

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 188 of 2020

Karmjeet Singh Kalra, S/o. Shri Kuldeep Singh Kalra, Aged About 26 Years, Caste Sikh, R/o. Kalpana Vihar, Near Shivam Heights, Shanti Nagar, Ameri Road, Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Divinder Singh, S/o. Shri Kartar Singh, Aged About 51 Years, Caste – Sikh.
2. Jasbeer Singh, S/o. Shri Kartar Singh, Aged About 64 Years, Caste-Sikh,
3. Daljit Singh, S/o. Shri Kartar Singh, Aged About 54 Years, Caste-Sikh,

No.1 to 3 Through : Divinder Singh, S/o. Shri Kartar Singh, All Partners of M/s. Singh Transporter, R/o. Kalpana Vihar, Near Shivam Heights Shanti Nagar, Ameri Road, Bilaspur Chhattisgarh.

4. Kuldip Singh, S/o. Shri Kartar Singh, Aged About 56 Years, Partners of M/s. Singh Transporter, R/o. Kalpana Vihar, Near Shivam Heights, Shanti Nagar, Ameri Road, Bilaspur Chhattisgarh.
5. Deputy Manager, Jampali Open Coal Mines, S.E.C.L. Jampali, Kudumkela, Thana and Tehsil Gharghoda, District Raigarh Chhattisgarh.

-----Respondents

For Petitioner

: Mr. Manoj Paranjpe, Advocate with
Mr. Abhyuday Singh, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

14/02/2020

1. Challenge in this petition is to the order dated 07.02.2020, passed in Civil Suit No.06-A/2020, by the Additional Judge to 1st Civil Judge Class-II, Gharghoda, Raigarh, District – Raigarh (C.G.) by allowing the application filed by the respondents under Section 151 of C.P.C. and granted interim relief in favour of the respondents and against the petitioner.

2. It is submitted that the petitioner and the respondents have entered into an agreement on 03.12.2019 according to terms of agreement firm of the respondents has supplied some machinery to the petitioner for consideration of Rs.40,00,500/- out of which, the petitioner has made advance payment of Rs.20.00 lakhs to the firm of the respondents. In the meanwhile, the respondents in capacity of the partners of the said Firm have filed a civil suit and not in capacity of Firm against the petitioner, in which the final relief has been prayed that permanent injunction be granted to the respondents to restrain the use of machinery provided by the respondents and also for depositing the machinery back to the yard of the Firm. Application under Order 39 Rule 1 and 2 have been filed separately by the respondents making a similar prayer and it was during the pendency of that application filed praying for temporary injunction, respondents have again filed an application under Section 151 of C.P.C. praying for interim relief in the same fashion.
3. The learned trial Court by the impugned order without assigning any reason has allowed the application and granted relief restraining the petitioner for use of the machinery provided to him by the firms of the respondents and also restraining other respondent SECL for making payment to the petitioner.
4. It is submitted that relief so ordered by the Court below amounts to granting final relief itself and further it was essential for the Court below to assign reason for granting such relief on interim basis. Relying on the judgment of Supreme Court in case of **Manohar Lal**

Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, reported in **1962 Supp (1) SCR 450**, it is submitted that the Supreme Court has very clearly held that in presence of express provision, the inherent powers under Section 151 of C.P.C. can not be invoked. Similarly reliance has also been placed on the judgment of Supreme Court in case of **Hammad Ahmed Vs. Abdul Majeed & Ors.**, reported in **2019 SCC OnLine SC 467** and the judgment in case of **Centre for Indian Trade Union (Citu) represented by the Secretary & Ors. Vs. Intercontinental Traders, represented by its Managing Director & Ors.**, reported in **2019 SCC Online Ker 6753**, it is prayed that the petition be admitted for grant of relief to the petitioner.

5. Considered on the submissions made by the counsel for the petitioner. On perusal of the impugned order it is found that the learned trial Court has made this observation that prima-facie case, irreparable injury and balance of convenience shall be determined while considering on the application under Order 39 Rule 1 and 2 of C.P.C. and without assigning any reason has allowed the application under Section 151 of C.P.C.
6. Grant of ad-interim temporary injunction itself embodied in the Code of C.P.C. under Order 39 Rule 3, even in the case when the respondents have appeared and the prayer of interim injunction itself is not available in that case, the entertaining of application under Section 151 of C.P.C. was not at all necessary. The learned Court below would have well within its right to insist for speedy disposal of the application under Order 39 Rule 1 and 2 of C.P.C.,

which would have been the correct procedure to be adopted in such case.

7. In view of the pronouncement of the Supreme Court in case of ***Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, Hammad Ahmed Vs. Abdul Majeed & Ors.*** and in case of ***Centre for Indian Trade Union (Citu) represented by the Secretary & Ors. Vs. Intercontinental Traders, represented by its Managing Director & Ors. (Supra)***, I am of this view that the learned Court below has not exercised its jurisdiction in accordance with the law, therefore, without issuing any notice to the respondents, this petition is allowed at motion stage. The impugned order 07.02.2020, passed in Civil Suit No.06-A/2020, by the Additional Judge to 1st Civil Judge Class-II, Gharghoda, Raigarh, District – Raigarh (C.G.) is set-aside. The learned trial Court is directed to proceed and decide the application for temporary injunction filed by the respondent preferably within a period of 10 days from the date of communication of this order after affording proper opportunity of hearing to the parties.
8. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge