

## Shri Sishir Das Vs State of Tripura and Others

**Court:** Gauhati High Court

**Date of Decision:** June 3, 1986

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 39 Rule 1, Order 39 Rule 2, 10, 115

**Citation:** (1986) 2 GLR 83

**Hon'ble Judges:** S.N. Phukan, J

**Bench:** Single Bench

**Advocate:** A.K. Bhowmick, for the Appellant; A. Chakraborty, Government Advocate, for the Respondent

**Final Decision:** Dismissed

### Judgement

S.N. Phukan, J.

The Plaintiff-Petitioner was appointed as Assistant Teacher by the Director of Education, Tripura and since 1977 he was

serving in the said capacity at Joynagar High School, Agartala. On 3.5.84 he was transferred by the Director of School Education to Kamalchhara

High School, Sonamura, representation was submitted against the said transfer but the Petitioner was released on 31.1.85 from the said School.

Hence a suit was filed on 16.4.85 before the learned Munsiff, Sadar, Agartala challenging the said transfer and a petition for temporary injunction

under Order 39, Rules 1 and 2 of the Code of Civil Procedure, for short, "Code of Civil Procedure" was also filed and an ex-parte interim order

was obtained on 17.4.85. However, on 30.7.85 after hearing both the parties the learned trial court rejected the prayer for injunction. In appeal

the learned Additional District Judge, West Tripura, Agartala passed an order on 16.9.85 directing the maintenance of status quo as on 12.9.85.

Ultimately on 16.12.85 the appeal was dismissed and hence the present petition u/s 115 CPC along with a petition for stay was filed before this

Court. The State filed a counter affidavit against the petition for stay.

2. The Plaintiff-Petitioner challenged the transfer order on three grounds namely, that the Director of School Education was not competent to issue

the impugned order of transfer as the Petitioner was appointed by the Director of Education, that the order of transfer was arbitrary and that the

said order was issued in violation of the guidelines framed by the Government of Tripura regarding transfer of employees. In the counter affidavit of

the State Government it has been stated that Director of School Education was competent as the Office of the Director of Education was

bifurcated and the Director of Education was re-designated as Director of School Education, that the transfer being a condition of service the said

transfer order was validly made by the competent authority and that as the learned lower courts did not commit any mistake of fact or law there is

no occasion for invoking the revisional jurisdiction of this Court.

3. Mr. A.K. Bhowmick, learned Counsel for the Petitioner contended that it is a fit case for exercising revisional jurisdiction of this Court and in

support of his contention he placed reliance on Kshitish Chandra Bhowmick AIR 1985 Gauhati 55. In my opinion this decision is not relevant for

the instant case as it is not a case u/s 10 Code of Civil Procedure.

4. In Manick Chandra Nandy Vs. Debdas Nandy and Others, the Hon"ble Supreme Court considered the scope of Section 115 CPC and held

that the exercise of revisional jurisdiction is confined to questions of jurisdiction. While in a first appeal the Court is free to decide all questions of

law and fact which arise in the case, in the exercise of its revisional jurisdiction the High Court is not entitled to re-examine or re-assess the

evidence on record and substitute its own findings on facts for those of those subordinate court. Their Lordships further held that a plea of

limitation concerns the jurisdiction of the Court which tries a proceeding, for a finding on this plea in favour of the party raising it would oust the

jurisdiction of the Court. The Hon"ble court observed:

In determining the correctness of the decision reached by the subordinate Court on such a plea, the High Court may at times have to go into a

jurisdictional question of law or fact, that is, it may have to decide collateral questions upon the ascertainment of which the decision as to

jurisdiction depends. For the purpose of ascertaining whether the subordinate Court has decided such a collateral question rightly, the High Court

cannot, however, function as a Court of first appeal so far as the assessment of evidence is concerned and substitute its own findings for those

arrived at by the subordinate Court unless any such finding is not in anyway borne out by the evidence on the record or is manifestly contrary to

evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party.

5. Now I have to consider the case in the light of the law laid down by the Apex court in Manik Chandra Nandy (supra).

6. The principles governing grant of injunction are well settled and for obtaining an order of injunction a person has to satisfy the court on the

following points: namely; that he has a prima facie case to go to trial, that the balance of convenience lies in his favour and that he will suffer

irreparable injury if the injunction is refused. In *Protiva Debi and Others Vs. Zilla Parishad, Howrah*, it was held that exercise of jurisdiction in

breach of provisions of Order 39, Rules 1 and 2 CPC makes it a case where the court had exercised its jurisdiction if not illegally at least with

material irregularity and the order granting injunction would be open to challenge in revision. With respect I agree with the law laid down by the

Calcutta High Court and hold that the High Court would be justified in exercising its revisional power if the injunction was granted ignoring the

above principles as the order of the lower court would amount to exercising its jurisdiction with material irregularity.

7. From the judgment of the learned trial court I find that the learned Court on the basis of materials available on record considered all the three

points and held that the Plaintiff-Petitioner could not make out a prima fade case; that the balance of convenience was in favour of the Defendants

and that the Plaintiff-Petitioner would not suffer any irreparable loss. The leaned Court gave a clear finding that the Plaintiff-Petitioner would not

suffer any financial loss as transfer was a condition of service. The learned court was of the opinion that the transfer order could not be treated as

malafide or arbitrary as it was issued for the sake of administrative reasons and for the interest of the students. I need not re-assess the evidence on

record. Nothing has also been brought to my notice to show that the findings of the learned lower court were not supported by the evidence on

record or manifestly contrary to evidence or palpably wrong. I am satisfied that in refusing to grant injunction, which was a matter of discretion of

the learned lower court, the learned Munsiff acted in a judicial manner.

8. Mr. Bhowmick, learned Counsel for the Petitioner has drawn my attention to the judgment of the learned lower appellate court to show that the

learned court dismissed the appeal without considering the findings of the learned trial court on all the three points, I have gone through the

judgment and I find that the learned lower appellate court came to the definite finding that the Plaintiff-Petitioner would not suffer any irreparable

loss or injury if the impugned order of transfer was not stayed. I am, therefore, of the opinion that the contention of Mr. Bhowmick has no

substance.

9. On perusal of the judgment of the learned lower appellate court I find that the learned court came to the finding that granting of injunction would

be redundant as the Plaintiff-Petitioner was released from the School on 31.7.85 i.e. before the order for maintaining status quo as on 12.9.85 was

passed. In *Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others*, it was held that ""injunction is granted only to restore the status quo and not

granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted". Relying on the above

decision the same view was also expressed in Ramchandra Tanwar AIR 1971 Raj 292. I respectfully agree with the law laid down by Calcutta

and Rajasthan High Courts and I am further of the opinion that same principle will also be applicable in respect of pending appeal. Before the

status quo order was passed by the learned lower appellate court the Plaintiff-Petitioner was released from his post and as such I am of the view

that the learned lower appellate court was justified in refusing to grant injunction as it would have amounted to establishing a new state of things that

is, bringing back the Plaintiff-Petitioner to the post from which he was released.

10. From what has been stated above, I hold that this is not a fit case for exercising jurisdiction u/s 115 CPC and as such the petition is liable to be

dismissed, which I hereby do.

11. In the result, the petition is dismissed. No costs.