
(2002) 04 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal 2832, 2833 of 2002

V.G. Quenim and Another

APPELLANT

Vs

Bandekar Brothers Pvt. Ltd.

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Citation : (2002) 6 ALT 34 : (2002) 1 JT 464 Supp : (2002) 10 SCC 513 :
(2002) 5 WLN 762

Hon'ble Judges : V. N. Khare, J; Ashok Bhan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The plaintiff-respondent herein filed four separate suits for recovery of money against the defendant-appellants herein. It is alleged that, simultaneously, the plaintiff-respondent moved two sets of applications, i.e. one for grant of temporary injunction, restraining the defendant-appellants from alienating the property mentioned in the schedule to the application, the second for attachment of property before the judgment. The trial court granted injunction (I.A. No. 50), as prayed for and the defendant-appellants were restrained from alienating or parting with the property mentioned in the schedule to the application. The trial court also passed an order directing the defendant-appellants to furnish security, failing which the suit property mentioned in the schedule would come under attachment, before the judgment. It is not disputed that the security as directed has not been furnished. However, the defendant-appellants preferred an appeal before the High Court. The High Court dismissed the said appeal. Aggrieved, the defendant-appellants have filed these appeals.

3. After we heard the matter, we find that the trial court was not correct in passing two sets of order for the same relief; one restraining the defendant-appellants from alienating the property and second, attaching the property

before the delivery of the judgment. We are, therefore, of the view that the order passed by the trial court, directing the defendant-appellants to furnish security, failing which the property shall come under attachment, is liable to be set aside. However, we are in agreement with the trial court granting injunction in favour of the plaintiff-respondent. During the course of the argument, it has been urged on behalf of the plaintiff-respondent that despite the order of injunction, the defendant-appellants have sold 1500 tones of iron ores worth Rs. 55 lacs to their sister concern, which is owned by their close relative and, therefore, to that extent the interest of the plaintiff-respondent be safeguarded. We find merit in the submission. For that purpose, the defendant-appellant shall give an undertaking within four weeks from today before the trial court that they will not part with the shares of M/s. Vilman Packaging Pvt. Ltd., house No. 436 at Miramar, Panaji and the mining machinery. However, it is made clear that any observation made either by the trial court or the appellate court shall not come in the way of the trial court in deciding the matter on merits.

4. In the aforesaid view of the matter, the order dated 13.12.2001 is set aside and the appeals are, accordingly, disposed of in the aforesaid terms.