

SUPREME COURT OF INDIA

Terene Traders

Vs.

Rameshchandra Jamnadas and Co.

C.A.No.2806 of 1986

(A. P. Sen and B. C. Ray, JJ.)

12.08.1986

ORDER

1. Leave granted. Arguments heard.

2. In this case a learned Judge of the Bombay High Court by his order dated July 1, 1986*has in revision set aside the order of the Bombay City Civil Court dated September 5, 1983and allowed the plaintiffs' application for grant of temporary injunction under Order XXXIX, R. 1 of the Code of Civil Procedure, 1908.

* Reported in (1986) 88 Bom LR 427.

3. Normally, this Court does not, as a rule, interfere with an interlocutory order of this nature except under very exceptional circumstances. Unfortunately this is a case of that kind. The learned single Judge in dealing with the revision observes that even though respondent No. 1 Rameshchandra

Jamnadas and Company were not doing business for some time because of financial hardship and were not in 'Khas' possession, that was not a ground on which it can be denied temporary injunction. We are afraid, the learned Judge was quite oblivious to the limitations of the powers of the High Court under S. 115 of the Code. The Bombay City Civil Court in a suit for declaration and injunction brought by plaintiff-respondent No. 1 Rameshchandra Jamnadas and Company, after hearing both the parties, refused to grant its application under Order XXXIX, R. 1 of the Code. The grant or refusal of temporary injunction was in the discretion of the City Civil Court. No doubt, that discretion was a judicial one to be exercised in accordance with reason and on sound judicial principles. It was not satisfied that the plaintiff had any prima facie case to justify the grant of such temporary injunction or that the balance of convenience required it. The City Civil Court on a careful consideration of the evidence came to a definite conclusion that the plaintiff-respondent No. 1 was not in possession of any portion of the suit premises on the date of the institution of the suit. Even the learned single Judge has not come to a different conclusion as he observes that the plaintiff was not in 'khas' possession. There was no occasion for the High Court to have granted temporary injunction. It is not the case that the City Civil Court acted either illegally or with material irregularity in dismissing the plaintiff's application for temporary injunction. That being so, the High Court could not have invoked its jurisdiction under S. 115 of the Code : Hindustan Aeronautics Ltd. v. Ajit Prasad Tarway (1972) 3 SCC 195: (AIR 1973 76).

4. Accordingly, the appeal succeeds and is allowed with costs. The judgment and order of the High Court allowing the plaintiffs application under Order XXXIX, R. 1 of the Code of Civil Procedure, 1908 for temporary injunction are set aside and that of the City Civil Court dismissing the same are restored. We however direct that the City Civil Court will expedite the hearing of this appeal.

Appeal allowed.