

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA.No.361 OF 2015

JUDGMENT:

This appeal is filed against the order dated 26.09.2014 passed by the XXIV Additional Chief Judge, City Civil Court in IA.No.2748 of 2013 in OS.No.795 of 2013, wherein the trial Court has refused to grant temporary injunction to the petitioners/plaintiffs restraining the respondents/defendants or any person claiming through or under them from impersonating themselves as Directors, Shareholders or as Office Bearers or as authorized representatives of the petitioner No.1 Company or calling and attending any statutory meeting of the petitioner No.1 company, like Board of Directors, Extra-ordinary General Meeting or Annual General Body Meeting etc. or to make any representation or correspondence with any Government Department like Excise Department/Revenue Department or any other Government, both State and the Central etc. or to open and operate any bank account in the name of the petitioner No.1 company.

Learned counsel for the appellants submits that though the Trial Court marked Exs.P1 to P12 and R1 to R24, without considering the prima-facie case, balance of convenience and irreparable loss and by merely basing on the documents, refused to grant injunction. Regarding balance of convenience also the trial Court has not given any reasons. He also submits that the Trial Court except extracting the pleadings in the affidavits of both the parties, failed to examine whether there is any prima facie case in favour of the petitioners. He also submits that if the term 'prima facie case' is not to be confused with 'prima facie title' which has

to be established, on evidence at the trial, as held by the Apex Court in ***Dalpat Kumar and another v. Prahlad Singh and Others*** ^[1].

On the other hand learned counsel for the respondents submits that though it is the case of petitioners that they have purchased shares from original promoters but later there is no correspondence and they have not acted in pursuance of the same. Learned counsel also submits that the respondents have been corresponding with the Excise Department and other Departments of the Government and that the respondents have also paid an amount of Rs.6 crores towards renewal of licence fee. As such, the Trial Court, basing on the said correspondence, refused to grant injunction in favour of the petitioners.

In the present case, though the order of the Court below runs into 37 pages, the Trial Court has only extracted the arguments and pleadings and also discussed about the decisions and Section 9 of the Code of Civil Procedure without reference to facts in the present case. Further, the trial Court only by referring to the documents viz., Exs. P1 to P12 and R1 and R24 at para-15 of the order, dismissed the IA without giving proper findings on the documents. This shows non-application of mind by the Court below.

The Apex Court in ***Dalpat Kumar's case*** (supra-1) held at para-5 as follows;

“5. The third condition also is that ‘the balance of convenience’ must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to

be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

In view of the above, the order dated 26.09.2014, passed by the XXIV Additional Chief Judge, City Civil Courts in IA.No.2748 of 2013 in OS.No.795 of 2013 is set aside and the matter is remanded to the Court below for reconsidering the documents filed by both the parties and for disposal of the same in accordance with law.

Accordingly, the CMA is allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

A.RAJASHEKER REDDY, J

04.12.2015

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[\[1\]](#) AIR 1993 SC 276