
(1963) 05 OHC CK 0007
In the Orissa High Court
Case No : A.H.O. No. 13 of 1961

S.P. Jain

APPELLANT

Vs

Kalinga Tubes Ltd. and Others

RESPONDENT

Date of Decision : 01-05-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 13, 151

Citation : AIR 1964 Ori 72 : (1963) 29 CLT 554

Hon'ble Judges : R.L. Narasimham, C.J;G.K. Misra, J

Bench : Division Bench

Advocate : A.C. Mitra, for the Appellant; R. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—A. H. O. 13 of 1961 and A. H Os. 2 to 14 of 1962 were allowed on 18-4-63. By a separate order on the very day, all interim orders passed in the case including the one appointing Shri G.C. Das as Court's nominee in the interim Board of Directors were vacated with effect from that date. This application has been filed on 19-4-63 on behalf of Mr. S.P. Jain, the petitioner in the Company Act case, asking for three reliefs. Those are to direct the appellants in all the aforesaid A. H. Os. (I) not to permit and effect any transfer of the 39,000 shares dealt with in the judgment, (2) not to alter the constitution of the Board of Directors prior to the judgment dated 18-4-63, and (3) not to issue any further shares. The second prayer was not pressed at the time of hearing.

2. The averment in the petition is to the effect that the petitioner has not been able to procure a certified copy of the judgment, on account of which he has not been able to file an application for leave to Supreme Court, and unless interim orders, as prayed for, are made, he would be prejudicially affected. The application is opposed. We have heard the parties.

3. A legal objection has been taken by Mr. Choudhry that the prayers cannot be granted as there is no application for leave to Supreme Court pending before this

Court. Reliance is placed on a Bench decision of this Court reported in Purna Chand Sahu Vs. Chamra Bariha and Others, . In Ramendra Narayan Roy and Another Vs. Smt. Bibhabati Debi and Others, a Bench of the Calcutta High Court held that even after the dismissal of an appeal the High Court has inherent power u/s 151 to make an interim order, in aid of the order which may eventually be passed by the Court dealing with the application for leave to appeal apart from the provisions of Order 45, Rule 13 C. P. C. The decision of the Supreme Court reported in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, gives a wide construction to Section 151 C. P. C. and clearly lays down,

"Section 151 itself says that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make orders necessary for the ends of justice. In the face of such a clear statement, it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it. The inherent power has not been conferred upon the Court; it is a power inherent in the Court by virtue of its duty to do justice between the parties before it. Further, when the Code itself recognizes the existence of the inherent power of the Court, there is no question of implying any powers outside the limits of the Code."

Purna Chand Sahu Vs. Chamra Bariha and Others, is distinguishable. Moreover the Supreme Court decision concludes the matter. We hold that we have jurisdiction to pass necessary interim orders even though no application for leave to appeal to Supreme Court is pending.

4. In this case, leave to appeal to the Supreme Court would be granted as a matter of right. The status quo with regard to the holdings of the 39,000 shares which constitute an important subject-matter of discussion in the judgment should be maintained. The Company should not also issue further shares until the matter is heard by the Supreme Court.

5. We accordingly direct that for a period of three months from today the concerned appellants in all the A. H. Os. who hold the 39,000 shares would not effect any transfer of those shares and the Company is prohibited from registering such transfers. The Company is further prohibited from issuing any further shares during this period.

6. We would accordingly allow the application. But there will be no order as to costs.

Narasimham, C.J.

7. I agree.