
(2001) 02 PAT CK 0069
In the Patna High Court
Case No : M.A. No. 247 of 1993

The Chairman, B.S.E.B. and Others

APPELLANT

Vs

Magadh Re-rolling Mill and Others

RESPONDENT

Date of Decision : 08-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Public Demands Recovery Act — Section 46

Citation : (2001) 1 BLJR 636 : (2001) 2 PLJR 286

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Judgement

S.N. Pathak, J.—This Miscellaneous Appeal is directed against the order dated 4th May 1993 passed by the sub-ordinate Judge-I, Nawadah in Title Appeal No. 58 of 1992. The defendants of the suit are appellants here.

2. The suit was filed by the respondents seeking a declaration that they were not liable to pay dues the tune of Rs. 5,41,965.10 to the Electricity Department without adjusting the amount as compensation for non-supply of regular electric energy to the Industry of the plaintiff-respondent. It was also averred in the plaint that the certificate proceedings initiated by the appellants was time-barred and, hence, the appellants were not entitled to recover the amount, through certificate proceedings and ad interim stay order was also sought for in the suit.

3. The lower Court, on a petition under Order XXXIX, Rule 1 C.P.C., passed the impugned order.

4. Before me, it was submitted that u/s 46 of the Public Demand Recovery Act, jurisdiction of the Civil Court was barred, unless fraud was alleged. Moreover, the plaintiff-respondent was not entitled to claim compensation and, hence, the impugned order passed by the lower Court was bad in law and it also suffered from non-consideration of principles governing grant of injunction.

5. So far as the bar relating to the jurisdiction of the Civil Court is concerned, I

am of the opinion that the aforesaid provision laid down under the P.D.R. Act refers to the questions arising between the certificate holder and the certificate debtor relating to discharge, satisfaction and making of the certificate amongst other questions. So this question referred to a stage after conclusion of the certificate proceeding and consequent upon the grant of certificate to the certificate holder. So the objection raised in this connection is not sustainable in the eye of law. So far as the grant of injunction is concerned, I find that if the plaintiff-respondents would be forced to pay the amount under the certificate proceedings and if he succeeds in the suit, it will be very difficult for him to recover back the amount from the Electricity Department and he would be put to a great hardship. Moreover, stay of the proceedings will not cause any substantial injury to the Electricity Department, because interest shall go on mounting and if ultimately the proceedings is concluded and decided in favour of the Electricity Department, it will be in an advantageous position. So the balance of convenience lay in favour of respondent-appellants. As far as prima facie case is concerned, the respondent averred, inter alia, that the certificate proceeding was time-barred and so prima facie case was there in his favour. As far as irreparable loss is concerned, plaintiff-respondents may not suffer any irreparable loss but they would certainly suffer substantial injury on account of proceedings of certificate, if it had no merit as alleged by the plaintiff. I am, therefore, of the opinion that grant of injunction by the lower Court, under the circumstances of the case, did not suffer from any legal flaw or irregularity necessitating any interference by this Court.

6. This Misc. Appeal is accordingly dismissed.