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**(2017) 01 AHC CK 0262**

**ALLAHABAD HIGH COURT**

**Case No:** Writ C No. 821 of 2017

Pankaj Kumar

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

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**Date of Decision:** Jan. 17, 2017

**Citation:** (2017) 3 ADJ 138

**Hon'ble Judges:** Surya Prakash Kesarwani, J.

**Bench:** Single Bench

**Advocate:** Sanjeev Kumar Rai, Advocate, for the Petitioner; S.C. Verma, C.S.C, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

**Surya Prakash Kesarwani, J.**—Heard Sri Sanjeev Kumar Rai, learned counsel for the petitioner, learned standing counsel for the State-respondents and Sri Suresh Chandra Verma, learned counsel for respondent no.4.

2. On 12.1.2017, the following order was passed:-

Heard Sri Sanjeev Kumar Rai, learned counsel for the petitioner, Sri Raj Kumar Pandey, learned standing counsel for the State-respondents and Sri Suresh Chandra Verma, learned counsel for respondent no.4, who has put in appearance today.

An affidavit of compliance of Sri Kamlesh Kumar Singh, Additional Commissioner, Allahabad Division, Allahabad, dated 11.1.2017, has been filed today, which is taken on record.

The aforesaid Sri Kamlesh Kumar Singh is also personally present in Court. He states that due to ignorance of the principles for grant of interim relief, he had passed the impugned interim order dated 8.12.2016, therefore, he tenders unconditional apology for the mistake. He undertakes that in future he shall not repeat such type of mistake.

Learned standing counsel states that now the appeal of respondent no.4 stands transferred to the Deputy Commissioner (Food), Allahabad Division, Allahabad, who shall make every effort to decide the **Appeal No.C-20160200001057 of 2016 ( Lal chandra Pandey v. State of U.P. & others )** expeditiously.

It is astonishing that the authorities to whom the appellate or the revisional jurisdiction has been conferred, are not being trained by the State Government for discharging their statutory obligations, while passing interim or final orders. It needs to be emphasized that the State Government must convene some training programme for these officers, so that they may be able to discharge smoothly their statutory duties under the relevant Act and the Rules, which shall ultimately be beneficial to people who are before them as litigant. I hope and trust that the State government shall take appropriate steps in this regard.

Considering the facts and circumstances of the case and the apology tendered by the aforesaid Additional Commissioner, the Court gives him an opportunity to go through the principles of passing of interim orders settled by Hon"ble Supreme Court, as reported in **JT 2009 (15) SC 33 (paragraph 13), Kashi Math Samsthan & Anr. v. Sudhindra Thirtha Swamy & Anr., JT 2009 (12) SC 240 (Paragraph Nos. 22 to 31), Zenit Mataplast P. Ltd. v. State of Maharashtra and others, JT 2000 (7) SC 151, M/s S.M. Dyechem Ltd. v. M/s Cadbury (India ) Ltd. and (1993) 3 SCC 161, Shiv Kumar Chadha v. Municipal Corporation of Delhi.**

The Court further directs the aforesaid Additional Commissioner to remain personally present on 17.1.2017 and to indicate on the said date the principles for grant of interim relief, so that the litigants before him may not suffer due to his ignorance about the settled principles for grant of interim relief.

Put up on 17.1.2017."

3. Learned counsel for the petitioner submits that the impugned interim order dated 8.12.2016 has been passed without keeping in mind the settled principles for grant of interim relief. The impugned order is wholly arbitrary and is liable to be set aside. He further submits that the appeal of the respondent no.4 is pending before the Deputy Commissioner (Food), Allahabad Division, Allahabad, which may be directed to be decided at an early date.

4. Learned standing counsel has no objection to the aforesaid request of the petitioner. He submits that the Officer shall always remain careful in future, while passing interim orders.

5. I have carefully considered the submissions of the learned counsel for the parties.

6. On 8.12.2016, the Additional Commissioner (First), Allahabad Division, Allahabad, passed the impugned order as under :

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7. Perusal of the aforequoted impugned order clearly indicates that the appellate authority, while passing the said order; has not considered well settled principles of law for grant of interim relief, namely, prima-facie case; balance of convenience and irreparable loss or injury. In the aforesaid interim order, no valid reasons have been recorded for grant of interim relief.

8. The principles of grant of interim relief have been well settled by Hon"ble Supreme Court in the case of **Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors., AIR 2001 SC 2367, Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694, S.M.Dyechem Ltd. v. M/s Cadbury (India) Ltd., 2000 AIR (SC) 2114, Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., 1999 AIR (SC) 3105.**

9. In the case of **Zenit Mataplast P. Ltd. v. State of Maharashtra and others, JT 2009 (12) SC 240** (Paragraph Nos. 23, 24, 25, 26, 27, 28, 29, 30 and 31), Hon"ble Supreme Court considered the principles for grant of interim relief and held as under :

"23. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. (vide **Anand Prasad Agarwalla v. Tarkeshwar Prasad & Ors. [JT 2001 (Suppl.1) SC 139: AIR 2001 SC 2367]**; and Barak Upatyaka D.U. Karmachari Sansthan (supra ).

24. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid

down. There may be a situation wherein the defendant/ respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide **M. Gurudas & Ors. v. Rasaranjan & Ors. [JT 2006 (12) SC 447: AIR 2006 SC 3275]**; and **Shridevi & Anr. v. Muralidhar & Anr. [2007(14) SCC 721]**).

25. Grant of temporary injunction is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide **S.M. Dyechem Ltd. v. M/s Cadbury (India) Ltd.[JT 2000(7) SC 151: AIR 2000 SC 2114]**, and Anand Prasad Agarwalla (supra ).

26. In **Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. [AIR 1999 SC 3105]**, this Court observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunction are as below :

"(i) Extent of damages being an adequate remedy;

(ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;

(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties" case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

27. In **Dalpat Kumar & Anr. v. Prahlaad Singh & Ors. [JT 1991(6) SC 502 : AIR 1993 SC 276]**, the Supreme Court explained the scope of aforesaid material circumstances, but observed as under :

"The phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible

to find from facts prima facie case and balance of convenience."

28. This Court in **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hira Lal [AIR 1962 SC 527]** held that the civil court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure.

29. In **Deoraj v. State of Maharashtra & Ors. [AIR 2004 SC 1975]**, this Court considered a case where the courts below had refused the grant of interim relief. While dealing with the appeal, the Court observed that ordinarily in exercise of its jurisdiction under Article 136 of the Constitution, this Court does not interfere with the orders of interim nature passed by the High Court. However, this rule of discretion followed in practise is by way of just self-imposed restriction. An irreparable injury which forcibly tilts the balance in favour of the applicant, may persuade the Court even to grant an interim relief though it may amount to granting the final relief itself. The Court held as under :

"The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice."

30. Such a course is permissible when the case of the applicant is based on his fundamental rights guaranteed by the Constitution of India (vide **All India Anna Dravida Munnetra Kazhagam v. Chief Secretary, Govt. of Tamil Nadu & Ors. [JT 2009(5) SC 17: 2009(5) SCC 452]**).

31. In **Bombay Dyeing & Manufacturing Co. Ltd. v. Bombay Environmental Action Group & Ors. [JT 2005(11) SC 366: 2005(5) SCC 61]**, this Court observed as under :

"The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed."

(Emphasis supplied by me)

10. In the case of **Kashi Math Samsthan and another v. Shrimad Sudhindra Thirtha Swamy and another, (2010) 1 SCC 689** (Paragraph 16), Hon"ble Supreme Court held as under :

"16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer

irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court."

(Emphasis supplied by me)

11. In view of the above discussions, I find that the impugned interim order has been passed without the well settled principles of law for grant of interim relief, namely, the prima-facie case, balance of convenience and irreparable loss or injury and as such the impugned interim order cannot be sustained and is hereby quashed.

12. In view of the above discussions and the agreement shown by the learned counsel for the parties for early disposal of the appeal, a direction is issued to the competent appellate authority to decide the appeal in accordance with law, expeditiously, preferably within two months from the date of production of a certified copy of this order, after affording reasonable opportunity of hearing and without granting unnecessary adjournments to the parties. The opportunity is also granted to the competent authority to decide the Stay Application afresh in accordance with law.

13. The writ petition is allowed to the extent, as indicated above.