates the fundamental right of the petitioner.

3. It is not in dispute before me that the respondent No. 2 had filed a title suit in the Court of Sub-Judge I Patna (Title Suit No. 380/2002) seeking manifold reliefs. Alongwith the plaint a prayer for ad-interim injunction was also made. An ad-interim injunction was granted in favour of the plaintiff on 19-8-2002. The petitioners thereafter appeared in the Court and submitted their show cause. After hearing the parties, the learned Sub-Judge confirmed the said order. Being

aggrieved by the said order the petitioners have preferred an appeal which has now been transferred to the Court of 11th Addl. District Judge, Patna for hearing and disposal in accordance with law.

4. The submission of the learned Counsel for the petitioners that the petitioners are raising a constitutional question in the present matter arid as a Civil Court does not have the jurisdiction to decide the question relating to fundamental right; the Court having jurisdiction to hear and decide the matter is concerned I am unable to accede to this argument. When a title suit is filed then the title suit is filed on the basis of certain statutory rights or contractual rights or on the strength of the fundamental rights. When the defendants raises a plea relating to fundamental rights enshrined in the Constitution of India then whether it is a Court of Munisf or the Sub-Judge or of Additional District Judge or o.f District Judge each and every Court is obliged and duty-bound to take up the question, consider it and record its finding on the same. Neither a Sub-Judge nor an Additional District Judge can refuse to consider the questions simply on the ground that they relate to fundamental rights of the parties. After all the Courts are meant and maintained for maintaining the fundamental rights of the parties/ citizens, If a party plaintiff makes a complaint of the violation of the some rights and the Court is ready and willing to extend a helping hand to him then in a given case where the defendant raised a question of violation of fundamental rights the Court cannot refuse to extend helping hand by saying that the constitutional question would not be considered by the said Court. In the present matter the question relating to maintainability of the matter, the question relating to the plaintiff's right to file a suit and the question relating to the defendants right to make an exhibit a serial in the same name, are yet to be considered. The appellate Court or any Court dealing with the matter of injunction is obliged to consider the basic requirements before granting the injunction or refusing the same. The Court has to see that whether the plaintiffs has a prima facie case in his favour meaning thereby whether he has raised triable issue or not. The Co.urt would be further required to see that whether the balance of convenience is in favour of the plaintiff or not. If the first two findings are recorded in favour of the plaintiff then the Court dealing with the ad-interim injunction has also to see that who would suffer the mischief of the irreparable injury in a given case, If all the three findings are in favour of the plaintiff and tripod can stand then too it is within the discretion of the Court to grant or refuse the injunction. It is always expected of the Courts that without being influenced by persons politics and personalities they would dispense justice in favour of public. It appears that the present matter has assumed importance because the title of the serial so also the depiction of the story as appear from the plaint is relating to the high political office of this State. Let me remind the learned Sub-Judge and the Additional District Judge that neither they are sub-ordinates to the politicians nor they have to work under them. The Courts are independent and are above all. They should not feel afraid of anything while dispensing justice. If in a given case the Court comes to the conclusion that the matter before it is fit

for granting an injunction, then an injunction must be granted and if the Court records a finding that the matter is not fit for grant of injunction then whosoever the plaintiffs Is the Court.should not grant an injunction, The public reposes confidence in Court, Judiciary, judicial process and judicial system. The Judges who have to maintain the said confidence should not act in a manner which shakes the confidence of the public,

5. I am sure and certain that the learned Addl. District Judge before whom the matter is pending shall without being Influenced by the extraneous material decide the matter in accordance with law. This is also expected of him that he shall consider each and every argument raised by the petitioners and shall not given a cause to the parties before it to say that despite submission of the written argument the Court has refused to record the findings on the question raised before the Court,

6. I dispose of the petition with the direction that within a period of four weeks from today, the learned appellate Court shall dispose of the appeal in accordance with law.