Item No.59
14.09.2023
Court. No. 19
GB

C.O. 2233 of 2022

Pushpa Devi Goenka
Vs.
Bhubnesh Commercial Private Limited & Ors.

Mr. Anirban Roy,
Mr. Soumalya Ganguli,
Mr. Nikhil Jhunjhunwala
… for the Petitioner.
Mr. Debrup Bhattacharjee,
Mr. Ritesh Kr. Ganguly
… for the Opposite Party No.1.
Mr. Debanik Banerjee,
Mr. Nilanjan Bhattacharya
… for the Opposite Party No.4.

This revisional application arises out of an order dated June 24, 2022, passed by the learned Additional District Judge, 14th Court at Alipore in Misc. Appeal No.397 of 2015. Misc. Appeal No.397 of 2015 was filed by the opposite party no.1 being aggrieved by an order dated August 19, 2015, by which the learned Civil Judge (Junior Division), 2nd Court at Alipore had rejected a prayer for ad interim injunction in Title Suit No.166 of 2015. The prayer was rejected on the ground that the cause of action arose on November 24, 2014 and the court did not find any urgency in the matter.

The learned lower appellate court, however, interfered with the order passed by the learned trial judge and directed the plaintiff and the defendants to maintain status quo in respect of creation of third party interest on the said shares as mentioned in the schedule appended to the plaint, either by way of transfer of the shares or otherwise, till the disposal of the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure. The learned court further directed the learned trial judge to dispose of the application for temporary injunction, within a period of three months from the date of communication of the order.

Mr. Roy, learned advocate appearing on behalf of the petitioner submits that the order impugned suffers from various irregularities:-

a) The learned lower appellate court, without ascertaining the actual quantum of all other shares belonging to the Pushpa Devi Goenka, could not have passed the order in respect of such unnamed and unquantified shares.

b) The learned lower appellate court ought to have decided the prima facie case, balance of convenience and inconvenience and irreparable loss and injury before coming to a conclusion that status quo within regard to all the shares in the name of Pushpa Devi Goenka along with the shares of Philips India Limited, should be maintained.

c) The averments in the plaint did not disclose anything about the other shares.

d) Before a court passes an order of injunction, the court must ascertain the status of the property. In this case, the court ought to have applied its mind with regard to whether, on an incomplete and vague pleading that an oral agreement had been entered into between the parties in respect of transfer all shares in the name of the petitioner, would entitle the defendant/opposite party no.1 to an order of injunction.

e) Unless there was a, prima facie, case to go to trial in respect of all the alleged shares of Pushpa Devi Goenka, the learned lower appellate court ought not to have interfered with the order passed by the learned trial judge.

The order of status quo was passed in respect of all the shares in the schedule of the plaint, although the entire discussion in order impugned, revolves around 93 shares of Philips India Limited.

Mr. Bhattacharjee, learned advocate appearing on behalf of the opposite party no.1 submits that the learned court below had passed a limited interim order and had directed the learned trial judge to dispose of the application for temporary injunction. Thus, there was no reason for this Court to interfere with the order impugned. Further submission is that the proceeding under Article 227 of the Constitution of India should not be converted into a mini trial. The learned lower appellate court, upon being satisfied with the prima facie case, balance of convenience and inconvenience as also irreparable loss and injury, thought it fit to order a status quo on the shares which were the subject matter of dispute in the suit. That the cause of action as pleaded, would indicate that the plaintiff had a triable case. A further enquiry as to whether there was any oral agreement or not in respect of all the shares of the petitioner were matters of evidence.

Reliance has been placed on the following decisions:-

Pradip Kumar Lodha versus Elan Ali Khan & Ors. reported in ***1996 SCC OnLine Cal 371*** and ***Anand Prasad Agarwalla versus Tarkeshwar Prasad and Others*** reported in ***(2001) 5 Supreme Court Cases 568***.

Mr. Banerjee, learned advocate appearing on behalf of the proforma defendant/shareholder of the opposite party No.1, adopts the submissions of Mr. Bhattcharjee.

The issue to be decided in this revisional application is whether the learned lower appellate court acted illegally and with material irregularity in passing a blanket order of status quo with regard to all the shares as per the schedule.

Order 39 Rules 1 and 2 of the Code of Civil Procedure permits the court to pass injunctions under three circumstances:-

A) When it is proved by affidavit or otherwise that a property in dispute is in the nature of being wasted, damaged or alienated by any party to the suit.

B) When the defendant threatens to or intends to remove or dispose of the property with a view to defraud his creditors.

C) When the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute.

Under the above circumstances, the court may grant injunction or pass such directions, in order to prevent wastage, damage, alienation, sale, removal or dispossession. In this case, the allegation is that the petitioner had entered into an oral agreement with the defendant no.3/petitioner and other defendants for sale of certain shares, through the proforma defendants.

The petitioner further contended that by virtue of the oral agreement a sum of Rs.18,600/- had been paid through the proforma defendant which was tendered to the defendant no.3/petitioner towards sale of 93 shares of Philips India Limited. That the defendant no.3/petitioner, in spite of receipt of the said amount, did not transfer the shares. That the plaintiff/opposite party No.1 and the proforma defendant had entered into such transaction with the other defendants and there was an assurance of transfer of all listed and unlisted shares lying in the name of the defendant no.3/petitioner.

The averment further indicates that the plaintiff was apprehensive that the defendant no.3/petitioner might deal with the shares in her name or under her control, causing prejudice to the plaintiff. The valuation of the shares of Philips India Limited had increased considerably and alienation of the same would cause financial loss and injury to the petitioner.

The cause of action has been pleaded in paragraph 23 to the effect that the same arose on November 24, 2014 and on all subsequent occasions, when various letters were sent by the plaintiff to the defendant nos.1, 2 and 3. The prayers were for a declaration that the proforma defendant was a creditor of the defendant no.3/petitioner and was entitled to acquire shares owned and controlled by the defendant no.3/petitioner. Further direction upon the defendant no.3/petitioner, to produce the shares controlled by her was sought for. Perpetual injunction, restraining the defendants from selling, alienating or transferring any of the shares held by them was also made. The schedule of the plaint enunciates the shares standing in the name of the defendant nos.1, 2 and 3. The schedule of the shares of the defendant no.3/petitioner, which is the subject matter of dispute in this revisional application is as follows:-

> ***"Pushpa Devi Goenka***
>
> *Philips India Limited 93*
>
> *Other shares standing in own name or control"*

The question is whether the opposite party no.1 had made out a strong, prima facie, case to go to trial in respect of all the shares of the petitioner, which led the learned lower appellate court to pass the order impugned. The plaint categorically records that an amount of Rs.18,600/- was paid on account of transfer of the shares of Philips India Limited. The other statement with regard to the shares of Pushpa Devi Goenka are not specific. Secondly, the cause of action as pleaded arose on November 24, 2014, which is a sale bill issued by the petitioner to the proforma defendant with regard to receipt of Rs.18,600/- towards sale of 93 shares of Philips India Limited at the rate of Rs.200/- per share. The starting point of the cause of action as pleaded in paragraph 23, is the aforementioned bill and thereafter the other letters written by the petitioner. All the letters which have been annexed and are presumed to be the letters mentioned while pleading the cause of action, are letters written by either Pushpa Devi or by the proforma defendant with regard to transfer of 93 shares of Philips India Limited.

Thus, a case with regard to ad interim order in respect of the 93 shares of Philips India Limited has been made out by the petitioner, in my prima facie view.

Having meticulously gone through the order of the learned lower appellate court, this Court is of the view that there is no quarrel with the proposition that a appellate court can always pass an ad interim injunction if the three factors are satisfied.

1) Prima facie case.

2) Balance of convenience and inconvenience.

3) Irreparable loss and injury.

As has been discussed earlier, the Civil Procedure Code specifies the circumstances under which a property, which is the subject matter of the suit, can be protected from damage, wastage, alienation and dispossession. In this case, such property are the shares. The shares which have been quantified and in respect of which the petitioner had paid some amount, are the 93 shares of Philips India Limited. The expression 'any other shares' is a matter which requires further probe and cannot be decided at the stage of grant of ad-interim injunction. Moreover, the reasons given by the learned lower appellate court pertain to the 93 shares and the amount of

Rs.18,600/- which was paid by the plaintiff. These shares require protection.

Under such circumstances, this Court is of the view that the order of status quo passed by the learned lower appellate court ought to have been restricted to those 93 shares in respect of which the records reveal that the plaintiff had paid the money, unless the contrary is established at the hearing of the injunction application.

Paragraph 11 of the decision of Pradip Kumar Lodha (supra) lays down the principle which has been discussed by this Court in this order, inasmuch as, the court's interference is necessary to prevent irreparable injury or damage and while doing so, comparative hardship or mischief or inconvenience is to be taken into consideration. In my prima facie opinion, a blanket order with regard to all shares held by the petitioner with whom the plaintiff allegedly entered into an oral agreement through the proforma defendant, would cause irreparable loss and injury to the petitioner/defendant no.3.

Referring to the ratio of the decision in ***Anand Prasad Agarwalla (supra)***, this Court agrees with the propositions and submissions of Mr. Bhattacharjee that the existence of an oral agreement, the nature of the oral agreement, whether the oral agreement was acted upon or not, must be decided at the trial.

There is no finding as to why the lower appellate court was of the opinion that the entire schedule should be stayed when the court had not recorded any satisfaction with regard to prima facie case, balance of convenience and inconvenience and irreparable loss and injury, insofar as the other shares are concerned. On a vague statement that all other shares in the name of Pushpa Devi Goenka was promised to be sold to the plaintiff, a blanket status quo order could not have been passed.

Under such circumstances, the order impugned is modified to the extent that the status quo order in respect of the petitioner's share, shall be restricted to the 93 shares of Phillips India Limited.

This Court has restricted the findings herein, only on the proposition of grant of ad-interim injunction and leaves the other issues to be decided by the trial Court while disposing of the injunction application.

The learned trial judge is directed to dispose of the application for temporary injunction within three months from date. The petitioner is at liberty to file an objection within a period of two weeks from date of communication of this order, if not already filed. All the findings hereinabove are tentative and shall not prejudice the learned trial judge while disposing of the application for temporary injunction.

Accordingly, the revisional application is disposed of. This order is only restricted to the case of the petitioner/defendant no.3.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)