

Sunil D. Chedda

Vs

Suresh Bansilal Sethi and others

Civil Appeal No. 291 of 1992

M. N. Venkatachaliah, B.P. Jeevan Reddy JJ

21.01.1992

## JUDGMENT

1. We have heard learned counsel on both sides. The Special Leave Petition is treated as one preferred against the order of the Division Bench dated 25th October, 1991, as well as the subsequent order dated 31 st October, 1991, of the single judge. Special leave granted and the appeal is heard and disposed of by this judgment.

2. Appellant is the plaintiff in a pending suit before the High Court for specific performance of an alleged agreement to sell in which he sought an interlocutory injunction to restrain the respondent-vendor from alienating or otherwise encumbering the suit property during the pendency of the suit. An order dated 10th September, 1991, was granted by the learned single Judge in appellant's favour on condition that appellant do furnish a bank guarantee for Rs. 40 lakhs (Rupees Forty lakhs only) within a period of six weeks. It would appear that at an earlier stage, the appellant had deposited a sum of Rs. 25 lakhs in Court. Appellant, however, did not comply with the terms of the order of the learned single Judge; but carried that order up in appeal before the Division Bench which by its order dated 28th October, 1991, dismissed the appeal observing:

"Appeal dismissed. We may state that we asked whether the appellants would be willing to keep the amount of Rs. 25 lakhs (already deposited) deposited in Court as a condition of the injunction or alternatively to give a bank guarantee for Rs. 25 lakhs. There was no clear answer."

3. The upshot of it all is that the appellant in order that he be entitled to the discretionary, interlocutory relief should either have agreed to continue the deposit of Rs. 25 lakhs or furnish a bank guarantee for the like sum in which event he would be entitled to withdraw the sum of Rs. 25 lakhs. Since he did not, apparently, signify his consent to do either of the things, the Division Bench dismissed his appeal. The single Judge's conditional order also lapsed as appellant did not comply with its terms.

4. Appellant then sought before the single Judge the return of Rs. 25 lakhs deposited by him. The prayer apparently proceeded on the premise that the status quo ante be restored since the motion for interlocutory relief had lapsed as a result of non-fulfilment of the condition of the order dated 10th September, 1991, and that, therefore, there was no justification to retain the deposit of Rs. 25 lakhs. But by the order dated 31 st October, 1991, the learned single Judge appears to have declined permission to the appellant to withdraw Rs. 25 lakhs.

5. After hearing learned counsel on both sides, we are persuaded to the view that the conditions of the order dated 10th September, 1991, of the learned single Judge not having been fulfilled by the appellant, that order did not become an effective and operative one. There is now no justification to entertain a prayer for a similar interlocutory relief afresh. For the same reason there is also no justification to withhold and retain the amount of Rs. 25 lakhs deposited by the appellant earlier. The High Court will now refund the sum of Rs. 25 lakhs together with accrued interest, if any, to the appellant.

6. But that will not make any difference to the operation of rule of lis pendens under S.52 of the Transfer of Property Act provided the lis is registered in the manner required by the local amendment. We grant two months from today to the appellant to have the lis registered and for this period of two months there will be an interim order restraining the respondent-defendants from alienating the property or creating any third party interest therein. This interim order will automatically lapse and expire by efflux of time on the expiry of two months from today without reference to or need for any further order of this Court.

7. If the lis is registered, the law, of course, will take its own course in respect of any pendente lite alienations. The appeal is disposed of accordingly. Order accordingly.

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