

Sadananda Sethi Vs. Benudhar Sethi

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SooperKanoon Citation : sooperkanoon.com/532075

Court : Orissa

Decided On : Apr-16-2008

Reported in : (2008)106CALLT61(NULL)

Judge : Indrajit Mahanty, J.

Appellant : Sadananda Sethi

Respondent : Benudhar Sethi

Advocate for Pet/Ap. : Mr. Mohapatra

Disposition : Petition dismissed

Judgement :

Indrajit Mahanty, J.

1. In this writ application the Petitioner has sought to challenge the Order Dated 21.8.2006 passed by the Learned District Judge, Khurda in CRP No. 13 of 2005 setting aside the order of status-quo passed by the Civil Judge (Jr. Division), Bhubaneswar in I.A. No. 97 of 2005.

2. An objection has been filed by the Opposite Party in Misc. Case No. 4408 of 2008 praying for dismissal of the writ application on the ground of having been rendered infructuous.

3. Mr. Mohapatra, Learned Counsel for the Petitioner submits that while it is a fact that 'he suit (C.S. No. 64 of 2000) was dismissed for default on 18.4.2003, the Plaintiff-Petitioner had filed an application before the Civil-Judge (Sr. Division), Bhubaneswar under Order 9 Rule 9 and Section 151 CPC praying to set aside the order of dismissal and to restore the suit in its original number and to dispose of the same on merits. He further submits that after filing of such an application on the prayer of the Plaintiff-Petitioner, the order of status quo was passed pending consideration of the application for restoration. This order of status quo was challenged before the Learned Dist. Judge and the Learned Dist. Judge having reversed the same, is the subject matter of challenge in the present writ application.

4. Mr. Sarangi, Learned Counsel for the Opposite Party has filed misc. case, indicating therein that the C.M.A. No. 208 of 2003 filed by the Plaintiff-Petitioner to restore the suit, was dismissed for default on 6.4.2007 and submits that since neither the suit nor the restoration application is pending under law, the present writ application is obviously infructuous.

5. Mohapatra, on the other hand, submits that while it is a fact that C.M.A. 208 of 2003 has been dismissed for default on 6.4.2007, but since another application for restoration of the suit has been filed and has been registered as C.M.A. No. 143 of 2008, is pending consideration. Mr. Mohapatra submits that Since the second application for restoration is pending, the writ application is not infructuous and, further states that this Court has power under Section 151 CPC to ensure the ends of justice are met. In this respect, he placed reliance upon the Judgment of this Court in the case of The Executive Officer, Notified Area Council, Polo sora v. Kintali Natabar Prusti and Ors. 1985 (II) OLR-298.

6. In the objection filed by the Plaintiff-Petitioner and Opposite Party to the Misc. Case No. 4408 of 2008 the aforesaid facts have been offered and prayer has been made to exercise jurisdiction under Section 151 C.P.C. to protect the right of the Plaintiff-Petitioner pending adjudication of CMA 143 of 2008.

7. Mr. Sarangi, Learned Counsel appearing for the Opposite Party, on the other hand placing reliance upon the Judgment of Hon'ble Apex Court in the case of

Shipping Corporation of India Ltd. v. Machado Brothers and Ors. 2004 (2) Civil Court Cases 533 (S.C.) and in particular, paragraph-18 thereof, wherein the Hon'ble Supreme Court has clearly laid down that one basic principle, that should be borne in mind is that 'interlocutory orders are made in aid of final orders and not vice versa. No interlocutory order will survive after the original proceeding comes to an end'.

8. This is a well established principle in law as could be seen from the Judgment of the Apex Court in the case of Kavita Trehan (Mrs.) and, Ors. v. Balsara Hygiene Products Ltd. : AIR 1995 SC441 wherein it has been held as follows:

Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible.

9. Considering the submissions made by the Learned Counsel appearing for both the parties, I am of the considered view that the writ application is infructuous in two reasons:

(i) the suit has been dismissed for default on 18.4.2003 and the application under Order 9 Rule 9 and Section 151 CPC was filed to set aside the order of dismissal. It is further a fact that this particular application was also dismissed for default on 6.4.2007.

(ii) the present application was filed in the year 2006 seeking to challenge the order of the Learned Dist. Judge, Khurda in CRP No. 13 of 2005 wherein, the Learned Dist. Judge was pleased to hold that the order of ad interim injunction granted in favour of the Plaintiff-Petitioner is not maintainable on the ground that the order had been passed under Section 151 CPC and placing reliance on the Judgment of the Hon'ble Supreme Court in the case of Shipping Corporation of India Ltd. (supra). Although the order held the proceeding to be maintainable, the Learned Dist. Judge further came to hold that on the date of passing of the impugned order (Trial Court) no suit was pending.

10. I am in agreement with the view expressed by the Learned Dist. Judge in the aforesaid order and I am of the view that since the suit was no longer pending and on the date of passing of the order of an ad interim injunction in a restoration application, no injunction could have been passed under Section 151 CPC. Apart from this, no doubt, it is correct to state that the Court does possess the power to pass such, orders to prevent injustice. But in the present case, I am of the view that this principle is not attracted since it is well settled that a party whose conduct indicates laches, is not entitled to discretionary relief.

11. In the present case, the original suit was dismissed for default and the restoration application has also been subsequently dismissed for default. In the meanwhile, pending consideration of the second application for restoration, no suit is pending and hence, no order under Section 151 CPC can be passed as laid down by the Hon'ble Apex Court in the Judgment cited above.

12. Accordingly, the present writ application is dismissed as infructuous. It is made clear that nothing has been expressed in this matter shall be construed as a view on the merits of the case.

13. Learned Counsel for the Petitioner prays for direction for early disposal of the application.

14. It is open for the Petitioner to move the Trial Court with such an application and if such an application is filed, the same shall be considered on its own merit.