
(1986) 04 MP CK 0030
In the Madhya Pradesh High Court
Case No : M.P. No. 38 of 1986 (sic)

Sonelal	Vs	APPELLANT
State of M.P. and others.		RESPONDENT

Date of Decision : 02-04-1986

Acts Referred:

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

Citation : (1988) J LJ 283

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : R.C. Lahoti, for the Appellant; Arvind Dudawat, Addl Govt., for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.—The Court below having taken an erroneous view of the law, the petitioner is in this Court and my attention is drawn by his Counsel to Section 8 of M.P. Act No. 29 of 1984. The provisions of sub-rule (2) of Rule 2, Order 39 of the CPC have been amended thereby in the State of Madhya Pradesh by which the Civil Courts' power to "stay" operation of any "order of transfer" and some other orders has been taken away.

2. Petitioner's counsel Shri Lahoti has made a very short point to assail the validity of the order passed by the Court below. His contention is that what was challenged by him in the suit was not any order of transfer and as such the question of stay of such an order did not at all arise. He has read out to me relevant portion of the plaint and has rivetted my attention to para 7 of the plaint. It clearly appears that the order was challenged on the ground that it was not a real order, but it was product of a conspiracy and was devoid of any legal effect as it had no factual basis. The suit was for a declaration that the said order was null and void.

3. I have no doubt that the mere fact that the order happened to be an order for

"transfer" of the petitioner to another place, the Court below was not debarred from entertaining the suit to adjudge the issue agitated by the plaintiff/petitioner. The plaintiff had indeed challenged, in fact, not the legal validity of the order, but had challenged the order as a fraudulent document and sought for a declaration that it was not a real and true order passed by the concerned authority having jurisdiction to make the order. The Court below overlooked this aspect of the case and on a plain reading of the provisions of the State amendment wherein the words "an order of transfer" occur in clause (b) of the newly-inserted Proviso, took the view that it had no jurisdiction to deal with the matter.

4 Shri Lahoti has also drawn my attention to the fact that the said order, which is annexed as Annexure P-1 to the petition, and is same as Annexure R-1 of the Return, *ex facie*, manifests interpolations. Another crucial fact on which counsel has relied is that the said order on its face shows that it had been rendered on application made for voluntary transfer, but the petitioner had never made any such application and the respondents, neither in the Courts below, nor even in this Court, made any effort to counter this allegation. These are very important facts which have a bearing on the question as to whether the plaintiff has a *prima facie* case to go to trial, but I express no opinion instantly here and now on this question. Because, the matter has to go down to the lower appellate Court for a proper consideration of the application made by the plaintiff under Order 39, Rule 2, C.P.C. as the appeal was dismissed by it erroneously and summarily on the ground that the Court had no jurisdiction to entertain the prayer in view of the change in law. Shri Lahoti concedes that the trial Court had refused temporary injunction on merits, but submits that it was also the duty of the lower appellate Court to hear the plaintiff-appellant on merits. He is right and I have no hesitation, therefore, to set aside the appellate order, impugned in this petition.

5. In the result, the petition succeeds and is allowed. The matter goes down to the lower appellate court with the direction that the petitioner shall be re-heard and a decision shall be rendered on merits after hearing parties. This shall be done expeditiously, if possible, within a period of one month from the date of communication of the order. Parties agree to appear in the Court below on 25-4-1986 to take further orders there.

6. However, pending disposal of the matter by the Court below-, it is necessary to take care of petitioner's present problem. Shri Lahoti submits that on 23-11-1985, this Court passed an interim order, staying operation of the order Annexure P-1, challenged in the suit. It is his prayer that the life of said order be extended until the matter is finally decided by the Court below. The prayer is opposed by Shri Dudawat, Additional Government Advocate, who has drawn my attention to the submission made in 1 A. No. 4185 of 1985 (in M.C.C. No 242 of 1985), by which the respondent applied for vacating the ad interim order aforesaid. He has also referred me to the return to submit that the petitioner has been duly relieved from his duties on 11-6-1985. However, I am not satisfied

because mere averment of the fact does not clinch the issue. No materials are placed before me to substantiate the fact that actually the petitioner has ceased to serve at his present place of posting although he was ordered on 11-6-1985 to hand over charge. That being the case, the prayer made by Shri Lahoti must be considered reasonable and allowed. Accordingly, I direct that pending disposal of the matter by the Court below, the operation of the order Annexure P-1 shall remain stayed. M.C.C. (No. 242 of 1985) is also disposed of in terms of the above order.