

(1989) 08 MP CK 0003

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Appeal No. 140 of 1988

Narayan Onkarsa

APPELLANT

Vs

Sardar Singh Gulab
Singh

RESPONDENT

Date of Decision: Aug. 31, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1(r)
- Madhya Pradesh Anusuchit Jati Tatha Janjati Rini Sahayata Adhiniyam, 1967 - Section 8

Citation: (1989) MPLJ 805

Hon'ble Judges: K.L. Shrivastava, J

Bench: Single Bench

Advocate: P.S. Garg, for the Appellant; J.L. Jain, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.L. Shrivastava, J.

This appeal under Order 43, Rule 1(r) of the Code of Civil Procedure, 1908 (for short "the Code") is directed against the order dated 30-7-1988 passed by the IInd Addl. Judge to the District Judge, Jhabua at Alirajpur in Civil Suit No. 2-A of 1988 of the Court of Civil Judge, Class I, Alirajpur whereby the appellant's application for grant of temporary injunction has been dismissed.

Circumstances giving rise to this appeal are these : Sardarsingh Bhilala, the present respondent had pledged certain silver ornaments weighing 155 Tolas with the appellant Narayan and had obtained loan of Rs. 200/- from the latter. The said Narayan failed to apply u/s 8 of the M.P. Anusuchit Jati Tatha Janjati Rini Sahayata Adhiniyam, 1967 (for short "the Adhiniyam") within 60 days of the establishment of

the Debt Relief Court (for short "the Relief Court"). On the debtor's application order for return of the ornaments to him was passed by the Relief Court on 3-12-1981.

The ornaments were not returned by the creditor. The respondent stating this fact, filed an application in the Relief Court praying for return of the ornaments. The Court on 2-6-1987 passed an order for delivery of the property or in the alternative for payment of its value at the prevailing market rate. Revision against this order preferred before the Collector was dismissed on 27-1-1988.

The appellant Narayan thereafter filed Civil Suit No. 2-A of 1988 in the Court of Civil Judge, Class I, Alirajpur praying for a declaration that the order dated 2-6-1987 passed by the Relief Court is void and for permanent injunction restraining the respondent Sardarsingh from proceeding to recover the pledged ornaments or the price thereof on the ground that the order, being without jurisdiction, is bad in law.

In the aforesaid suit, Narayan filed an application for temporary injunction and under orders of the District Judge the learned Additional Judge to him has passed the impugned order dismissing the application.

Aggrieved by the aforesaid order the plaintiff has preferred this appeal.

The contention of the learned counsel for the appellant is that u/s 14-A inserted in the Adhiniyam by section 6 of the M.P. Anusuchit Jati Tatha Janjati Rini Sahayata (Sanshodhan and Vidhimanya Karan) Adhiniyam, 1984 (for short "the Sanshodhan Adhiniyam"), the debtor applied for delivery to him of the property in question. This he did beyond one year of the enforcement of the provision. As the time was not extended by the Government as provided under the proviso, the application dated 16-10-1986 was clearly barred by time and, therefore, the order dated 2-6-1987 passed thereon by the Relief Court, being without jurisdiction, is void.

The contention of the learned counsel for the respondent is that the Relief Court had already directed return of the property by its order in 1981 and by section 5 of the Sanshodhan Adhiniyam the said order of 1981, though then without jurisdiction, stood retrospectively validated.

The point for consideration is whether the appeal deserves to be allowed.

Learned counsel for the appellant contends that the order dated 2-6-1987 passed by the Relief Court is expressly u/s 14-A of the Adhiniyam as inserted in 1984 and the application having been made beyond time, the order thereon was clearly without jurisdiction. He urges that if the same is treated as an application for execution of the order passed in 1981 it could be filed within one year Of the Sanshodhan Adhiniyam and not beyond that.

On a careful consideration I am of the view that looking to the order passed by the Relief Court it has to be treated as one passed u/s 14-A of the Adhiniyam and due to the limitation prescribed, the application treated as one under the section, was

clearly barred by time and, therefore, the order passed thereon by the Relief Court is void being without jurisdiction. The decision in Govind Prasad's case, AIR 1952 Nag. 278 is pertinent.

The contention of the respondent's learned counsel that by virtue of section 5 of the Sanshodhan Adhiniyam the order dated 2-6-1987 passed by the Relief Court cannot be challenged before the Relief Court or any other Court is without merit. That section provides for validation of certain orders passed prior to the Sanshodhan Adhiniyam of 1984 and includes orders for return of movable property and the order dated 2-6-1987 is not within its ambit.

In his application filed before the Relief Court on 25-8-1986 the respondent had admittedly stated that the ornaments had not been returned despite previous order. The learned Relief Court admittedly treated it as an application u/s 14-A inserted in the Adhiniyam by the Sanshodhan Adhiniyam and passed the impugned order. As an order u/s 14-A it is certainly void and in this view the appellant is prima facie entitled to the relief of declaration. The question of limitation for the execution of the Relief Court's order passed in 1981 does not crop up for consideration in this appeal.

This brings us to the question of prima facie case as to the relief of permanent injunction which is governed by the provisions in the Specific Relief Act, 1963 (for short "the Act").

As is clear from section 38 of the Act, the equitable relief of injunction is within the Court's discretion. This discretion has to be exercised judiciously. In the instant case, the appellant despite Relief Court's order passed in 1981 which stood validated by the Sanshodhan Adhiniyam, has failed to comply with it and has instituted the Civil Suit on the technical plea that the impugned order of 1987, being without jurisdiction, is void. It is also clear from the record that the appellant had compromised with the respondent agreeing to pay him Rs. 6,200/- in lieu of the ornaments and had made part payment of Rs. 1,000/-. I am of the view that in the circumstances it cannot be said that he has a prima facie case for this equitable relief of permanent injunction and, therefore, temporary injunction has to be refused (vide [Gujarat Electricity Board, Gandhinagar Vs. Maheshkumar and Co., Ahmedabad](#), .

The grant of discretionary relief of temporary injunction is governed by the provisions of the Code and is subject to the three principles:

- (i) prima facie case of plaintiff's legal right;
- (ii) Balance of convenience in his favour i.e. the comparative mischief of the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise by granting it.

(iii) Whether he would suffer irreparable injury (a material injury) which cannot be adequately compensated for by damages.

If any of the conditions is not satisfied, temporary injunction cannot be granted. Here looking to the fact that the appellant is a creditor and in the absence of any reliable averment that the respondent would not be in a position to return the ornaments or their value, it has to be held that he has failed to prove these two conditions as well.

As a result of the foregoing discussion, I find that the impugned order passed by the lower Court in exercise of its discretion, on a consideration of the correct principle governing the relief of temporary injunction, is not liable to be interfered with in this appeal, under Order 43, Rule 1(r) of the Code.

For the foregoing reasons, the appeal fails and is dismissed.

In the circumstances of the case, it is directed that the parties shall bear their own costs as incurred.