
(1989) 02 PAT CK 0029

In the Patna High Court

Case No : Appeal from Original Order No. 34 of 1980 (R)

State Bank of India

APPELLANT

Vs

M.L. Biswas and Co. and Others

RESPONDENT

Date of Decision : 08-02-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : (1989) 37 BLJR 531 : (1989) PLJR 464

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This Miscellaneous appeal arises out of an order dated 4-4-1980 passed by the Subordinate Judge, Palamau in Money Suit No. 37 of 1974.

2. By reason of the said order, the said learned Court refused to grant an injunction in favour of the plaintiff.

3. It by the said order, also rejected an application filed on behalf of the plaintiff-appellant for appointment of a Receiver under Order XL, Rule 1 of the Code of Civil Procedure,

4. This appeal has been filed by the appellant against that part of the order only whereby and whereunder the plaintiffs' application for appointment of a Receiver has been dismissed.

5. Mr. K. D. Chatterjee, learned Counsel appearing on behalf of the appellant submitted that the learned trial Court in passing the impugned order, misdirected himself in so far as he failed to take into consideration the admitted fact that the various goods were hypothecated in favour of the plaintiff, Bank by the defendants. According to the learned Counsel as the goods were hypothecated, the learned trial Court ought to have appointed a receiver. Mr. Pradeep Ghosh, learned Counsel appearing on behalf of respondent Nos. 1 to 3, on the other

hand, submitted that no case for appointment of a receiver has been made out.

The learned Counsel further submitted that it is settled principle of law that in money suit, a receiver cannot be appointed as a matter of course and the plaintiff has not made out any special circumstances for appointment of a receiver in a money suit. The learned Counsel has further drawn my attention to the order dated 15-4-1987 passed in Civil Revision No. 410 of 1986 (R) for the purpose of showing that the defendants 1 to 3 had already deposited a sum of Rs. 35,00,000 in between November, 1984 and December, 1985.

6. Be that as it may, in my opinion, as the suit was filed in the year 1979, at this juncture neither it is equitable nor in the interest of justice, a receiver is required to be appointed in respect of the properties mentioned in the suit. This appeal has been pending since the year 1980. The appellant has not brought anything on record to show that the defendants 1 to 3, even during the pendency of this appeal, had removed! any goods from the jurisdiction of the court or has committed any overt act for which the courts could have considered that it would be just and proper to appoint a receiver. In this view of the matter, on this ground alone, this appeal deserves to be dismissed,

7. However, it is observed that in the facts and circumstances of this case, the suit be disposed of expeditiously. The learned Counsel informed me that further proceeding in the suit has been stayed in Civil Revision No. 232/81 (R).

8. In this view of the matter, I may observe that the parties will be at liberty to move Hon"ble the Chief Justice for fixing a date of hearing in the aforementioned Civil Revision. With the aforementioned observation, this appeal is dismissed. However, in the facts and circumstances of the case, the parties shall bear their own costs.