



GAHC010124882024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/214/2024

RAKESH SHARMA AND ANR
S/O- LATE KANCHAN SHARMA, R/O- HOUSE NO. 25, PNG ROAD,
SANTIPUR HILLSIDE, BYE LANE NO. 1, P.O. AND P.S. BHARALUMUKH,
GUWAHATI-09.

2: M/S LAXMI MOTOR WORKS
A PROPRIETORSHIP FIRM REPRESENTED BY ITS PROPRIETOR SHRI
RAKESH SHARMA HAVING ITS OFFICE AND PRINCIPAL PLACE OF
BUSINESS AT A.T. ROAD
SANTIPUR
GUWAHATI-09

VERSUS

SWARAJ CHOUDHURY AND 2 ORS.
S/O- SHRI NAGESHWAR CHOUDHURY, R/O- REHABARI HOUSE NO. 65,
ANNAPURNA ENCLAVE, P.S. PALTANBAZAR, GUWAHATI-08.

2:SMTI. VEENA CHOUDHURY
W/O- SHRI NAGESHWAR CHOUDHURY
R/O- HOUSE NO. 65
ANNAPURNA ENCLAVE
P.S. PALTANBAZAR
GUWAHATI-08.

3:DIGANTA DAS
S/O- LATE BHUNESWAR DAS
R/O- SANTIPUR AT ROAD
P.O. AND P.S. BHARALUMUKH
GUWAHATI-09



BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners :Shri SP Roy, Advocate,
Ms. P Dey, Advocate, and
Ms. P Agarwala, Advocate.

For the Respondents : Shri RK Buyan, Advocate &
Shri M Kashyap, Advocate.

Date of Hearing : 27.06.2024.

Date of Judgment : 27.06.2024.

JUDGMENT & ORDER

Heard Shri SP Roy, learned counsel for the petitioners. Also heard Shri RK Bhuyan, learned counsel for the respondent nos. 1 and 2, who have also filed a Caveat.

2. Considering the subject matter involved, this petition is taken up for a disposal at the motion stage itself.

3. The petition has been presented under Article 227 of the Constitution of India, challenging an order dated 03.06.2024 passed in Misc. (J) Case No. 478/2024 arising out of Misc. Appeal No.08/2024 by the learned Civil Judge (Sr. Division) No. 3, Kamrup (M), Guwahati.



4. By the aforesaid order dated 03.06.2024, the prayer for stay has been rejected and the Misc. (J) Case No. 478/2024 has been disposed of.

5. The appeal has been instituted against an order dated 20.05.2024 passed by the learned Civil Judge (Jr. Division) No. 1, Kamrup (M), Guwahati whereby the prayer for injunction filed by the respondent nos. 1 and 2 was partly granted.

6. It transpires that the petitioners, as plaintiffs, had instituted a suit principally against the respondent nos. 3 and 4 for permanent injunction not to evict them without following the due process of law. There was also an issue with regard to restraining the parking of the vehicles of the respondent nos. 1 and 2. The learned Trial Court, vide the initial order dated 16.02.2024 had passed an ad interim injunction restraining the opposite parties from disturbing the peaceful possession and not to park the vehicles in front of the garage and that ad interim order was till the next date. The opposite parties had filed objection and thereafter the present respondent nos. 1 and 2 had also filed another injunction petition. Both the injunction petitions were heard and disposed of vide a common order dated 20.05.2024 by which, the following directions were given:

“1. The Defendant no. 1 and 2 shall not park their vehicles outside the suit premises causing hindrance to the egress and ingress to the suit premises (garage).

2. The Plaintiff shall allow the defendant no. 1 and 2 to park one or two



vehicles (as stated in the injunction application) inside the garage only during night hours after closing time of the garage and the defendant no. 1 and 2 shall remove their vehicles from the garage before opening time of the garage.”

7. Shri Roy, learned counsel for the petitioners has submitted that the respondent nos. 1 and 2 have no right of any manner to seek for injunction and without going to that aspect of the matter of making out of a *prima facie* case, the injunction has been granted. It is also submitted that the said order appears to be contrary to the initial order of ad interim injunction dated 16.02.2024

8. The learned counsel for the petitioners has also criticized the order dated 03.06.2024 passed by the learned first Appellate Court by contending that no reasons have been assigned while declining the prayer for stay made under Order 41 Rule 5 of the Code of Civil Procedure. It is submitted by Shri Roy that when the appeal was admitted, it was incumbent upon the learned first Appellate Court to grant stay. In support of his contention, Shri Roy, learned counsel has placed reliance upon the case of ***Mool Chand Yadav & Anr. Vs. Raza Buland Sugar Company Ltd., Rampur & Ors.***, reported in **(1982) 3 SCC 484**.

9. *Per contra*, Shri Bhuyan, learned counsel for the respondent nos. 1 and 2 has submitted that the contention raised on behalf of the petitioners that his clients did not have any right is belied by the document annexed at page 86 of the Paper Book which is an arrangement for allowing the parking of the vehicles and other mechanical works by the petitioners with his clients. The learned counsel has further submitted that the orders of injunction passed on



20.05.2024 by the learned Trial Court is a reasonable order in which, the learned Trial Court has taken into consideration all the three golden principles, including the aspect of suffering of irreparable loss and injury. It is contended that while allowing the respondent nos.1 and 2 to park their vehicles, the learned Trial Court attached certain conditions so that the petitioners-plaintiffs do not suffer any difficulties in running and operating their garage.

10. As regards the order passed by the learned first Appellate Court on 03.06.2024, the learned counsel for the respondent nos. 1 and 2 has submitted that the subject matter of appeal being injunction, the approach of the learned first Appellate Court is in consonance with the settled principles of law wherein, in a case of exercise of discretion concerning grant or non-grant of injunction, unless such discretion appears to have been exercised in a perverse manner, the Appellate Court should go slow in interfering. Shri Bhuyan, learned counsel submits that in any case, the appeal has been admitted and the contentions which have been urged by the petitioners in the appeal are yet to be decided on merits.

11. The rival submissions have been duly considered. The materials placed on records have also been carefully examined.

12. The contention made on behalf of the petitioners that the present respondent nos. 1 and 2 have no manner of right for praying for injunction stands, *prima facie* belied by the document annexed at page 86 of this compilation which is a communication dated 21.07.2023. Though a contention has been raised by Shri Roy, learned counsel for the petitioners that no rent has



been paid by the respondent nos. 1 and 2 in terms of the said communication, those can be matters of adjudication in the trial and not at this stage and therefore, this Court refrains from making any comments so that no prejudice is caused to either of the parties.

13. The learned Trial Court in the order dated 20.05.2024 has taken into consideration all the facts and circumstances which reflect from a reading of the operative portion which has already been extracted above.

14. The aspects of hindrance to egress and ingress to the suit premises which is the garage and allowing the defendant nos. 1 and 2 who are the respondent nos. 1 and 2 herein to park one or two vehicles only after the closing time of the garage and remove the same before the opening time of the garage are considerations which are reasonable and acceptable. This Court has also noticed that the appeal preferred by the petitioners against the aforesaid order is yet to be adjudicated and only the prayer for stay has been rejected.

15. The case law cited by Shri Roy, learned counsel for the petitioners in the case of **Mool Chand Yadav** (*supra*) has laid a caveat that requirement of staying an order while an appeal is admitted is to be made only when such order has serious civil consequences. In the considered opinion of this Court, the order of the learned Trial Court will not have any serious civil consequence and rather, the same would balance the equities and the rights of the rival parties.

16. The approach of an Appellate Court in matters of injunction should be sparring. The Hon'ble Supreme Court in the case of **Wander Ltd. Vs. Antox India**



(P) Ltd., reported in **1990 Supp SCC 727** (*supra*), the following has been laid down:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion. ...”

17. In the case of **Ramdev Food Products (P) Ltd. Vs. Arvinbhai Rambhai Patel**, reported in **(2006) 8 SCC 726**), the Hon’ble Supreme Court has held as follows:

“125. We are not oblivious that normally the appellate court would be slow to interfere with the discretionary jurisdiction of the trial court.



126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, the appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again.

127. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.”

18. That apart, the powers under Article 227 of the Constitution of India are supervisory in nature only to ensure that the orders passed by Subordinate Courts are in order and not in excess of jurisdiction. In the considered opinion of this Court, the impugned order of the first Appellate Court in refusing to stay does not appear to be in the excess of jurisdiction and therefore, this revision petition is dismissed.

JUDGE

Comparing Assistant