

**Civil Revision**  
**Present :The Hon'ble Justice Prasenjit Mandal**  
**Judgement On: October 5, 2010.**

**C.O. No. 4363 of 2007**  
**Bandana Mukherjee.**

**Versus**

**Soma Mukherjee & ors.**

**Point:**

MANDATORY INJUNCTION: At the time of getting employment, the defendant no.1 had to execute an instrument that she would maintain the dependants of the deceased employee- She is drawing the salary but not paying a farthing to her mother-in-law-Whether mandatory injunction could well be passed against the daughter-in-law- Code of Civil Procedure,1908,Order 39 Rule 1 &

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**Facts:**

The plaintiff/petitioner herein instituted a title suit being T. S. No.114 of 2005 before the learned Civil Judge (Junior Division), Second Court, Asansol against the opposite parties herein seeking for declaration that the plaintiff is entitled to be maintained by the defendant no.1 to the extent of 50% of her monthly salary so long as she remains alive, a decree for mandatory injunction directing the defendant nos.2 to 5 to deduct 50% of the monthly salary of the defendant no.1 in each month and to pay the same to the plaintiff so long as she remains alive and other reliefs. In that suit, the plaintiff filed an application under Order 39 Rule 1 & 2 read with Section 151 of the C.P.C. for passing interim reliefs restraining the defendant nos.2 to 5 from realizing the 50% of the monthly salary of the defendant no.1 in favour of the plaintiff. The learned Trial Judge passed an ad interim order of injunction. The defendant no.1 contested the suit and upon hearing both the sides, the

learned Trial Judge disposed of the application for temporary injunction directing the defendant nos.2 to 5 not to release 50% of the total monthly salary of the defendant no.1. Being aggrieved by such order, the defendant no.1 preferred a misc. appeal, which was disposed of by the learned Civil Judge (Senior Division), Asansol holding, inter alia, that without taking into evidence, mandatory injunction cannot be considered and set aside the impugned order. Being aggrieved by such orders, the plaintiff/petitioner has preferred this revisional application.

**Held:**

At the time of getting employment, the defendant no.1 had to execute an instrument supported by an affidavit that she would maintain the dependants of the deceased employee, Saibal Mukherjee. So, the defendant no.1 was under an obligation to maintain the plaintiff so long as the plaintiff remains alive. The execution of the instrument and the affidavit by the concerned employee have been done in order to prevent the other family members of the deceased employee from starvation. Had the other members opted for family pension as per rules, they had not to depend on the charity of the defendant no.1. Ultimately, the situation is that the defendant no.1 has now been residing at her father's house without maintaining the mother of the deceased employee. The order of mandatory injunction is absolutely necessary in order to prevent a breach of obligation. **Para-10**

The learned lower Appellate Court was not justified in observing that no mandatory injunction could be passed without taking evidence. Such findings cannot be supported. In appropriate situation an order of mandatory injunction could be passed to prevent a breach of obligation. Moreover, such type of measures is necessary not only to preserve the rights of the mother-in-law during the pendency of the suit but also for her survival. **Para-13**

The learned lower Appellate court has observed that since the relief sought for in the petition for temporary injunction and that of the main suit are the same and one, without taking evidence such mandatory injunction could not be passed. This observation cannot be supported because the question of survival of the plaintiff is involved and the mother-in-law is claiming such relief on the basis of the obligation to be discharged by her daughter-in-law as a condition for getting her service.

**Para-14**

Full relief cannot be granted to the plaintiff at this stage but the employer may be directed to deduct 50% of the monthly salary of the defendant no.1 for the present and to keep it under separate accounts by the concerned authority, that is, the defendant nos.2 to 5 for securing payment. Otherwise, it may be difficult for the mother-in-law of the defendant no.1 to get the benefits of the service rendered by her husband (now deceased) and her son (now deceased). After deduction of such amount, appropriate orders may be passed by the defendant nos.2 to 5 from time to time for adjudication of the deducted amount and completely, at the time of disposal of the suit. **Para-15**

The plaintiff has shown a strong prima facie case to go for trial. The mandatory injunction is necessary to prevent irreparable injury to the plaintiff. Since the daughter-in-law is drawing the money as her salary and she is not paying a farthing to her mother-in-law, under the compelling circumstances, mandatory injunction could well be passed against the daughter-in-law and if it is not passed immediately, it is likely to cause extreme hardship for the mother-in-law to realise her due shares of the service benefits of her deceased husband and the deceased so

**Para-16**

It is not a case for maintenance but for discharge of an obligation that was undertaken by the defendant no.1 at the time of getting her employment. Moreover, the service condition was that the employee appointed under the compassionate ground is to discharge the obligation he or she had undertaken at the time of getting employment. So, question of maintenance is not of much importance in deciding the issue involved in the application for temporary injunction. **Para-17**

The recourse of granting mandatory injunction is absolutely necessary to prevent great injustice or irreparable harm to the plaintiff and in such a situation, the mandatory injunction for deduction of 50% of the monthly salary of the defendant no.1 should be justified. **Para-18**

**For the petitioner: Mr. Sabyasachi Sen,  
Ms. Samapti Ganguli.**

**For the opposite parties: Mr. Bidyut Banerjee,  
Mr. Arup Krishna Das.**

**The Court:**

This application is at the instance of the plaintiff and is directed against the order dated September 27, 2007 passed by the learned Civil Judge (Senior Division), Asansol in Misc. Appeal No.30 of 2006 arising out of an order no.31 dated October 19, 2006 passed by the learned Civil Judge (Junior Division), Second Court, Asansol in Title Suit No.114 of 2005.

2. The short fact is that the plaintiff/petitioner herein instituted a title suit being T. S. No.114 of 2005 before the learned Civil Judge (Junior Division), Second Court, Asansol against the opposite parties herein seeking for declaration that the plaintiff is entitled to be maintained by the defendant

no.1 to the extent of 50% of her monthly salary so long as she remains alive, a decree for mandatory injunction directing the defendant nos.2 to 5 to deduct 50% of the monthly salary of the defendant no.1 in each month and to pay the same to the plaintiff so long as she remains alive and other reliefs. In that suit, the plaintiff filed an application under Order 39 Rule 1 & 2 read with Section 151 of the C.P.C. for passing interim reliefs restraining the defendant nos.2 to 5 from realizing the 50% of the monthly salary of the defendant no.1 in favour of the plaintiff. The learned Trial Judge passed an ad interim order of injunction. The defendant no.1 contested the suit and upon hearing both the sides, the learned Trial Judge disposed of the application for temporary injunction directing the defendant nos.2 to 5 not to release 50% of the total monthly salary of the defendant no.1. Being aggrieved by such order, the defendant no.1 preferred a misc. appeal being Misc. Appeal No.30 of 2006 which was disposed of by the learned Civil Judge (Senior Division), Asansol holding, inter alia, that without taking into evidence, mandatory injunction cannot be considered and so he set aside the impugned order. Being aggrieved by such orders, the plaintiff/petitioner has preferred this revisional application.

3. Now, the point that emerges for decision is whether the impugned order should be sustained.

4. Upon hearing the learned counsel for both the parties and on perusal of the materials on record, I find that admittedly, one Dwija Das Mukherjee was an employee of M/s. Eastern Coalfields Ltd. But, unfortunately he died on October 10, 1995 leaving the plaintiff has his sole legally married wife, his only son, Saibal Mukherjee and his mother Smt. Shyama Sundari Mukherjee. The concerned authority of the M/s. Eastern Coalfields Ltd. was pleased to extend their hands of cooperation by providing an employment to the son of the deceased employee on compassionate ground as per rules prevalent in the said authority. Accordingly, Saibal Mukherjee was appointed

and he maintained the dependent family members of the deceased employee. The said son Saibal Mukherjee was the only bread earner of the family. He was married to the defendant no.1 on December 13, 1999. After marriage, the defendant no.1 was admitted to Raniganj Girls College wherefrom she obtained her B.A. degree and in all such days, the plaintiff looked after her.

5. The said son died on July 16, 2000 leaving behind his mother, the defendant no.1 and his grandmother, Smt. Shyama Sundari Mukherjee. Then the concerned authority extended their hands of cooperation by providing an employment to the defendant no.1. At that time, the defendant no.1 had to executed an instrument whereby she undertook to look after the dependent family members of the said Saibal Mukherjee (deceased). She also undertook that in case of not maintaining the said dependent family members of the deceased, the concerned authority might deduct 50% from her monthly salary for maintenance of the dependent members of the family and for that reason the other dependent members also gave their no objection for giving an employment to the defendant no.1. Thereafter the defendant no.1 got an employment as security guard and later on, she was regularised as a lady security guard in the M/s. Eastern Coalfields Ltd. at Santoria.

6. The defendant no.1 was duty bound to maintain the plaintiff as per terms of the employment and also the rules of the company but he did not maintain her. Immediately, on getting the said employment, she changed her radically and she began to display hostile attitude towards the plaintiff. Ultimately, she withdrew herself from the family members of the plaintiff. She is not maintaining the plaintiff at all.

7. The above facts are not disputed at all. There is no evidence that after getting employment the defendant no.1 is maintaining her mother-in-law, the plaintiff. According to the terms of employment, had the dependent members of Saibal Mukherjee not given any 'no objection certificate' and had his family members chosen to adopt the family pension as per rules 9.5.0., the dependent members of Saibal Mukherjee would have got the family pensions at the rate of Rs.3,000/- per month instead of employment. But keeping in mind the benefits of service, the other family members of deceased Saibal Mukherjee executed the no objection certificate in favour of the defendant no.1 to facilitate her appointment with the concerned authority. At that time, the defendant no.1 had to execute an instrument supported by an affidavit executed by her to the effect that in the event of not maintaining the other family members of the deceased employee, namely, Saibal Mukherjee, the concerned authority might deduct 50% of the monthly salary for the maintenance of the other dependants of the deceased employee, Saibal Mukherjee.

8. Under such circumstances, the learned Trial Judge directed the concerned authority to deduct 50% of the monthly salary of the defendant no.1 by the order no.31 dated October 19, 2006. In disposing of such application, I find that the learned Trial Judge has discussed all the basic principles in passing an order of temporary injunction. He has found prima facie case in favour of the plaintiff. The balance of convenience and inconvenience and irreparable loss and damage in favour of the plaintiff and thus, he concluded that the temporary injunction as prayed for should be granted. Accordingly, he has disposed of the application.

9. On the contrary, learned lower Appellate Court allowed the Misc. Appeal filed by the defendant no.1 on the ground that without taking evidence and without going into the trial, the mandatory

injunction cannot be considered. He has also observed that the main relief sought for in the suit is similar to that prayed for in the application for temporary injunction. So, the interim relief should not be granted by way of mandatory injunction. Accordingly, he allowed the appeal filed by the defendant no.1 setting aside the order of the learned Trial Judge.

10. At the time of getting employment, the defendant no.1 had to execute an instrument supported by an affidavit that she would maintain the dependants of the deceased employee, Saibal Mukherjee. So, the defendant no.1 was under an obligation to maintain the plaintiff so long as the plaintiff remains alive. The execution of the instrument and the affidavit by the concerned employee have been done in order to prevent the other family members of the deceased employee from starvation. Had the other members opted for family pension as per rules, they had not to depend on the charity of the defendant no.1. Ultimately, the situation is that the defendant no.1 has now been residing at her father's house without maintaining the mother of the deceased employee. In such a situation, I am of the view that the order of mandatory injunction is absolutely necessary in order to prevent a breach of obligation.

11. The contention of the defendant no.1 is that she did not execute any such papers but these are matters to be decided at the time of trial.

12. But, on perusal of the papers filed by the plaintiff, I find that she has shown that the defendant no.1 was under an obligation to maintain her. When the defendant no.1 left her matrimonial home and began to reside at her father's house, the only course that remains is to pray for mandatory



injunction by the plaintiff and such a course of mandatory injunction is permissible in the given situation. This is the only remedy available to the plaintiff and no other remedy is open to her.

13. Therefore, the learned lower Appellate Court was not justified in observing that no mandatory injunction could be passed without taking evidence. Such findings cannot be supported. In appropriate situation an order of mandatory injunction could be passed to prevent a breach of obligation. Moreover, such type of measures is necessary not only to preserve the rights of the mother-in-law during the pendency of the suit but also for her survival.

14. The learned lower Appellate court has observed that since the relief sought for in the petition for temporary injunction and that of the main suit are the same and one, without taking evidence such mandatory injunction could not be passed. This observation, I hold, cannot be supported because the question of survival of the plaintiff is involved and the mother-in-law is claiming such relief on the basis of the obligation to be discharged by her daughter-in-law as a condition for getting her service.

15. Anyway, full relief cannot be granted to the plaintiff at this stage but the employer may be directed to deduct 50% of the monthly salary of the defendant no.1 for the present and to keep it under separate accounts by the concerned authority, that is, the defendant nos.2 to 5 for securing payment. Otherwise, it may be difficult for the mother-in-law of the defendant no.1 to get the benefits of the service rendered by her husband (now deceased) and her son (now deceased). After deduction of such amount, appropriate orders may be passed by the defendant nos.2 to 5 from time to time for adjudication of the deducted amount and completely, at the time of disposal of the suit.

16. This being the situation, I am of the view that the plaintiff has shown a strong prima facie case to go for trial. The mandatory injunction is necessary to prevent irreparable injury to the plaintiff. Since the daughter-in-law is drawing the money as her salary and she is not paying a farthing to her mother-in-law, under the compelling circumstances, mandatory injunction could well be passed against the daughter-in-law and if it is not passed immediately, it is likely to cause extreme hardship for the mother-in-law to realise her due shares of the service benefits of her deceased husband and the deceased son.

17. During argument, Mr. Das, appearing on behalf of the defendant no.1/opposite party no.1, submits that there is every doubt whether the mother-in-law could claim maintenance against the daughter-in-law as per provisions of the Hindu Adoptions & Maintenance Act, 1956 or under provisions of any other law. Therefore, at the time of disposal of the application for temporary injunction any order of deduction should not be passed. In this regard, I find that it is not a case for maintenance but for discharge of an obligation that was undertaken by the defendant no.1 at the time of getting her employment. Moreover, the service condition was that the employee appointed under the compassionate ground is to discharge the obligation he or she had undertaken at the time of getting employment. So, question of maintenance is not of much importance in deciding the issue involved in the application for temporary injunction.

18. Therefore, I am of the view that such a recourse of granting mandatory injunction is absolutely necessary to prevent great injustice or irreparable harm to the plaintiff and in such a situation, the mandatory injunction for deduction of 50% of the monthly salary of the defendant no.1 should be

justified. So, the observations made by the learned lower Appellate Court cannot be supported. He has committed errors of law and so his findings should be set aside.

19. Accordingly, this application is allowed. The defendant nos.2 to 5/opposite party no.2 to 5 herein are directed to deduct 50% of the monthly salary of the defendant no.1/opposite party no.1 herein and to keep the same under a separate account. Such deducted money shall be adjudicated from time to time upon application by the either parties to the suit and finally appropriate orders shall be passed at the time of passing the judgment.

20. The above observations are made for the disposal of this application and the learned Trial Judge shall not be swayed away by such observations. He shall dispose of the suit on the basis of evidence as available.

21. Considering the circumstances, there will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

**(Prasenjit Mandal, J.)**