

Party Name : RANJIT KR. SAHA Vs SREEDAM CH. GHOSH

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned counsel, Mr. T.K. Deb for the petitioner.

This is a petition under Section 115 of CPC challenging order dated 03.10.2015 passed by Ld. District Judge, West Tripura, Agartala in case No. Civil Misc (Stay) 41 of 2015.

After hearing Mr. Deb learned counsel for the petitioner and having gone through the papers placed on record, it appears that the plaintiff-petitioner filed a suit vide T.S 118 of 2014 in the Court of Ld. Civil Judge, Senior Division, Agartala seeking Specific Performance of Contract along with a separate petition seeking temporary injunction not to take up any permanent construction pending disposal of the Suit. The special petition was registered as Civil Misc.(injunction) 68 of 2015. Plaintiff-petitioner also prayed for an ex-prate order of ad-interim injunction pending service of notice on the defendant

The Trial Court considering all the materials placed on record by order dated 23-09-2015 passed an ex-prate ad-interim order directing both the parties to maintain status quo till disposal of the original suit.

Notice under Order XXXIX Rule 3 of CPC was directed to be served on the defendant.

It is alleged that the defendant preferred an appeal against that order and also prayed for stay of interim order dated 23.09.2015 passed in Civil Misc. (injunction) 68 of 2015 and that stay petition was registered as Civil Misc (Stay) 41 of 2015.

It is submitted by Mr. Deb, learned counsel that learned District Judge even without issuing notice to the plaintiff by order dated 03.10.2015 stayed the operation of order dated 23.09.2015 passed by learned Civil Judge, Senior Division and disposed the Misc. case. A certified copy of that order has been placed along with the revisional application.

The order passed by learned District Judge reads as follows:-

"PRESENT

SRI. S. SIKDAR

DISTRICT JUDGE

WEST TRIPURA, AGARTALA

03.10.15

This is an application U/O-XLIX Rule 5 read with order XLII and section 151 of CPC for staying the impugned order dated 23.09.15 passed in Misc (J) 68/15 arising out of T.S-118/14.

Register it as a Civil Misc (Stay) Case.

Heard the learned counsel of the appellant.

Considered the submission. It is ordered that the operation of the impugned order dated 23.09.15 shall remain stayed till the disposal of the appeal.

The Misc Case is thus disposed of.

Send a copy off this order to the learned court below."

The certified copy of the above order even does not reflect the number of the original appeal in connection with which the stay petition has been filed, which has been registered as Civil Misc (Stay) 41 of 2015, in which the above order has been passed by the learned District Judge, West Tripura, Agartala.

It is quite surprising that the learned District Judge interfered in an order passed by a Court of Equity without assigning any reason and without giving opportunity of hearing to the other side.

The plaintiff-petitioner filed injunction petition under Order XXXIX Rule 1 and 2 before the Trial Court and the Trial Court hearing the petitioner and considering the materials on record passed an ex-prate order and directed notice as required under Order XXXIX Rule 3 of CPC. If the defendant was aggrieved he would immediately appear before the Trial Court and ventilate his grievance against the ex-prate order and pray for vacating the ex-prate order.

No doubt the defendant has a right to challenge the order even by filing an appeal before the superior forum but it is not expected that the superior forum will interfere in the order passed by the Court of Equity without giving notice and without hearing the other side and dispose the Misc. case at the threshold.

The order dated 3.10.2015 passed by learned District Judge, West Tripura, Agartala in Civil Misc. (Stay) 41 of 2015 is altogether out of jurisdiction and violative of the principles of natural justice and, therefore, order dated 3.10.2015 passed in Civil Misc. (stay) 41 of 2015 is set aside and quashed.

Learned District Judge, West Tripura, Agartala is directed to issue notice to the plaintiff side and after hearing them to pass necessary order if an appeal along with a special petition is pending before him challenging order dated 23.09.2015 passed in Civil Misc (injunction) 68 of 2015.

The revisional application accordingly stands disposed of.

Send a copy of this order to the Court of learned District Judge.