

13.01.2021

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FMAT 455 of 2019
with
I A No. CAN 1 of 2019
(CAN 4548 of 2019)

(Via Video Conference)

Sharad Singhi
Vs.
Sheojee Tiwari & Ors.

Mr. Mainak Bose
Mr. Rishabh Karnani
Ms. Sweta Gandhi Murgai
... For plaintiff/appellant.

Mr. Sagar Bandopadhyay
... For respondents.

The instant appeal arises from an order dismissing the application for temporary injunction on the premises that the plaintiff/appellant has not been able to establish the prima facie case. The entire suit centers around the two separate Power of Attorneys executed by the defendants/respondents appointing the plaintiff as constituted attorney to deal with the property owned and possessed by them. The antecedent to execution of the two power of attorneys can be deciphered from the plaint.

Admittedly the defendants were carrying on the business in partnership in the name and style “Ridhi Sidhi Iron Works” and faced the financial crunch. The plaintiff along with another person, namely Ankit Jaiswal, were offered by the aforesaid partners to be

inducted in the said partnership business as they were unable to pay their dues and run the business. The reconstituted partnership deed was executed on 29th April, 2014 inducting the plaintiff/appellant and Ankit Jaiswal as the partners having 25% share respectively in profit and loss of the said partnership business.

It is further stated that the Power of Attorney were executed in a pretext of reconstitution of the partnership deed and to secure the amount due and payable by the original partners and, therefore, a right in the property has been created which cannot be taken away merely on the revocation thereof.

The ad interim order of injunction was refused by the trial court and the application of temporary injunction stood dismissed on contest as the plaintiff/appellant has miserably failed to establish a prima facie case for trial.

We are not unaware of the proposition of law that mere rejection of an application for temporary injunction for want of a prima facie case does not stand in the way of deciding the final reliefs after full-fledged trial. The findings made at the time of disposal of the temporary injunction application are tentative in nature and have no bearing at the time of final disposal of the suit.

The stand of the plaintiff is misdirected that the aforesaid Power of Attorney were executed to secure the amount invested in the partnership business.

The status of the constituted attorney is akin to an agent terminable at any point by the principal except the agent before such time exercised his authority given under the aforesaid instrument to bind the principal. More so, when a power to do specified act is given to the agent the power of attorney is required to be construed strictly as the act of the agent in excess of the authority shall not bind the principal. The exception can be seen in Section 202 of the Contract Act, 1872 protecting the interest of an agent against termination of the agency if he has an interest in the property constituting the subject-matter of the agency. Illustration (a) appended to Section 202 of the Act makes the position more clear when an authority to sell the property of the principal was given to the agent who out of the sale proceeds pays himself to the debts due to him from the principal. The authority cannot be said to be a bare agency but coupled with the grant and may be deemed to be irrevocable as the purpose underlining such authority is to secure some benefit.

The contention of the plaintiff that the aforesaid power of attorney are irrevocable has to be understood in the perspective of the intention gathered from the

power of attorney. Mere use of the word “irrevocable” does not ipso facto makes the power of attorney irrevocable but depends upon the terms disclosed therein that it created or recognized an agency coupled with interest in favour of the agent. In other words, the agency creates any interest in the subject-matter of the agency into the agent, such agency cannot be terminated taking shelter either under Section 201 or 203 of the Contract Act but the right of the agent is saved by virtue of an exception provision contained in Section 202 thereof.

The Power of Attorney relied upon by the plaintiff does not manifest any intention of the principal that the sale proceeds from the immovable property shall be utilized or paid off to the agent towards the debt due to the principal and, therefore, it cannot be said that the authority given to the plaintiff under the aforesaid power of attorneys was coupled with the interest in the subject-matter of the agencies.

The aforesaid Power of Attorneys would clearly indicate that the plaintiff was authorized to find out the suitable buyer of the land belonging to the principal and the sale proceeds shall be deposited in the bank account of the principal without any adjustment and/or set off.

We, thus, do not find any infirmity and/or illegality in the impugned order. However, for the purpose of precaution we once again reiterate that the findings recorded by the trial court as well as this Court are restricted to the application for temporary injunction and is tentative in nature. It will not have any swaying effect or persuasive value on the learned judge at the time of final disposal of the said suit.

The appeal is dismissed along with the connected application. No order as to costs.

(Harish Tandon, J.)

(Kausik Chanda, J.)