

Misc Appeal No.48/2024
(Arising out of TS- 644/2023)
Civil Judge (Sr.Divn), 2nd Court, Asansol
JO Code- WB00965
CNR No: WBB07-00047-2024

Order no.13
09.07.2026

Today is fixed for hearing of the Misc Appeal.

Ld. Advocates of both parties are present by filing ready slip.

The Misc Appeal has originated being dissatisfied with the Order no.13 dated 25-07-2024 passed by the Ld. Civil Judge (Jr. Div.), Addl. Court, Asansol in TS no.644/2024. By the order dated 25.07.2024, Ld. Trial Court had allowed the application for temporary injunction filed by plaintiff/respondent after contested hearing. It is contended by the appellant/defendant that Ld. Court below did not go through the documents filed by them and on the basis of a wrong finding had allowed the temporary injunction prayer.

In the present Misc Appeal respondent/plaintiff had appeared. During hearing Ld. Lawyer for the respondent submitted that Ld. Court below had rightly allowed the temporary injunction prayer of respondent/plaintiff after perusing and considering all documents and there is no infirmity in the observation of the Ld. Court and it does not require any interference.

The present appeal has been filed challenging the temporary injunction order granted by Ld. Trial Court. The operating portion goes as follows *“defendants/appellants nos 4 to 6 are restrained from disbursing any kind of terminal benefits of deceased employer Dilip Bouri now deceased in favour of plaintiffs/respondents and defendants/appellants no 1 to 3 till disposal of the suit.”*

The suit is for declaration that respondent no 1/ plaintiff no.1 is the wife and respondents/plaintiff no. 2 to 5 are the children of deceased Dilip Bouri and for permanent injunction. The peculiar factual matrix of the case is that both respondent no. 1/plaintiff no. 1 and appellant no 1/defendant no.1 claim to be the legally wedded wife of deceased Dilip Bouri and rest plaintiffs and defendants nos 2 to 3 are children of said person. At the time of hearing, both sides had produced bundles of documents in support of their contention to be wife of the deceased and they are entitled to claim all the monetary benefits in the event of death of Dilip Bouri during continuation of his employment. Defendants no 4 to 6 are the representatives of the Eastern Cold Fields Ltd that is the employer of the deceased person. Ld. Court of the first instance, granted the order of temporary injunction with an observation that *“There are adverse claims which needed to be adjudicated by a full fledged trial. At the stage documents of plaintiffs or the defendants cannot be taken as sacrosanct and at this stage, no opinion can be formed without taking evidences.”* Therefore, Ld. Court had passed the impugned order after minutely considering all the documents filed by both the sides.

Ld. Counsel for the appellant/defendant submitted that appellant/defendant No,1 is the lawful wife of deceased Dilip Bouri. There are series of documents including

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marriage certificate which substantiate the fact that appellant/defendant no. 1 is the wife and appellant/defendant no. 2 and 3 are legitimate sons of the deceased. Per Contra Ld. Counsel for the respondent/plaintiff submitted that they also have convincing and cogent documents in their favour which can draw the conclusive inference that respondent no. 1 plaintiff no. 1 is the legal and only wife of deceased Dilip Bouri and at the same time respondent no. 2 to 5 plaintiff no. 2 to 5 are the children of the deceased.

Ld. Counsel for the respondent/plaintiff at the time of hearing relied upon the following judicial decision:-

1. Judgment of Dalpat Kumar v/s Prahlad Singh(1992) SCC 719
2. Judgment of Tamminedi Ramakrishna etc. v/s N Jayalakshmi [SLP© No-5, 12678-12679/2021, order dated 23-08-2021
3. Judgment of K. Ramaswamy v/s K Ramaswami.
4. Judgement of N. Kalaiselvi and another v/s The General Manage Salem District Central Co-operative Bank Ltd. And other 2008 supreme (Mad) 2953

Admittedly, Dilip Bouri now deceased was a permanent employee of Dhemomain Colliery under Eastern Cold fields Ltd and it is also not denied that Dilip Bouri expired on 03/11/2022 within his service period. The cause of action for filing of the suit arose when respondents/plaintiffs came to know that appellants/defendants are trying to withdraw all the monetary compensation and terminal benefit including gratuity, life cover schemes, CMPF accumulation etc. and also employment under death quota from the employer. Appellants/defendants no. 1, 2, 3 appeared and filed written statement. The temporary injunction petition under Order 39 Rule 1 and 2 of CPC was heard on contest and the impugned order was passed. Appellants/defendants no, 1,2,3 have availed their statutory right and challenged the temporary injunction order before this Court.

Perused the available documents filed by both the parties. The oldest document filed by respondent is a registration certificate of West Bengal Board of Secondary Education in the name of Dayamoy Bouri son of Dilip Bouri wherein the date of birth of Dayamoy Bouri is recorded as 3rd April, 1984. Similarly, the oldest document filed by appellant/defendant is for the year 1998 which are nomination form and particulars of family of deceased Dilip Bouri. Apart from the aforesaid documents there are series of documents filed by both the parties from which names of respondent no.1 and appellant no. 1 appear to be the wife of Dilip Bouri. The marriage certificate filed by appellant is dated 10-08-2018 wherein the date of marriage is mentioned as 16-01-1982. Ld. Trial Court has rightly observed that the dispute involved in the suit can only be determined after full-fledged trial and since there are triable issues, so there is a good prima facie case. At this stage, none of the documents filed by appellant/defendant can be taken to

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be genuine without passing through the litmus tests of cross-examination. Similar view also goes towards the documents filed by respondents. The suit is for declaration and the fact in issue is determination of the status of legal married wife of deceased Dilip Bouri. Till determination of such issue which can only happen after conclusion of adjudication, no order for realization or disbursement of any form of benefit relating to death of Dilip Bouri from defendant no 4 to 6 can be permitted. Another cardinal principle which has to be taken for consideration at the time of passing temporary injunction order is the aspect of balance of convenience and inconvenience. By weighing both the cases of granting or refusing of temporary injunction, I find that more prejudice or harm will be caused if no injunction order is granted. On refusal of injunction order there is every possibility of outbreak of future complications which may give rise to multiplicity of proceedings. Endeavour should always be made to curb down possibility of future litigation by deciding all disputes between the parties in a single litigation. More so, the aspect of irreparable loss and injury is also tilted in favour of plaintiffs/respondents since in the event of refusal of injunction order the very purpose for filing of the suit will get frustrated and if all the benefits arising due to death of Dilip Bouri is disbursed in the mean time without determination of the moot question that is the status of legal wife of the deceased then the loss caused to the plaintiff/respondent cannot be compensated by damages. Therefore, until and unless the veracity of allegation and counter allegation passes through the test of trial, the benefits due to death of Dilip Bouri should be preserved or else the entire suit will be infructuous.

Hence, in the given facts and circumstances and in the light of aforesaid discussion, I do not find any illegality and infirmity in the order passed by the Ld. Trial Court vide order no.13 dated 25.07.2024 and the decision does not invite any interference.

Hence, it is

ORDERED

That the Misc Appeal be and same is dismissed on contest on the ground as stated above. The impugned order no.13 dated 25.07.2024 is hereby affirmed.

DA is directed to return the TCR along with the copy of the order to Ld. Trial Court.

The instant Appeal is disposed of.

DA is hereby directed to do needful in this regard.

D/C by me

C.J.S.D, 2nd Court, Asansol