

**IN THE HIGH COURT OF UTTARAKHAND**

**AT NAINITAL**

ON THE 13<sup>TH</sup> DAY OF AUGUST, 2021

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

WRIT PETITION (M/S) No. 1345 of 2021

**BETWEEN:**

Sudhir Lodhi. ....Petitioner  
(By Mr. Ramji Srivastava and Mr. Shankar Aggarwal,  
Advocates)

**AND:**

Smt. Bobby Gurung alias  
Smt. Babita Gurung and others. ....Respondents  
(By Mr. Ashish Joshi, Advocate for respondent no. 3)

**JUDGMENT**

Petitioner filed a suit for permanent injunction alongwith temporary injunction application. Learned trial Court vide dated 22.04.2021 issued notices on the temporary injunction application fixing 06.05.2021, therefore, petitioner has approached this Court contending that, having regard to the facts of the case, learned trial Court ought to have granted ex-parte temporary injunction order in favour of the petitioner.

2. The order passed by learned trial Court on 22.04.2021 cannot be faulted, as Order 39 Rule 3 C.P.C. ordains that the Court shall, in all cases, direct notice of the application to be given to the opposite party before granting any injunction and proviso to

Rule 3 mandates that Court will have to record reasons for granting ex-parte temporary injunction. Since the order passed by learned trial Court is in consonance with the law governing the field, therefore, no interference with the order dated 22.04.2021 would be warranted.

3. Learned counsel for the petitioner submits that petitioner's property is likely to be auctioned by State Bank of India; although, it was never mortgaged with the Bank. He further submits that petitioner had not taken any loan against the said property, therefore, the Bank has no authority to put the said property into auction.

4. Per contra, learned counsel appearing for respondent no. 3 submits that the property in question, which is proposed to be auctioned, belongs to one Smt. Durga Bharti and she had mortgaged the said property in favour of State Bank of India.

5. This Court, while exercising supervisory jurisdiction, cannot go into the controversy whether the act of State Bank of India, of putting the property for auction, is authorized or not.

6. Learned counsel for the petitioner submits that since the temporary injunction application filed by the petitioner is pending, therefore, the writ petition may be disposed of with a direction to learned trial Court to consider the said application on the next date fixed or any other day within three weeks thereafter. He assures the Court that petitioner will take *Dasti* notice for effecting personal service upon

all the defendants to ensure that all the defendants are served before the next date fixed in the matter.

7. Having regard to the facts & circumstances of the case and also in view of undertaking given by learned counsel for the petitioner on behalf of his client, learned trial Court is requested to consider petitioner's temporary injunction application on 02.09.2021 or on any other day within three weeks thereafter.

8. Till consideration of petitioner's temporary injunction application or till 24.09.2021, whichever is earlier, *status quo* qua the suit property shall be maintained and no third party interest shall be created by any of the parties.

9. It goes without saying that learned trial Court shall consider temporary injunction application of the petitioner on merits, untrammelled by any observation made in this order.

10. The writ petition is, accordingly, disposed of.

**(MANOJ KUMAR TIWARI, J.)**