

Court No. 4
29.01.2024
(AD 215)
(S. Banerjee)

FMA 106 of 2023
Kaustabh Mondal & Anr.
Vs.
Nilanjan Saha
CAN 1 of 2023

Mr. Subhendu Banerjee
... for appellants
Mr. Satyajit Mahata
Mr. Pabitra Koley
Mr. Rasanur Sk.
... for the respondent

Though the application for temporary injunction is listed before us but after hearing the respective counsels we feel that the point urged in the instant application being the legal issue, we, therefore, decided to hear out the appeal along with the application for temporary injunction as it would be a futile exercise to keep the appeal pending. We thus invited counsels to address us on the merits of the instant appeal.

The instant appeal arises from an order by which an application for temporary injunction is rejected by the learned Trial Court. The aforesaid application for temporary injunction was filed in a suit for specific performance of an oral agreement coupled with the further reliefs in the form of protecting the possession which the appellant alleged to have obtained in part performance thereof.

The contesting respondent before the learned Trial Court in its affidavit-in-opposition disclosed various facts and denied any agreement, far to speak of oral agreement having entered into by and between the parties nor the possession thereof was ever handed over and/or made over to the appellant in respect of the subject property. The further disclosure of an earlier suit having filed by the appellant was also taken in the said pleading which, according to the contesting respondent, have been grossly suppressed in the plaint as well as in the temporary injunction application and, therefore, there is no illegality and/or infirmity in the impugned order passed by the learned Trial Court. The second plea as taken appears to have been a seminal point in the instant appeal for the simple reason that the court exercising jurisdiction in relation to an application for temporary injunction in discretionary as well as equitable manner. We invited the counsels to place the pleading filed by the appellant before the learned Trial Court and it is discerned therefrom that the plaintiff/appellant prior to the institution of the instant suit, filed a title suit being Title Suit No. 139 of 2022 before the learned Civil Judge (Senior Division), 1st Court at Baruipur with regard to the suit property. But the prayer appears to have been couched in a different manner. It also reveals from the pleading that an application for temporary injunction was taken out

repleting in the facts as pleaded in the instant suit which was dismissed on contest. Though the miscellaneous appeal have been filed before the first appellate court which is still pending, yet there has been a gross suppression of the aforesaid facts in the instant suit.

It is no longer *res integra* that the court exercises equitable and discretionary jurisdiction in dealing with an application for temporary injunction which is intended in aid of the final relief. The party seeking a temporary injunction must disclose all the facts involved and/or germane from the cause of action pleaded therein and any suppression of the material fact shall disentitle such litigants to get an order of temporary injunction. The aforesaid principles can be gainfully applied from the ratio laid down by the Hon'ble Supreme Court in the case of *M/s. Gujrat Bottling Co. Ltd. & Ors. -Vs.- Coca Cola Company & Ors.*, reported in AIR 1995 Supreme Court Page 2372 wherein it is held –

“50. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other

considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.”

In a subsequent decision rendered by the Hon’ble Supreme Court in the case of *S. P. Chengalvaraya Naidu (dead) by L.R.s –Vs.- Jagannath (dead) by LR,* AIR 1994 SC 853, the Apex Court has highlighted the nuances of disclosure of all material facts and the consequences on failure thereof. It has been held that if a person who approaches a court does not come with clean hands and is found guilty of suppression of material facts, the Court shall refuse to pass injunction in his favour. Since the grant of temporary injunction is based upon an equitable principle, the person who

approaches the court seeking an order must disclose all material facts and the gross suppression of such fact was considered to be a fetter in exercising such equitable jurisdiction.

We are conscious of a distinction between the facts and/or material facts as every fact which do not germane from a cause of action or have any linkage to it if suppressed, may not invite the dismissal of the application for temporary injunction; on the other hand, the converse is true i.e., in the event the material fact which is intertwined and/or interrelated with the cause of action having suppressed by the litigant approaching the court, it disentitles him to get the order of temporary injunction.

In the instant case the earlier suit was filed concerning the alleged oral agreement in respect of the self-same property and the protection in relation thereto was sought for. The court on contested hearing rejected the application for temporary injunction and the aforesaid facts appear to have been grossly suppressed in the instant suit.

In view of the law enunciated in the above noted decisions, we do not find any illegality and/or infirmity in the order of the learned Trial Court in dismissing an application for temporary injunction, the appeal as well

as the application are dismissed. There shall be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)