
(1997) 03 PAT CK 0048
In the Patna High Court
Case No : Civil Revision No. 3 of 1997 (R)

Tata Iron and Steel Co. Ltd.	Vs	APPELLANT
Tarkeshwar Singh and Others		RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 91

Citation : (1997) 2 BLJR 1104

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prasun Kumar Deb, J.—This Civil Revision application has been preferred against the order dated 24.9.1996 passed by the Munsif, Jamshedpur, in Title Suit No. 13 of 1993 whereby and whereunder the learned court below has rejected the application filed by the defendant-petitioner on 15.12.1995 for hearing on leave matter u/s 91(1)(b) of the Code of Civil Procedure.

2. The opposite parties as plaintiffs filed the above-mentioned suit along with an application seeking leave u/s 91(1)(b) of the CPC for removal of the alleged public nuisance alleged to have been committed by the petitioner on a portion of the passage/road provided around Bada Kudar Lake within the Jubilee Park.

3. In the suit notice was issued to the defendant to show cause and the trouble started. On issuance of such notice from the Court's end, the defendant appeared and filed objection against the petition for leave of the Court but, in the meantime, there was another petition filed by the plaintiffs-opposite parties before the Munsif for publication of notice under Order I Rule 8 of the CPC for converting the case into a case of representative capacity. That prayer was allowed and then this petitioner came up before this Court in Civil Revision No. 505 of 1993 (R) and the same was disposed of vide order dated 3.8.1994 with the following direction and observation:

In the circumstances, I hold that the present suit cannot proceed unless necessary leave as required u/s 91(1)(b) of the CPC is granted. Accordingly, the impugned order directing publication of the notice under Order I Rule 8 of the CPC pursuant to the order dated 4.2.1993 is set aside and the trial court is directed to pass necessary order on the plaintiff's petition u/s 91(1)(b) of the CPC on merit in accordance with law. It is made clear that I have not applied my mind to the merits of the plaintiff's petition u/s 91(1)(b) of the Code of Civil Procedure.

4. Being weaponed by the observation of this Court, as mentioned above, the defendant-petitioner became enthusiastic that he is also to be heard before the order of leave is passed by the court for proceeding with the suit but the whole thing is misconceived. There was no observation by this Court that the petitioner-defendant is also to be heard u/s 91(1)(b) of the Code of Civil Procedure. The matter u/s 91(1)(b) of the CPC regarding the leave of the Court is a privity between the plaintiff and the court. The defendants come into the picture only after the leave is granted and being summoned. Some procedural irregularity may be there regarding issuance of show cause notice to the defendants but no where in that notice it was mentioned that the petitioner was to file show cause on the prayer of the leave of the court sought for by the plaintiffs. Only because such redundant notice was given, the defendant-petitioner did not get any right to file objection in the matter of leave of the court as contemplated u/s 91(1)(b) of the Code of Civil Procedure. I have already mentioned that leave matter is before the proceeding of the suit. If leave was not granted then the suit has got no existence and the suit comes into existence only after the leave is granted and until and unless the suit is on board, the defendant has got no existence. However, definitely if there is any defect in grant of leave of the court or it was irregular then the defendant would be at liberty to challenge such leave in course of the suit by filing written statement etc., but when the matter is in between the plaintiff and the court, the defendant-petitioner has got no statutory or vested right to be heard in the matter of leave of the court.

5. Mr. K.D. Chatterjee, learned Counsel for the petitioner, tried to impress this Court that principle of natural justice is violated while not giving chance to the petitioner to be heard in the matter of grant of leave u/s 91(1)(b) of the Code of Civil Procedure. The question of violation of the principles of natural justice does not arise as because the defendant after the leave is granted comes in existence on receipt of summons in the suit and he shall have a right to question the legality or otherwise of the leave granted by the court in favour of the plaintiffs, but at a premature stage, he has no right to be heard. This court had also not given any indulgence to the defendant-petitioner to be heard at the time of grant of leave of the court, as mentioned earlier, and practically such order or such indulgence cannot be granted also as the legal position stands.

6. For the reasons aforesaid, this Civil Revision petition has got no force and as such rejected in limine.