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Motilal Singh Vs Shib Chandra Bose

C.R. No. 1824 of 1968

Court: Calcutta High Court

Date of Decision: Nov. 22, 1968

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, Order 43 Rule 1

Citation: 75 CWN 233

Hon'ble Judges: Salil Kumar Datta, J

Bench: Single Bench

Advocate: Sudhir Kumar Datta, for the Appellant;K.C. Roychoudhury, Opposite Party No. 1, for the Respondent

Judgement

Salil Kumar Datta, J.
This rule is directed against the Order No. 10 dated May 25, 1968 passed by the learned District Judge at Howrah

in Mis. Appeal No. 271 of 1967 holding that no appeal lies against the Order No. 8 dated December 14, 1967 passed by learned Munsif, Third

Court, Howrah in the Title Suit No. 227 of 1967. The facts of the case as stated in the petition are as follows : The opposite party No. 1 brought a

Title Suit No. 214 of 1963 before the Second Court of the learned Munsif, Howrah against the petitioner for his eviction from the suit premises

which he held as a ghar-bharatia and for arrears of rent. The petitioner filed a written statement contesting the suit on ground inter aha "that he was

a thika tenant of the land and had constructed structures thereon and was not liable to eviction. The suit was, however, decreed ex parte on May

26, 1966. Thereafter the petitioner filed an application under Order 9 Rule 13 of the CPC but being advised to institute a comprehensive suit he

did not proceed with the same. He instituted on July 31, 1967 a suit being Title Suit No. 227 of 1957 in the Court of Third Munsif, Howrah

claiming that he was a thika tenant in respect of the disputed land and the learned Munsif, Howrah had no jurisdiction to entertain the Title Suit No.

214 of 1963 and pass the decree for his eviction from the land in suit

2. In the said suit, the petitioner filed an application for temporary injunction restraining the opposite party No. 1 from executing the said ex parte

decree. By Order No. 8 dated December 14, 1967 the learned Munsif refused the prayer for ad interim injunction and directed issue of notice to

the opposite party No. 1. Against the said order, the petitioner preferred an appeal being Mis. Appeal No. 271 of 1967 and the learned District

Judge who heard the appeal by his Order No. 10 dated May 25, 1968 dismissed the appeal on the ground that as the order of the learned Munsif

was passed under Order 39 Rule 3 of the CPC no appeal lay. The petitioner has moved this court in revision against the said order.

3. At the hearing of the rule, Mr. K. C. Roy Choudhury the learned Advocate for the opposite party No. 1" conceded that the order of the

learned Munsif was not under Rule 3 of the said order as has been found by the lower Appellate Court. He, however, contended that the learned

Judge was correct in dismissing the appeal, as an appeal lies against a final order and the order of the learned Munsif refusing ad interim injunction

was not a final order. In support of his contention, he relied on the decision in (1) Raja Deo Singh v. Kr. Shambho Krishna Narain, 1960 ALJ 124

(125), where it has been held that an order issuing an ad interim injunction was only a preliminary order and not final order and as such no appeal,

lay. Mr. Roy Choudhury further contended that as no ad interim injunction was issued, there was no order under Rule 1 or Rule 2 Order 39 of the

Code and as such there was no appeal against the said order. In support of his contentions, he relied on decision in (2) H. Bevis and Co. Vs. Ram

Behari and Others, .

4. Mr. Sudhir Kumar Datta appearing for the petitioner has argued that the learned Lower Appellate Court was in error in thinking that the order

passed by the learned Munsif was under Order 39 Rule 3 of the Code of Civil Procedure. He contended that the order was under Rule 1 or Rule

2 of Order 39 of the Code and was a final order in so far as it went. Accordingly relying on the decision reported :"n (3) Saraju Prashad Singh Vs.

Gangaprosad Shah and Others, he contended that the order was a final order under Order 39 Rule 1 or 2 and was appealable. He further

submitted that under Order 43(1) (r) of the Code an appeal is provided for any order under Order 39 Rules 1, 2 and 4 and that an order refusing

an ad interim injunction must necessarily be an order under the said rules and as such appealable under provisions of Order 43 Rule 1(r) of the

Code.

5. On the first point, I am unable to hold that an order refusing ad interim injunction is not a final order. Here, as in similar cases the party comes to

the court for immediate relief and that is refused or granted, such order remain effective and final for the time being.- On the principles indicated in

(3) Saraju Prosad v. Gangadhar (Supra), the order refusing ad interim injunction is a final order so far as it goes. I regret, in view of the above

position and of the decision referred to above, I am not in a position to agree with the decision in (1) Raj Deo Singh v. Kr. Shambhu Krishna relied

on by the opposite party No. 1 on this point and to accept his contention.

6. I am also unable to accept the other contention on behalf of the opposite party No. 1 to the effect that an order refusing - ad interim injunction is

not an order under Rule 1 or Rule 2 of Order 39 of the Code. The relevant rules confer jurisdiction on the court either to issue an injunction or to

refuse an injunction as it may consider appropriate and all its orders allowing injunction or refusing injunction will obviously and must necessarily be

orders under the said rules. The case will be the same in respect of other rules of the Code. It may be of interest to note, as has been pointed out

by Mr. Dutta, that in Order 43 Rule 1, in respect of sub-clauses (d), (e), (k) etc appeal has been provided for only against order rejecting the

connected application, while no such condition is imposed under sub-clause (r) in respect of orders under Rule 1, Rule 2 or Rule 4 of Order 39 of

the Code. I am, therefore, of the opinion that an order refusing injunction will none the less be an order under Rule 1 or 2 of Order 39 of the Code

and thus appealable.

This view finds, though indirectly, a support in the decision reported in Kali Charan Shaw Vs. Kissen Lal Choudhury, . 17. The contention of the

opposite party No. 1 on this point is accordingly overruled. In view of my above conclusions, I hold that the appeal before the Lower Appellate

Court was maintainable and the learned Judge failed to exercise the jurisdiction vested in him in dismissing the appeal in limine as not maintainable.

In the result, the order of the learned Judge impugned in the rule is set aside and the rule is made absolute. The appeal is now sent, back to the

lower appellate Court for disposal in accordance with law.

There will be no order for costs in the rule.