
(2002) 04 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Rev. Petition No's. 463 and 798 of 2000

State of Rajasthan

APPELLANT

Vs

Ramesh Chand

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2003) 1 BC 406 : (2002) 4 WLC 634

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Virendra Agrawal, for the Appellant; R.K. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Both these revision petitions are directed by the petitioners against the order of the Addl. District Judge No. 1, Bharatpur in Civil Misc. Application No. 89/94 and the same are being taken up for hearing together and are being decided by this common order.

2. The facts of the case and the grounds to challenge this order are taken from S.B. Civil Revision Petition No. 798/2000.

3. The plaintiff non-petitioner No. 1 filed a civil suit in the Court of District Judge, Bharatpur along with application under Order 39, Rules 1 and 2, CPC r/w Section 151, CPC on 3.7.1992. It is averred in the suit that on 22.3.1991 plaintiff non-petitioner No. 1 has got an FDR for the sum of Rs. 3,00,000/- from Indian Bank, Bharatpur branch in favour of the Executive Engineer, PWD Division National Highway No. 4, Jaipur as he was intended to participate in the bid which was to be held at Jaipur. He has not participated in the bid. He lost the FDR as what is alleged. On maturity of the FDR on 25.3.1992 he had asked the Bank authorities to give him the money, but the payment has not been made by the Bank. It is stated that there is nothing outstanding with the PWD and the Bank and both the

Bank and PWD are not justified to withhold the FDR. In the suit it is prayed that the FDR be not allowed to be encashed by any other person and FDR may be allowed, to be encashed by the plaintiff petitioner.

4. The arguments on the application filed under Order 39 Rules 1 and 2, CPC were heard and this application came to be rejected by the learned Trial Court under its order dated 8.9.1994. The plaintiff non-petitioner filed an application u/s 151 on 5.5.2000 praying therein for grant of temporary injunction i.e. to direct the respondents to make the payment of the FDR. This application was contested by the petitioner. It is stated in the reply to the application filed by the petitioner that the firm consisting of plaintiff non-petitioner No. 1, petitioner Ranjit Singh, Harnam Singh and Maharaj Singh and the FDR in dispute was placed with the non-petitioner No. 3 for this firm as security. It is stated that he obtained the contract for collecting the toll tax on the Kanota Bridge of Dhund River for a period of one year from 6.4.1991 to 5.4.1992. The amount of the FDR has been adjusted in connection with the amount of contract. The contract was given on 21.3.1991 and the FDR was prepared on 22.3.1991. Learned Trial Court under the impugned order allowed that application and directed the respondent non-petitioner No. 3 to make the payment of that FDR to the non-petitioner No. 1. Hence this revision petition.

5. Having heard learned Counsels for the parties, perusing both the revision petitions and the impugned order, I am satisfied that the learned Trial Court has committed not only serious illegality but material irregularity in exercise of its jurisdiction in passing the impugned order. The learned Trial Court has not granted any temporary injunction on the application filed by the plaintiff non-petitioner No. 1 under Order 39 Rule 1 and 2, CPC. If we go by the substance of these two applications, i.e. first filed under Order 39 Rules 1 and 2, CPC and second application u/s 151, CPC. I am satisfied that these are identical in all respects. The earlier application has also been filed u/s 151, CPC. Once, the learned Trial Court has declined to grant temporary injunction, I fail to see any justification much less any propriety in the order impugned to direct for payment of the amount of the FDR to the plaintiff. It is no more *res integra* that when there is specific provision in CPC for covering particular grievance and prayer, the resort to provisions of Section 151, CPC is not permissible. Here in this case otherwise also the ingredients which are to be established for grant of relief u/s 151, CPC were not present in the case. This order cannot be taken to have been passed in the interest of justice or to prevent abuse of the process of Court. Once temporary injunction has not been granted, this relief could not have been granted u/s 151, CPC. Otherwise also while granting relief u/s 151, CPC, the learned Trial Court should have considered or adhered to the ingredients that unless non-petitioner No. 1 cannot be compensated in terms of money in case the desired relief is not granted and balance of convenience also favours granting of relief, no such relief could be granted. It is money matter i.e. the encashment of FDR. There is serious dispute between the parties whether this FDR was of the petitioner or of non-petitioner No. 1 as claimed by him. In the suit it was the

main relief prayed for and by this interim application while passing the impugned order, the learned Trial Court has granted the same,

6. While passing this impugned order, learned Court below has not considered the case pleaded by the defendant petitioner Dhirendra Singh. He pleaded that a firm consisting of himself, the plaintiff non-petitioner No. 1, the defendant petitioner Ranjit Singh, Harnam Singh and Maharaj Singh has been constituted and a partnership deed in this regard was also executed between the parties on 22.3.1991 and this FDR was placed with non-petitioner No. 3 as security and amount thereof has already been adjusted in the amount of contract by the State. Another important aspect has not been considered by the Court below that the bid was finalised on 21.3.1991 and this FDR was taken on 22.3.1991. The bid was held on 21.3.1991 and as per the plaintiff's own case his bid was not accepted, then what for this FDR was taken by him on 22.3.1991. This story with which the plaintiff has come up in the Court that he lost the FDR after few days of taking thereof is difficult to digest what to say to believe and accept the same. It is on the face of it appears to be concocted and manufactured one to make a case otherwise looking to the value of the FDR where really it would have been lost, the plaintiff should have filed an FIR or should have given notice of this fact to the Bank so as to avoid possible misuse thereof. He waited till the FDR had matured. This is yet another important fact which goes against the plaintiff and in favour of defendant petitioner and support his case that there is all the possibility of taking of this "theka" in partnership of the plaintiff and to furnish a security this FDR was taken by him. Leaving apart all other aspects this FDR remained with the plaintiff till date it is lost, when his tender was not accepted on the next day, he should have taken it back and should have gone for encashment of the same. He waited till the maturity of the FDR. It is the case of the defendant Dhirendra Singh that in respect of dispute re the partnership created vide deed dated 22.3.1991 the plaintiff has filed an application for appointment of Arbitrator which was dismissed by the Civil Court. Against the dismissal of that application he filed an appeal which is pending in this Court. This is yet another important fact which goes in favour of the defendants and support their case that there was a partnership of which the plaintiff was one of the partners.

7. Leaving apart the fact that non-grant of such a relief will not result in causing any irreparable injury to the non-petitioner No. 1 which cannot be compensated in terms of money, grant of this relief amounts to granting the final relief at interlocutory stage. Time and again Their Lordships of the Supreme Court has deprecated this approach of the Courts to grant final relief at the stage of interim relief. In such matters if interim relief is not granted, it will not cause any injury to the plaintiff non-petitioner No. 1. Where he ultimately succeeds in the suit, will get the money with interest. The balance of convenience does not favour grant of interim relief. In case the order of the Trial Court is allowed to stand, certainly it will occasion failure of justice and will cause irreparable injury to the petitioners.

8. As a result of the aforesaid discussion, both the revision petitions succeed and the same are allowed. The order dated 23.5.2000 of Addl. District Judge No. 1, Bharatpur is quashed and set aside. The non-petitioner No. 1 is directed to forthwith deposit the amount paid to him in pursuance of the order dated 5.5.2000 in the Trial Court. On deposit of this amount, the learned Trial Court is directed to invest the same in FDR for one year the amount is to be deposited by the plaintiff non-petitioner No. 1 within a period of four months from today. In case this order is not complied with by the plaintiff non-petitioner No. 1, it will be open to the petitioner to bring this fact to the notice of the Court so as to initiate contempt proceedings against him. The suit out of which this revision petition arises is of the year 1994. Learned Trial Court is directed to decide the suit itself within a period of nine months from the date of receipt of a certified copy of this order. The plaintiff non-petitioner is directed to pay Rs. 1100/- as cost of each petition to the petitioners.