



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 11 of 2020

Date of Decision: 20.07.2020

Smti Anjalee Bhattacharjee

Vs. Smti Sunanda Deb & Anr.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)

:

Mr. K. Paul, Adv.

For the Respondent(s)

:

Mr. S. Sen, Adv.

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|-----|---|-----|
| i) | Whether approved for reporting in Law journals etc. | Yes |
| ii) | Whether approved for publication in press: | No |

1. Matter taken up via Video Conferencing.
2. This application under Article 227 of the Constitution of India, is the second round of litigation by the petitioner before this Court.
3. The order impugned herein dated 24.06.2020 had been passed in FAO No. 1 (H) 2020 arising out of Misc. Case No. 3 (H) 2020 in Title Suit No. 5 (H) 2020 by the Court of the learned Additional District Judge, Shillong.
4. The facts surrounding the instant application causing the petitioner to again approach this Court under Article 227 are that in the first instance, on the rejection of the prayer for ex parte ad-interim injunction by the learned Trial Court vide order dated 29.05.2020 and an appeal filed thereon before the Lower Appellate Court, which did not yield any result, had approached this Court by way of a revision application



which was numbered as CRP No. 11 of 2020. This Court by order dated 22.06.2020 had directed the Lower Appellate Court to hear the appeal expeditiously on the next date fixed. The Lower Appellate Court thereafter vide order dated 24.06.2020, rejected the prayer of the petitioner for grant of ad-interim injunction and directed the parties to appear before the Trial Court on 29.06.2020, with the added direction that an endeavor be made to dispose the said injunction matter within 15 days. The petitioner being aggrieved by this order is once again before this Court by way of this instant application under Article 227.

5. Heard learned counsel for the parties.

6. Mr. K. Paul, learned counsel for the petitioner submits that the learned first Appellate Court had taken a contrary view that there was no rejection of the prayer for ad-interim injunction which he submits, is against settled law which has laid down that an issuance of notice under Order 39 Rule 3 would amount to an order of rejection of the injunction, which would in turn make it appealable under Order 43 Rule 1 (r) CPC. Reliance has been placed in the judgment of **Sajjan Kumar Tharad & Anr. vs Deoris Marbaniang** reported in **(2010) 2 GLT 773**. Learned counsel contends that the learned first Appellate Court failed to appreciate the ingredients for the grant of ad-interim injunction, inasmuch as, the petitioner's limited prayer was only for a direction for the obstacles to be removed and to allow clear ingress and egress to the suit premises, to enable the petitioner to conduct her business smoothly.

7. Learned counsel submits that the learned Lower Appellate Court had recorded the submissions of the respondents that pursuant to the FIR filed by the petitioner, the police had issued notice to one Shri Bharat Motiram who is also a tenant under the respondents and that the dispute was essentially a dispute between the tenants and not with the respondents. In this context, he submits the Lower Appellate Court should have closed the appeal leaving the petitioner to pursue the case against the other person, instead of directing both the parties to appear before the Trial Court again to hear the injunction matter. He submits that the impugned order therefore suffers from manifest error and perversity and is liable to be set aside. Learned counsel also prays that in the interim that the respondent be



directed to remove the garbage/debris blocking the ingress and egress of the petitioner.

8. Mr. S. Sen, learned counsel for the respondents in reply has submitted that the appeal is not maintainable and whether the judgment in the case of **Sajjan Kumar Tharad & Anr. vs Deoris Marbaniang** (supra) holds the field is highly debatable. In this regard, the learned counsel has placed reliance in the case of **Ramrameshwari Devi & Ors. vs. Nirmala Devi & Ors.** reported in **(2011) 8 SCC 249** wherein he submits that it has been held that Courts have to be extremely careful in granting ad-interim ex parte injunction and that the better course for the Court is to give a short notice and hear both the parties before passing orders. Learned counsel submits that when the initial order dated 29.05.2020 was passed by the Trial court fixing a short date for service of notice and for hearing on the injunction matter on 03.06.2020, the petitioner did not appear and instead had preferred an appeal against the said order, which had then thereafter travelled to this Court against the order of the first Lower Appellate Court dated 10.06.2020. Learned counsel has also drawn the attention of this Court to the order dated 29.05.2020 which he submits has been passed by a Court lacking jurisdiction, inasmuch as, it has been passed under the heading 'Court of Assistant to Deputy Commissioner (J), Shillong' when the suit in fact had been filed before the Court of the Assistant District Judge.

9. Learned counsel submits that the prayer No. 5 in the plaint of the Title Suit is identical to the prayer made in the application under Order 39 Rule 1 & 2 which he contends is unsustainable in the consideration of a prayer for grant of ad-interim injunction as it would amount to a claim for final relief at the interim stage itself. Learned counsel further submits that no case is made out for interference under Article 227 of the Constitution of India and prays that the matter be dismissed.

10. Heard learned counsel for the parties. The main grievance as sought to be made out in the instant revision application, is the non-consideration of the Lower Appellate Court of the prayer of the petitioner for grant of ad-interim injunction and failing to recognize and acknowledge the position of law that issuance of notice under Order 39



Rule 3 would amount to a rejection of the prayer for ad-interim ex parte injunction, and hence appealable under Order 43 Rule 1(r) of the CPC. The ratio of the cited case is that notice to the defendant before passing an order of injunction would amount to refusal. Though now there are divergent views with regard to this proposition as to whether an order under Order 39 Rule 3 is appealable or whether Section 105 of the CPC would come into play, the cited judgment i.e. **Sajjan Kumar Tharad & Anr. vs Deoris Marbaniang** (supra) in my opinion still holds the field and as such this Court in the instant case, will not enter into this aspect.

11. The impugned order, as far as the finding on the point that there was no rejection, but only refusal to pass an ad-interim ex parte injunction is therefore incorrect. With regard to the other issues raised i.e. whether the suit is essentially between tenants or whether the appeal should not have proceeded after the submissions of the respondents as to the extent of their liability in law, this Court will not go into the same in an application under Article 227, and the same is to be considered at the time of hearing of the injunction matter.

12. Power is vested in a competent court under Order 39 Rule 1 & 2. Order 39 and Rule 3 is only a procedural safeguard, so that ad-interim ex parte injunctions are considered and granted in only exceptional cases which the concerned Court is to consider, as ordinarily, courts should pass appropriate orders only after hearing both parties. In the instant case, after the refusal of ad-interim ex parte injunction, a bipartite hearing on the injunction application is yet to be conducted, as it has been mired in a multiplicity of proceedings, which may have rendered the stated ground of urgency or exceptional circumstances redundant. Even in this second round of litigation, no sufficient grounds have been made out, calling for any interference by this Court in exercise of powers under Article 227 of the Constitution of India. As regards the nomenclature of the Trial Court as recorded in the order dated 29.05.2020, at this stage it cannot be considered to be fatal to the case, but the Trial Court is to ensure that such lapses do not occur and records are maintained correctly and accurately.

13. In view of the facts and circumstances and keeping in mind the confines of the exercise of power in such matters under Article 227 of the



Constitution of India, and in the absence of any glaring jurisdictional error or failure of justice, this instant revision application is disposed of with the direction that the parties concerned, shall appear before the learned Trial Court on 24.07.2020, and the learned Trial Court shall then fix a positive date for hearing on the main injunction matter without any further delay. It is expected that the injunction matter be heard and concluded preferably within the period of 2(two) weeks from 24.07.2020.

14. The matter accordingly stands disposed of.
15. No order as to costs.

JUDGE

Meghalaya
20.07.2020
"V. Lyndem-PS"

