

**(1998) 03 GAU CK 0028**

**Gauhati High Court**

**Case No:** M.A. (F) No. 16 of 1998

Indrajit Bakshi

APPELLANT

Vs

Pannalal Bakshi

RESPONDENT

**Date of Decision:** March 7, 1998

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 4

**Citation:** (1998) 1 GLT 543

**Hon'ble Judges:** V.D. Gyani, J

**Bench:** Single Bench

**Advocate:** M. Singh and G. Singh, for the Appellant; C.R. Dey and G.P. Bhowmik, for the Respondent

### **Judgement**

V.D. Gyani, J.

The learned Counsel appearing on behalf of the Respondent inviting attention two orders dated 7.1.98 and 19.1.98 pointed out that show cause notice against admission of this appeal being there, the question of granting stay vide order dated 19.1.98, could not be there.

2. In view of the anomalous situation, that has been created by the two orders at one stage of hearing, it was suggested that keeping open the question of admission, the learned Counsel for the Respondent can still make his submissions. It was with reference to Rule 4 Order 39 of the CPC that the learned Counsel for Respondent urged that instead of moving the trial Court, the Appellant has straightway rushed to this Court with the present appeal countering his argument. The learned Counsel for the Appellant maintained that both the courses are available to the aggrieved parties against whom an ex parte injunction is passed. The legal position as urged, cannot be disputed.

3. The question is one of expeditious disposal either of this appeal or the application for injunction pending before the trial Court because delay in either case is bound to

affect the parties one way or the other to avoid any such adverse effect, a via media was suggested to the learned Counsel appearing for the parties and they readily agreed, instead of going into the merits of the impugned order, it is left to the trial Court to decide the question as a whole on merits and it is open to the Appellant to place all the materials available to him and make his submissions on merits for any modification alteration or cancellation of the order dated 16.12.97 as passed by the trial Court. The Appellant's anxiety is that the stay order as passed by this Court, staying the operation of the order dated 16.12.97 should continue so as to provide some breathing space to the Appellant to appear and make his submissions before the trial Court.

4. Learned Counsel, appearing for the Respondent, no doubt expressed his reservations about the efficacy of the stay order dated 19.1.98 more so, in face of the earlier order dated 7.1.98 if this issue is pursued further, it would naturally and necessarily take some more time and in that event, the stay order dated 19.1.98 will continue, taking this into view, it is thought better that let the matter of grant for interim injunction be decided by the trial Court, the parties shall appear before the trial Court on 10.3.98 on which date the Appellant shall file his affidavit documents and placing of such materials that he relies upon for vacating the impugned order dated 16.12.97. The Respondent shall also at liberty to file any additional affidavit or documents, in support of his claim for injunction the parties shall exchange the affidavits and documents by 10th of March, 1998.

5. The trial Court is directed to see that the matter relating to ad-interim injunction is disposed of by 20th of March, 1998. In the meanwhile, till 20th of March 1998 the stay order suspending the operation of the trial Court's order dated 16.12.97 shall remain operative.

It is also made clear that if, for some unforeseen reasons the matter cannot be disposed of within the time schedule as suggested above, the District Judge shall consider the same and make necessary arrangements for expeditious disposal of the case.

6. With this direction the appeal stands finally disposed of with no order as to costs.