
(2007) 01 GAU CK 0011
In the Gauhati High Court

Smt. Mamoni Choudhury and Another	Vs	APPELLANT
Pradip Kr. Choudhury and Others		RESPONDENT

Date of Decision : 03-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 2007 Guw 135

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—Heard Mr. A.S. Choudhury, learned Senior Counsel, appearing on behalf of the appellants, and Mr. B. Mazumdar, learned Counsel for the respondent No. 1. I have also heard Mr. S. Dutta, learned Counsel appearing on behalf of the respondent Nos. 3, 4 and 5. None has appeared on behalf of the respondent No. 2.

2. Dilip Kr. Choudhury (since deceased) was an employee of the respondent No. 1, namely, M/s. Bongaigaon Refinery & Petrochemicals Ltd. Dhaligaon, Bongaigaon, Dilip Kr. Choudhury died and on his death, a sum of Rs. 6,56,090/- has been finalized as his monetary claim under the JPA Insurance Policy payable to his surviving legal heirs, namely, the two appellants herein, who are sisters of the said deceased and the respondent No. 1 herein, who is the brother of the said deceased. The said deceased left the respondent No. 1 herein as the nominee in respect of his said JPA Insurance Policy, Claiming that they too, as legal heirs of the said deceased, were entitled to share in the said sum of Rs. 6,56,090/- along with the respondent No. 1 herein, the two appellants instituted TS No. 06/2001 in the Court of the Civil Judge (Sr. Divn.), Bongaigaon, seeking, inter alia, a decree for declaration that each of the two plaintiffs and the defendant No. 1 was entitled to get one-third share in the said sum of Rs. 6,56,090/- and also for permanent injunction restraining the defendant Nos. 2 to 5, (i.e. the respondent Nos. 2 to 5 herein) from disbursing the said entire sum of Rs. 6,56,090/- to the defendant-respondent No. 1 on the strength of his

nomination.

3. While the suit was pending, the plaintiffs also made an application, under Order XXXIX, Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking grant of temporary injunction restraining the defendant Nos. 2 to 5 from disbursing the said amount to the defendant No. 1 without apportioning the shares of the plaintiffs. This application gave rise to Misc. (J) Case No. 105/2001. The defendant No. 1 contested the suit and also resisted the prayer for temporary injunction made by the plaintiffs, the case of the defendant No. 1 being that both the plaintiffs were already married, they were residing with their respective spouses and as they were not dependants on the said deceased and as the defendant No. 1 is the sole surviving member of the family of the said deceased the plaintiffs are not entitled to receive any share in the said sum of Rs. 6,56,090/-. Upon hearing the learned Counsel for the parties, the learned trial Court passed an order on 26-9-2001, wherein it observed to the effect that the defendant No. 1 would receive the amount, if allowed, merely as a nominee and after the defendant No. 1 receives the money, the disbursement thereof can be decided according to the shares, which would be determined in the suit. Because of the conclusion, so reached, the learned trial Court turned down the prayer for temporary injunction. Aggrieved by the order, dated 26-9-2001, aforementioned, the plaintiffs have impugned the same in the present appeal.

4. While considering the present appeal, it needs to be noted that the defendant No. 1, being the sole nominee of the said deceased is prima facie entitled to receive the said sum of Rs. 6,56,090/- from the defendant Nos. 2 to 5, but the receipt of the said sum of money by the defendant No. 1 would be as a trustee of all those, who may have legal share in the said sum of money. According to the plaintiffs, they are legally entitled to one-third share each in the said sum of money. This assertion of the plaintiff is disputed by the defendant No. 1. Thus, when the defendant No. 1 refused to receive the said sum of money as a trustee of the two plaintiffs along with his own share in the said sum of money, the defendant No. 1 could not have been allowed to receive the said sum leaving it open for him to pay or not to pay the shares, which the plaintiffs claim as their legally entitled dues. In such circumstances, the learned trial Court ought to have granted temporary injunction restraining the defendant No. 1 from receiving the amount aforementioned until disposal of the suit, particularly, when the plaintiffs had set up a prima facies case for trial, the balance of convenience was in favour of granting injunction, for, omission to grant injunction, as had been sought for, would have given rise to multiplicity of proceedings, which is not in the interest of justice, and irreparable loss would have ensued to the plaintiffs, should the plaintiff refuse to part with the share of the plaintiffs.

5. Considering, therefore, the matter in its entirety and in the interest of justice, I am firmly of the view that the learned trial Court ought to have granted temporary injunction restraining the defendant-respondent Nos. 2 to 5 from disbursing the said sum of money to the defendant-respondent No. 1 until

disposal of the suit.

6. In view of the above, this appeal succeeds and the impugned order is set aside. The defendant-respondent Nos. 2 to 5 herein are restrained and prohibited, until disposal of the suit, from disbursing the said sum of Rs. 6,56,090 to the defendant-respondent No. 1.

7. In view of the fact that the suit needs to be expeditiously disposed of, the learned trial Court is directed to dispose of the suit expeditiously and, preferably, within a period of four months from the date of receipt of the LCR by holding, if required, day to day trial.

8. Before parting with this appeal, it may, however, be placed on record that Mr. Dutta, learned Counsel appearing on behalf of the respondents Nos. 3 to 5, has submitted that as retention of the terminal benefits of the said deceased amounting to the said sum of Rs. 6,56,090/- would force these defendants to pay interest thereon, though these defendants are not inclined to keep the said sum of money with them, appropriate directions may be issued to enable these respondents to deposit the said sum with the Court subject to such conditions as this Court may deem fit. To the submissions, so made, on behalf of the defendant-appellant Nos. 3 to 5, no objection has been made by the learned Counsel for the parties concerned. This aspect of the matter may be raised by the defendant-respondent Nos. 3 to 5 herein in the learned trial Court and if such a submission is made in the learned trial Court, the learned trial Court shall hear the parties concerned and pass order(s) in accordance with law.

9. Send back the LCRs.