

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6634 OF 2009
(Arising out of SLP©No.20138 of 2009)

Home Care Retail Marts P. Ltd. ...Appellant

Versus

New Era Fabrics Ltd. ...Respondent

ORDER

1. Leave granted.
2. This appeal is directed against the judgment and order dated 16th of July, 2009 passed by the High Court of Judicature at Bombay in Writ Petition No.5756 of 2008 by which the High Court, in the exercise of its power under Article 227 of the Constitution of India, had set aside the concurrent findings of fact arrived at by the courts below by which an application for injunction filed by the appellant in a pending suit was allowed in the manner indicated in the said order. The appellant before us is the original plaintiff in the suit which has been filed for declaration and injunction. As noted herein earlier, against the order of the High Court setting aside the concurrent orders of the courts below allowing an application for injunction pending disposal of the suit, the plaintiff/appellant has come up to this Court by way of a special leave petition which on grant of leave was heard in the presence of the learned counsel for the parties.

3. We have heard Mr. Shyam Divan, learned senior counsel appearing for the plaintiff/appellant and Dr.A.M.Singhvi, learned senior counsel appearing for the defendant/respondent. We have examined the impugned order as well as the orders of the courts below in depth and in detail. We have also heard the learned senior counsel for both the parties in extenso. In our view, the findings arrived at by the courts below cannot be said to be perverse or arbitrary for which the High Court could set aside the said orders in the exercise of its power under Article 227 of the Constitution. On a thorough reading of the judgment of the High Court which is under challenge before this Court and also the orders of the courts below, it can be said that there is some arguable point to be gone into for the purpose of deciding whether the plaintiff/appellant is entitled to an order of injunction restraining the respondent from interfering with the access to the said premises from the Mogul Lane side by the appellant and its customers in addition to the gate on the other side of its Hypermarket. Since this is a question to be gone into on evidence at the time of trial and in view of the fact that the plaintiff/appellant and their customers were using the said entry from Mogul Lane to the Hypermarket, we are of the view that at this stage, the High Court was not justified in exercising its power under Article 227 of the Constitution to set aside the concurrent orders of

the Courts below which by any means cannot be said to be perverse or arbitrary.

4. In **Smt. Rajbir Kaur & Anr. Vs. M/s.S.Chokesiri & Co. [1989 (1) SCC 19]**, this Court has observed that when the findings of fact recorded by the courts below are supportable on the evidence on record, the revisional court must be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own. In the present case, the question arose whether under the Leave and Licence Agreement entered into by the parties, the plaintiff/appellant was entitled or is entitled to use the gate from Mogul Lane for the access to its Hypermarket or not. At this stage, it is very difficult to say that the two courts below were not justified in holding prima facie that such right exists to the plaintiff/appellant, this aspect can only be gone into by the parties on the evidence to be produced at the time of final hearing of the suit. A substantial question on the interpretation of the rights of the parties to use the gate from the Mogul Lane to the Hypermarket of the plaintiff/appellant had arisen and, therefore, there was no reason for the High Court to interfere with the concurrent orders of the courts below in the exercise of its power under Article 227 of the Constitution. In **The Managing Director (MIG) Hindustan Aeronautics Ltd., Balanagar, Hyderabad and another Vs. Ajit**

Prasad Tarway, Manager (Purchase and Stores), Hindustan Aeronautics Ltd., Balanagar, Hyderabad [AIR 1973 SC 76], this

Court observed as follows :-

“In our opinion, the High Court had no jurisdiction to interfere with the order of the first appellate Court. It is not the conclusion of the High Court that the first appellate Court had no jurisdiction to make the order that it made. The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law, but one thing is clear that it had jurisdiction to make that order. It is not the case that the first appellate court exercised its jurisdiction either illegally or so, the High Court could not have invoked its jurisdiction under S. 115 of the Civil Procedure Code: See the decisions of this Court in Pandurang Dhoni V. Maruti Hari Jadhav, (1996) 1 SCR 102 = (AIR 1966 SC 153), and D.L. F. Housing & Construction Co. (P) Ltd., New Delhi V. Sarup Singh, (1970) 2 SCR 368 = (AIR 1971 SC 2324)”

5. Therefore, we are of the view that the impugned order of the High Court is liable to set aside and the orders passed by the Courts below are to be restored.

6. However, it is needless to say that the order of injunction granted by the courts below shall continue till the final disposal of the suit on condition that the appellant shall go on paying the amount that it is liable to pay in terms of the Leave and Licence Agreement dated 27th of August, 2005. In default of payment or deposit of the said amount, the injunction granted by the courts below shall stand vacated and the order of the High Court shall stand restored.

7. Considering the facts and circumstances of the present case, we direct the Court of Small Causes at Bombay before which the suit is now pending, to decide the suit at an early date preferably within six months from the date of supply of a copy of this order to it without granting any unnecessary adjournments to either of the parties.

8. Mr. Shyam Divan, learned senior counsel appearing for the appellant submits, on instruction, that I.A.No.2 of 2009 filed by the appellant in this Court, which is for some direction, shall not be proceeded with and, therefore, he prays for withdrawal of the same. The prayer of Mr.Divan is, therefore, allowed and the application for direction being I.A.No.2/2009 is treated as withdrawn. Dr.A.M.Singhvi, learned senior counsel submitted that since the Leave and Licence Agreement has already been terminated, it may not be taken that the said agreement is still continuing as we have directed the appellant to deposit or pay in terms of the said agreement.

9. We make it clear that our direction to continue the order of injunction granted by the trial court on the aforesaid condition shall not mean that the Leave and Licence Agreement is still continuing. All these questions are kept open to be gone into at the time of hearing of the suit.

10. For the reasons aforesaid, the impugned order of the High Court is set aside and that of the Courts below are restored and the appeal is allowed to the extent indicated above. There will be no order as to costs.

.....J.
[Tarun Chatterjee]

New Delhi;
September 18, 2009.

.....J.
[R.M.Lodha]

