

Narayan Prusti Vs. State and ors.

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Court : Orissa

Decided On : Sep-10-1971

Reported in : AIR1972Ori186; 37(1971)CLT1171

Judge : R.N. Misra, J.

Acts : [Specific Relief Act, 1963](#) - Sections 41; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rule 2

Appeal No. : M.A. No. 24 of 1971

Appellant : Narayan Prusti

Respondent : State and ors.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : S.C. Mohapatra and ;J.K. Tripathy, Adv.

Disposition : Appeal dismissed

Judgement :

R.N. Misra, J.

1. The plaintiff is in appeal. The learned Subordinate Judge rejected an application for interim injunction pending disposal of the suit. The suit that is pending is for perpetual injunction restraining the defendants-respondents from proceeding with

Certificate Case No. 964-C-II-1962 before the Certificate Officer. Kamakshanagar. The plaintiff was a construction contractor and had undertaken to lay roads and raise buildings under the Sub-Divisional Officer of Kamakshanagar on behalf of the Tribal and Rural Welfare Department of the State Government. There were two registered instruments and one unregistered instrument in respect of 5 of the items of work and in respect of the last item there was no document at all. The contracts were terminated and extension of time was not allowed, but later on the contractor's representation the orders rescinding the contracts were withdrawn. Time was extended till 30-5-61, but as the contractor did not complete the works as Per the contracts penalty was levied and costs of material were ordered to be recovered alone with interest. The impugned certificate case for recovery of Rs. 1536.47 was initiated. The plaintiff filed the suit denying his liability and claimed interim injunction pending the suit.

2. The learned Subordinate Judge has taken the view that Section 41(b) of the Specific Relief Act of 1963 is a bar to grant of injunction and as such injunction against proceeding with the certificate case would not be issued to the certificate officer. Against this order of the learned Subordinate Judge the present appeal has been filed.

3. Mr. S. C. Mohapatra for the plaintiff-contractor who is in appeal before this Court contends that the certificate officer is not a court and the learned Subordinate Judge has taken an erroneous view of the law. Thus his conclusion about non-maintainability of the relief of the interim injunction is vitiated. According to Mr. Mohapatra. even if injunction is not available by application of Order 39. Rule 1 C. P. C. such interim relief could be granted under Section 151 C. P. C. He next contends that keeping the background of the case in view the balance of convenience is in favour of not allowing the certificate case to proceed till the disposal of the suit. The learned Subordinate Judge, according to Mr. Mohapatra. took an erroneous view of the law by rejecting the petition for interim injunction. On the other hand, the learned Addl. Government advocate appearing for the respondents contends that the certificate officer is a court and as he is not subordinate to the learned Subordinate Judge the bar of Section 41 of the Specific Relief Act has full application and no injunction could be granted.

4. It has therefore, to be first examined whether the certificate officer is a court and being a court whether he is subordinate to the learned Subordinate Judge. If the certificate officer is a court and not subordinate to the learned Trial Judge, obviously Section 41(b) of the Specific Relief Act would be a bar to Brant of injunction.

5. The question as to whether the certificate officer under the Public Demands Recovery Act is a court came to be examined before a Division Bench of this Court in (1970) 36 Cut LT 1282 = (1971 Cri LJ 742) (K. C. Nanda v. Certificate Officer. Boudh). In paragraph 10 of the judgment the various tests to constitute a court were indicated thus:

'(i) In order to constitute a Court, In the strict sense of the term, it must exercise judicial power of the State, namely, the Dower which every sovereign authority must of necessity, have to decide itself or Its subjects whether the rights relate to life, liberty or property; and as an essential condition thereof, it must have the power to give a decision or definitive judgment which has finality and authoritativeness.

(ii) The court, in exercising this judicial cower of the State, must act judicially, namely, its proceedings must be conducted with fairness and impartiality, normally characterising the proceedings in a Court of justice.

(iii) This judicial power must be invested with the Court by a statute, in other words, it must exercise jurisdiction by reason of the sanction of the law and not merely by reason of voluntary submission to such jurisdiction; and

(iv) The judicial decision which must thus be rendered presupposes existence of a lis, that is to say, controversies between two or more parties involving;

(a) presentation of respective cases of the parties to the dispute:

(b) determination of disputes on the question of facts and law by means of evidence adduced by the parties to the dispute and even with assistance of argument by or on behalf of the parties to the proceeding on the basis of the evidence recorded, and in the context of the law of the land.'

Then it was held.

'Thus, the 'Court' In addition to Possessing the essential power to render a decision or definitive judgment having finality and authoritativeness and binding Upon the parties, must have the other aforesaid attributes. The distinction between a 'Court' and a 'Tribunal' which is not a Court rests solely upon the existence or absence of the power to render a definitive or authoritative decision.

It is next to be seen whether all the aforesaid requisites are to be found in the present case. It is therefore, proper to consider the provisions of the Orissa Public Demands Recovery Act under which the impugned proceedings have been initiated against the petitioner and to determine whether the Certificate Officer is a Court within the meaning of the Contempt of Courts Act.

(Provisions of the Orissa Public Demands Recovery Act were considered at length).

Thus, it is clear that apart from all the trappings of a Judicial Tribunal, the essential condition, that is existence of the power to give a decision or a definitive judgment which has finality and authoritativeness is fully satisfied in the instant case.'

Therefore, in view of what has been laid down in the aforesaid Division Bench decision it must follow that the certificate officer under the Public Demands Recovery Act is a court. Mr. Mohapatra laid emphasis upon the fact that their Lordships were considering 'court' with reference to the provisions of the Contempt of Courts Act and therefore, the conclusion that the certificate officer was a court for the purposes of the Contempt of Courts Act cannot be relied upon in the present setting. This contention of Mr. Mohapatra has to be repelled. The word 'court' is used in Section 3(1) of the Contempt of Courts Act and with reference to the word 'court' as used in that sub-section the Division Bench was trying to reach a conclusion as to whether a certificate officer is a court. The word 'court' must be given precisely the same meaning --be it with reference to the; Contempt of Courts Act or the Specific' Relief Act. The certificate officer, therefore, must be held to be a court.

6. The next question for examination is as to whether such certificate officer is subordinate to the learned Trial Judge in this case. Section 41(b) of the Specific Relief Act provides.

'An injunction cannot be granted --

x x x x x(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought.

Mr. Mohapatra is not in a position to contend that the certificate officer is a court subordinate to the Subordinate Judge. Thus the bar under Section 41(b) of the Specific Relief Act squarely applies. The application in the trial Court was labelled as one under Order 39. Rule 2 C. P. C. and not under Rule 1 thereof. The bar provided under Section 41(b) of the Specific Relief Act was material for the purposes of the first proviso to Rule 1 as per the amendment adopted by this Court. So far as Rule 2 is concerned, there is no reference to the Specific Relief Act. The learned Trial Judge should have examined the case with reference to Rule 2 of Order 39 C. P. C. and not with reference to the bar under the proviso of Rule 1 of Order 39 C. P. C. Rule 2 (1) of Order 39 C. P. C. provides:

'In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not the plaintiff may at any time after the commencement of the suit, and either before or after judgment apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right'

7. The suit in question is not of the type referred to it in Rule 2. Relief of injunction is both an equitable as also a discretionary remedy. The amount claimed in the certificate case is Rs. 1,536-47. If the certificate case is allowed to be executed, the plaintiff would at the worst be called upon to pay the aforesaid amount. It has not been specifically pleaded as to what irreparable injury would be caused by not restraining the certificate proceeding. Remedy of injunction in the circumstances of this case cannot be made available for the mere asking for it. It was the duty of the

plaintiff to clearly allege and establish, if the allegations were refuted, that he was entitled to protection, otherwise irreparable injury would necessarily result. The plaintiff is a contractor of some standing and if he is made to pay a sum of Rs. 1536.47 no irreparable injury can be conceived of. The parties recovering the amount are public officers of the State of Orissa and there is no apprehension of difficulty of reimbursement in the event of a decree in the suit. Taking all these aspects into consideration I am satisfied that it is not fit case where any injunction should be granted.

The other contentions raised at the Bar for the appellant and the respondents need not be referred to In view of this finding.

8. Thus, while vacating the reasons of the learned Trial Judge as irrelevant for the purpose I would hold that the plaintiff-appellant has not been able to establish any justification for granting injunction pending suit. The appeal fails and is dismissed. There would be no order as to costs.

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