
(1975) 06 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Revision No's. 27 and 28 of 1975

Virendra Hotel and Allied Industries (P) Ltd.

APPELLANT

Vs

Ram Parkash

RESPONDENT

Date of Decision : 19-06-1975

Acts Referred:

Citation : (1975) 4 ILR HP 416

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; M.G. Chitkara, for the Respondent

Judgement

R.S. Pathak, C.J.—Having heard learned Counsel for the parties it seems to me that this and the connected revision petition must be allowed. The learned District Judge, Simla, has made an order directing the parties to maintain Status quo. That order in effect amounts to an injunction against the Petitioner, who is a Defendant in the suit pending before the trial court. But it appears from the order that the direction has been made without consideration of the balance of convenience and whether a prima facie case has been made out by the Respondent, who is Plaintiff in the suit. The Respondent as Plaintiff in the suit had applied for injunction and as the law stands today it was necessary that he should establish a prima facie case before an injunction could be granted. The learned District Judge has erred in leaving the two questions of balance of convenience and prima facie case to the stage of the decision of the suit itself. At the stage of deciding the suit what will have to be considered is not a prima facie case but a case as finally tried between the parties. The factor of the balance of convenience is a matter to be considered with reference to the position between the parties during the pendency of the suit. It has little relevance when the suit is being disposed of altogether by the trial court. It is apparent that the learned District Judge has misconstrued the legal position and has erred in making the order impugned before me. In the circumstances the revision petitions are allowed and the order of the learned District Judge dated April 25, 1975, is set

aside and the cases are now remanded for fresh decision. Learned Counsel for the parties are agreed that the cases should now be transferred to another District Judge. There is justification for doing so inasmuch as the learned District Judge, Simla, has made certain observations in the order under revision, which can possibly be construed as foreclosing a fresh decision so far as he is concerned. The cases are, therefore, remanded to the learned District Judge, Solan Division, who will hear them at Solan during his next sitting at that station.