

(2004) 09 JH CK 0021

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4621 of 2004

Sudhir Kumar

APPELLANT

Vs

Dr. Ram Autar Prasad and Others

RESPONDENT

Date of Decision : 07-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 226

Citation : (2004) 4 JCR 482

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : R.S. Majumdar, for the Appellant; B.K. Pathak, for respondent Nos. 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioner has prayed for quashing the order dated 2.8.2004 passed by the Additional District Judge, Fast Track Court No. IV, Dhanbad in Misc. Appeal No. 55 of 2003 whereby and whereunder the appeal filed by the petitioner against the order dated 2.8.2003 passed in Title Suit No. 72 of 2002 rejecting the prayer for injunction made under Order XXXIX, Rules 1 and 2 read with Section 151 of the CPC has been dismissed.

2. The petitioner-plaintiff filed the Title Suit No. 72 of 2001 in the Court of Munsif, Dhanbad praying relief, inter alia, for a decree declaring that the plaintiff having paid Rs. 2.04.000/- to the defendant No. 1 is entitled for transfer of joint "B" A/C (MIS) No. 155048 of Garga Check Post Office in his own name alone and for permanent injunction restraining the defendants from allowing operation/ closure/ withdrawal of any amount of MIS joint A/D No. 155048 without consent and knowledge of the plaintiff. The petitioner-plaintiff also filed an application under Order XXXIX, Rules 1 and 2 of the CPC praying grant of temporary injunction in terms of the relief of permanent injunction. Show cause was also

filed on behalf of the defendant Nos. 2 and 4 against the injunction and separate show cause was also filed on behalf of the defendant No. 1. The trial Court, after hearing the parties and perusing the injunction petition and show cause, rejected the prayer for grant of temporary injunction in T.S. No. 72 of 2001 on 2.8.2003. Aggrieved by the said order, the plaintiff then filed Misc. Appeal No. 55 of 2003 taking all the grounds. The said appeal was contested by the respondents-defendants. The lower appellate Court having considered the points of facts and (sic) which were placed before him came to the conclusion, inter alia, that the plaintiff-petitioner could not make out a prima facie case for grant of injunction as the dispute is between the father and son upon the claim of the deposited amount. out of which the defendant can only get monthly interest from the amount of Rs. 2.04.000/- deposited in the said MIS account and in case plaintiff-petitioner succeeds and the suit is decreed in his favour, he can get the amount recovered from the defendant No. 1 (father) and dismissed the appeal by the impugned order dated 2.8.2004.

3. Mr. R.S. Majumdar learned counsel appearing for the petitioner submitted that the orders of the Court below are wholly improper and unsound. According to Mr. Majumdar, when the defendant No. 1 succeeds in withdrawing the amount then the suit itself will be frustrated.

4. Mr. B.K, Pathak learned counsel appearing for the respondents on the other hand submitted that there is no infirmity and illegality in the impugned order. The Courts below have concurrently found that the plaintiff-petitioner could not make out a primo. facie case for grant of injunction and that he would not suffer irreparable injury or loss if the injunction is not granted in his favour.

5. Having heard the learned counsel for the parties and perused the records I find that there is a dispute between the father and son regarding monetary claim. The plaintiff alleged that defendant No. 1 took loan of Rs. 2,04,000/- from the plaintiff and for that the defendant No, 1 has entered into an agreement with the petitioner (plaintiff) to transfer the MIS account in the name of his son but later on the defendant No. 1 refused to transfer the said account in the name of the plaintiff, hence the suit was filed. The claim of the plaintiff is computable in terms of money and there is no case of his suffering any irreparable loss or injury. Both the Courts have considered the case of the petitioner and concurrently held that he could not establish a prima facie case or case of Irreparable loss and injury and could not make out a case for grant of temporary injunction. There is no illegality or infirmity in the order of the Courts below warranting any interference by this Court in exercise of power under Articles 227 of the Constitution of India. Accordingly, this writ petition is dismissed.