

Civil Revision
PRESENT:
THE HON'BLE MR JUSTICE KALIDAS MUKHERJEE
C.O. NO. 3683 OF 2008
Saila Roy & Ors.
Vs.
Shib Sankar Ghosh @ Ata & Ors.
JUDGMENT ON: 24.02.2010

Point:

AD-INTERIM INJUNCTION: Injunction order passed by trial Court not challenged- Subsequent application for recalling rejected by trial court, whether proper- Code of Civil Procedure, 1908 S. 151.

Fact: The petitioners/defendants have filed the instant application under Article 227 of the Constitution of India assailing the order passed by Ld. Civil Judge (Junior Division), 4th Court, Howrah in a Title Suit for a decree for declaration and for injunction. In the said suit the Opposite parties/plaintiffs filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure and the Ld. Court below passed an ad-interim order of injunction dated 20th September, 2004 and subsequently the plaintiffs/opposite parties filed an application under Section 151 of the Code of Civil Procedure praying for an order directing the officer-in-charge of Domjur Police Station to see that the injunction order passed by the learned Court below against the defendants was not violated by them in any way. The learned Court below by an order dated 7th November, 2005 allowed the said application for implementation of the earlier order dated 20th September, 2004 and extended the order of ad-interim injunction for a further period. The defendants/petitioners thereafter made an application under Section 151 of the Code of Civil Procedure praying for recalling the earlier order dated 7th November, 2005. The learned Court below after hearing the parties rejected the said application.

Held:

After passing of the order for implementation of the earlier order of injunction, the defendants filed an application for recalling of the said order. The learned Court below by the order impugned rejected the application filed by the defendants upon hearing both sides. In the instant application the order of ad-interim injunction dated 20th September, 2004 is not under challenge. The defendants did not challenge the order of ad-interim injunction in the higher forum. Since, the learned Court below passed the order impugned upon hearing both sides, Court finds that no illegality was committed by the learned Court below in passing the impugned order.

(Paragraph – 9)

Cases cited: 1. AIR 1983 Cal 266 [Sunil Kumar Halder & Ors. Vs. Nishikanta Bhandari and others]

2. AIR 2003 Madras 219 [N. Karpagam Vs. P. Deivanaiammal]

For the petitioners: Mr. Animesh Das.

For the O.Ps.: Ms. Sucharita Biswas
Mr. Sukumar Das

The Court:

1. This is an application under Article 227 of the Constitution of India assailing the order No. 73 dated 16th July, 2008 passed by learned Civil Judge (Junior Division), 4th Court, Howrah in T.S. No. 162 of 2004. The case of the petitioners in short is that plaintiffs/O.Ps. herein filed a suit against the defendants/petitioners herein before the learned Court below praying, inter alia, for a decree for declaration and for injunction.

2. In the said suit the Opposite parties filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure and the learned Court below passed an ad-interim order of injunction vide order No. 2 dated 20th September, 2004. On August 18, 2005 the defendant Nos. 1 and 3 entered appearance in the said suit and prayed for time to file objection against the application for injunction and also to file written statement. The plaintiffs/opposite parties filed an application on October 5, 2005 under Section 151 of the Code of Civil Procedure, inter alia, praying for an order directing the officer-in-charge of Domjur Police Station to see that the injunction order passed by the learned Court below against the defendants was not violated by them in any way. The learned Court below was pleased to allow the said application under Section 151 of the Code of Civil Procedure on November 7, 2005 for implementation of the earlier order No. 2 dated 20th September, 2004 and extended the order of ad-interim injunction for a further period.
3. The learned Court below directed the officer-in-charge, Domjur Police Station to ensure proper implementation of the order dated September 20, 2004. The defendants/petitioners made an application on December 23, 2005 under Section 151 of the Code of Civil Procedure praying, inter alia, for recalling the earlier order No. 20 dated 7th November, 2005. The plaintiffs/opposite parties filed written objection against such application filed by the defendants. After hearing both sides the learned Court below was pleased to reject the said application. Being aggrieved by the said order No. 73 dated July 16, 2008 passed by the learned Court below the defendants have filed the instant application under Article 227 of the Constitution of India.

4. The learned Counsel appearing for the petitioners submits that the learned Court below was not justified in passing an order for implementation of the ex-parte order of injunction. It is contended that an opportunity of being heard should have been given to the defendants.
5. The learned Counsel appearing for the plaintiffs/opposite parties herein submits that the learned Court below was justified in passing an order of ad-interim injunction and it was within the competence of the learned Court below to pass an order for implementation of the earlier order of ad-interim injunction. It is also contended that while passing the order impugned the learned Court below heard the submissions of both parties. It is contended that the defendants could have filed appeal against the order of ad-interim injunction and the instant application assailing the order impugned is not maintainable. On the point of implementation of the order of injunction the learned Counsel has referred to and cited the decisions reported in *AIR 1983 Cal 266 [Sunil Kumar Halder & Ors. Vs. Nishikanta Bhandari and others]* and *AIR 2003 Madras 219 [N. Karpagam Vs. P. Deivanaiammal]*
6. It appears from the order impugned that the learned Court below was pleased to pass an order of ad-interim injunction and thereafter the plaintiffs filed an application for implementation of the said order of injunction. The learned Court below allowed the petition filed by the plaintiffs for implementation of the order of injunction and directed the Officer-in-charge, Domjur P.S. to ensure proper implementation of the order of injunction dated 20.9.2004.
7. In the decision reported in AIR 1983 Cal 266 (Supra) it has been held that for implementation of the order for injunction, the Court can order police protection for the same under Section 151 of the Code of Civil Procedure. After passing of the order for implementation of the earlier order of injunction, the defendants filed an application for

recalling of the said order. The learned Court below by the order impugned rejected the application filed by the defendants upon hearing both sides. In the instant application the order of ad-interim injunction dated 20th September, 2004 is not under challenge. The defendants did not challenge the order of ad-interim injunction in the higher forum. Since, the learned Court below passed the order impugned upon hearing both sides, I find that no illegality was committed by the learned Court below in passing the impugned order.

8. In the result the application under Article 227 of the Constitution of India fails and the same is dismissed.
9. There will be no order as to costs.
10. Let a copy of this order be sent to the learned Court below immediately.
11. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)