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(2008) 1 ARC 133 : (2007) 25 LCD 1537

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

**BUS TATA TAXI TEMPO DRIVER AND OWNERS KALYAN SAMITI —
Appellant**

Vs.

STATE OF U.P.AND OTHERS — Respondent

(Before : Shri Narayan Shukla, J)

Writ Petition No.4874 (M/S) of 2007

Decided on : 18-09-2007

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11

A. Civil Procedure Code, 1908 — Order 39 Rules 1 & 2 — Temporary Injunction — Maintainability of Suit — Objection to jurisdiction, valuation, court fee, or maintainability — When such objection has prima facie substance, it should be decided before ruling on a temporary injunction application — Trial court erred in postponing decision on maintainability objection until after framing issues and granting interim injunction, as this departs from established procedure. (Paras 3, 4, 5)

B. Civil Procedure — Procedure — Preliminary Objections — Rule that objections regarding jurisdiction, valuation, court fee, or maintainability, if appearing to have prima facie substance, should be decided first before considering injunction applications — This principle ensures proper and orderly progression of litigation, preventing premature rulings on interlocutory matters. (Paras 3, 5)

C. Writ Petition — Judicial Review — Scope — Quashing of Appellate Order — High Court quashed the District Judge's order that stayed a trial

court's injunction, finding that the trial court should have first decided the maintainability objection — High Court set a specific date for parties to appear before the trial court and directed the trial court to decide the maintainability objection first, then reconsider the injunction application. (Paras 6, 7)

JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. Umesh Chandra Pandey, learned counsel for the petitioner, learned Standing Counsel for respondents 1 to 3 and Mr. Shishir Chandra, learned counsel for respondents 4 and 5, who filed counter affidavit on behalf of respondents 4 and 5, the same is taken on record.

2. By means of the present writ petition the petitioner has challenged the order dated 6.9.2007 passed by the District Judge, Bahraich in Misc. Civil Appeal No.51/07, whereby the order passed by the trial Court dated 1.9.2007 in Regular Suit No.290 of 2007 has been stayed on the ground that before trial Court there was an application moved by the appellant raising objection on the maintainability of the suit itself and it should have been considered first and only thereafter the trial Court could have proceeded to pass the order on the application for temporary injunction.

3. Learned counsel for the respondents 4 and 5 has made an effort to raise objection on the maintainability of the suit in light of the judgment and order passed by the Division Bench of this Court in Arun Kumar Tiwari v. Smt. Deepa Sharma and Others, 2006 (1) ARC 717, in which it has been held that whenever a serious challenge is made to the jurisdiction of the Court as well as to the valuation of the suit and sufficiency of the Court fee or to the maintainability of the suit, then if there appears, prima facie, some substance in those pleas, the proper procedure for the Court is to first decide these issues and then to decide the injunction application and other matters.

4. From perusal of the order passed by the trial Court it is evident that the trial Court has considered the objection of the respondents but it has postponed the same for decision after framing issues and on the basis of the documents produced by the petitioner/plaintiff the trial Court has proceeded to pass injunction, whereby he has fixed 18.9.2007 for disposal of the objection of the respondents and till then he has restrained the respondents from interfering in the operation of the Taxi stand by the petitioner.

5. Learned counsel for the respondents submits that since the objection was very well there, it should have been considered first by the trial Court. However, after perusal of the judgment and order passed by the Division Bench of the Court in the case of Arun Kumar Tiwari (supra), I find that it always depends upon the satisfaction of the trial Court and if the objection has some substance, it certainly has to pass order on the objection first. In the present case the learned counsel for the respondents 4 and 5 could not establish any right

for creating interference in the operation of the Taxi stand by the petitioner.

6. In reply the learned counsel for the petitioner submits that the petitioner is operating Taxi stand on the private place i.e. the premises of the temple, upon which the respondents have no control. He further submits that since the trial Court has already fixed date for disposal of objection as well as application for temporary injunction, but the learned counsel for the parties are not in a position to tell the date fixed by the trial Court, I hereby fix a date before the trial Court on 4.10.2007 to consider and orders on these applications. On that date, the parties who are being represented by their respective counsels shall appear before the trial Court and the trial Court shall proceed to decide the objection raised by the defendant respondents and only thereafter it shall proceed to either pass a fresh order on the application for temporary injunction or to confirm the order passed on 1.9.2007.

7. Since I have fixed the date before the trial Court for disposal of the objection raised against the maintainability of the suit itself as well as the application for temporary injunction, I find that the pendency of appeal will not serve any purpose, accordingly, I hereby quash the order dated 9th September, 2007 passed by the District Judge, Bahraich in Misc. Civil Appeal No.51/07.

8. With the aforesaid observations and directions, the writ petition is disposed of finally.

(Ordered accordingly)