

GAHC010191812021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/132/2021

NIRANJAN BAISHYA

S/O LT. DHIREN BAISHYA, R/O HOUSE NO. 54, WARD NO. 52, BARPATHAR,
BASISTHA, GUWAHATI, DIST- KAMRUP(M), ASSAM, PIN-781029

VERSUS

MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD AND 2 ORS
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956,
REPRESENTED BY ITS MANAGING DIRECTOR, HAVING ITS REGISTERED
OFFICE AT GATEWAY BUILDING, APOLLO BUNDER, MUMBAI-400001,
INDIA

2:MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD.
REPRESENTED BY ITS BRANCH MANAGER
HAVING ITS BRANCH OFFICE AT 4TH FLOOR
STAR CITY BUILDING
ABOVE RELIANCE TRENDS
NEAR HANUMAN MANDIR
ULUBARI
GUWHATI-781007
ASSAM

3:KOTAK MAHINDRA OLD MUTUAL LIFE INSURANCE LTD
REPRESENTED BY THE CLAIMS MANAGER
GROUP CLAIMS
HAVING ITS REGISTERED OFFICE AT 7TH FLOOR
BUILDING NO. 21
INFINITY PARK
OFF WESTERN EXPRESS HIGHWAY
GENERAL A.K. VAIDYA MARG
MALAD (E)
MUMBAI-40009

Advocate for the Petitioner : MR. R BORPUJARI

Advocate for the Respondent : MR. G K GUPTA (R-3)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 20-01-2023

Heard Ms. K. Sumi, learned counsel for the petitioner and Mr. M. Sarma, learned counsel for the respondent Nos. 1 and 2. Also heard Mr. G.K. Gupta, learned counsel for the respondent No. 3.

2. The instant petition under Article 227 of the Constitution has been filed challenging the order dated 15.09.2021 in Misc. (J) Case No. 23/2021 passed by the Addl. District Judge No. 2, Kamrup(M), arising out of Misc. Appeal (Civil) Case No. 33/2021 whereby the Court below had rejected the injunction application on the ground that the three golden principles for grant of ad interim temporary injunction were not in favour of the petitioner. Taking into account the order which this Court proposes to pass, this Court is not inclined to deal with the merits of the said order inasmuch as, the same may prejudice the petitioner herein.

3. The Hon'ble Supreme Court in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*, reported in (2019) 9 SCC 538, had categorically observed that in respect of cases filing under the Code of Civil Procedure (for short 'the CPC') which may involve suits and other proceedings before the civil courts, the availability of an appellate remedy in terms with the provisions of the CPC may have to be construed as a near total bar. Otherwise there is a danger that someone may challenge a decree in a

revision under Article 227 of the Constitution. It was further observed that wherever the proceedings are under the CPC and forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Paragraphs 12 and 13 of the said judgment being relevant are extracted as below:

*“12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in *Surya Dev Rai v. Ram Chander Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] , pointed out in *Radhey Shyam v. Chhabi Nath* [*Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that “orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts”.*

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

4. The order impugned in the instant revision petition is an order passed in the proceedings under Order 39 Rule 1 and 2 read with Section 151 of the CPC, whereby the first Appellate Court had rejected the injunction application on the ground of not satisfying the three golden principles for grant of an injunction. The said order is appealable under Order 43 Rule 1(r) of the CPC and under

such circumstance, the instant revision petition filed under Article 227 of the Constitution in view of the law laid down by the Hon'ble Supreme Court as quoted hereinabove cannot be entertained.

5. Accordingly, the instant revision petition under Article 227 of the Constitution stands dismissed. However, it is observed that the petitioner herein is given the liberty to prefer an appeal against the order dated 15.09.2021 passed in Misc. (J) Case No. 23/2021 and the period of the pendency of the instant proceedings i.e. from 12.11.2021 till date shall be excluded while computing the period of limitation.

JUDGE

Comparing Assistant