

Assam Schedule VII, Form No. 133

High Court Form No. (J) 3  
HEADING OF JUDGMENT IN APPEAL

**District: DIBRUGARH**

**IN THE COURT OF CIVIL JUDGE, DIBRUGARH,  
ASSAM**

**Present : Smti. Jharna Saikia  
Civil Judge, Dibrugarh**



**Tuesday, the 12<sup>th</sup> day of July, 2022**

**Misc. Appeal No. 02 of 2020**

M/S UNF Engineers India Pvt. Ltd.

Office Address : Borbaruah Complex, Opposite  
SBI, A.T. Road, Amolapatty, Sivasagar,  
Assam, Pin-785640,

Represented by its Power of Attorney  
Holder, Sri Babul Dey,

S/O Late Kameswar Chandra Dey

R/O : Babupatty,

P.O. & P.S. & District Sivasagar, Assam

.....Appellant

**-Vs-**

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1. The State of Assam,  
Represented by Commissioner and  
Secretary to the Government of Assam,  
Water Resource Department, Dispur,  
Guwahati-6
2. The Chief Engineer,  
Water Resource Department,  
Chandmari, Ghy-3
3. The Addl.Chief Engineer,  
Water Resource Department,  
Upper Assam Zone, Dibrugarh, Assam
4. The Executive Engineer,  
Sivasagar Water Resource Division,  
Sivasagar, Assam



.....**Respondents**

This appeal came up for final hearing on  
10.06.2022 in the presence of :

- Mr. Jayanta Kr. Sarma. .... Learned Advocate for  
the Appellant.
- Ms. Manika Devi ..... Learned Advocate  
(G.P.) for the  
Respondent No.1.
- Mr. Debashish Roy ..... Learned Advocate for  
the Respondents i.e.  
Water Resource  
Department.

And having stood for consideration to this 12<sup>th</sup>  
day, of July 2022, the Court delivered the following  
judgment :

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**JUDGMENT & ORDER**

1. Challenge made in the instant appeal, preferred under Order 43 Rule 1 (r) of CPC against the order dated 25.11.2020 passed by learned Munsiff No.2, Dibrugarh in Misc. (J) Case No.32/2020 arising out of T.S No.48/2020 on the file of the learned Munsiff No.2, Dibrugarh whereby and where under the learned Munsiff no.2 while issuing show cause notice to the opposite parties, did not grant any ex-parte relief to the appellant/ petitioner.
2. On receipt of the appeal memo notices were issued to the respondent and the case records of Misc(J) Case No.32/20 and T.S. No. 48/20 were called for and in pursuance to the notice respondents entered appearance through their engaged counsel and contested the appeal.
3. I have heard learned counsel for the appellants and respondents and also have gone through the appeal memo and case record of Misc (J) Case No. 32/20 T.S. No. 48/20 and the documents submitted in support of the petition u/o 39 rule 1 and 2 r/w Sec. 151 CPC.



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4. The facts leading to the institution of the title suit and the injunction petition before the trial court in brief is that the Plaintiff is a Private Limited Company having its registered office at Borbaruah Complex, Opposite SBI, A.T. Road, Amolapatty, Sivasagar, Assam, Pin-785640 Represented by its Power of Attorney Holder, Sri Babul Dey, aged about 60 years S/o- Late Kameswar Chandra Dey R/O: Babupatty P.O. & P.S. & District Sivasagar, Assam.



5. That the Defendant No.2 had issued an initiative for bid(IFB) on dated 07.10.2020 inviting tender from approved and eligible contractors for raising and strengthening Demow Bund L/B from Demow Chariali to Dhai Ali from CH.10350 m to end point Dhai Ali (Phase-1) under Sivasagar Water Resource Division, Sivasagar, Assam.

6. That the Plaintiff being one of prospective bidder having good reputation and good will in the field of Civil Engineering works has submitted its bid in pursuant to above mentioned IFB, with all the relevant documents.

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7. That the Plaintiff has submitted a copy of Special Power of Attorney along with the other documents which was executed by the Managing Director of the Plaintiff Company in favour of one Babul Dey, son of late Kameswar Chandra Dey whereby nominating and appointing him to carry on certain works relating to representing the Plaintiff Company in certain works which are being clearly mentioned in the said Power of Attorney, including among others : **1)** *To represent the aforesaid company in the matter of signing contractual agreements, documents and instruments regarding electrical Civil and electrical and electronic matters etc.*



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**2)** *To submit and receive bills from the concerning parties, authorities having relevance with the above nature of works and things and acknowledge the receipt of the same for and of behalf of the Plaintiff.*

8. That on completion of submission of e-tendering bidding process an evaluation committee meeting was held on 03.11.2020 in the e-tendering cell of the office of the Defendant No.3. That just after closing of

evaluation meeting a minute was being uploaded in the official Website of the Defendants vide Website- <http://assamtenders.gov.in> which clearly shows that the Plaintiff Company is qualified in the Technical bid and allowed to enter into the process of price bid.



9. That more surprisingly an another copy of minute was uploaded in the above referred website of the defendants on the same day i.e. on 03.11.2020 which shows that the Plaintiff Company is rejected for further bidding proceeding keeping the status of all remaining successful bidders unchanged. That the ground of rejection is explained in their remark column as "Not Admitted. Name of the bidder in BoQ is not matching with the name in which the tender is submitted."

10. It is submitted by the Plaintiff that the grounds of rejection as explained in the minute is completely illegal, arbitrary and irrational and clearly shows wrongful and malicious intent of the defendants and in no way convincing for any prudent man. That from the conducts of the defendants the Plaintiff has a firm believe

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that the Plaintiff is intentionally deprived only to accommodate some other candidate of the defendants for the respective tender work.

- 11.** It is further stated in the plaint that a power of attorney is a legally acceptable document and it is a common instrument widely used in trade and business activities across the country by which individuals, firms, Companies as well as Government agencies but in the instant case the Plaintiff was thrown away from the bidding process in violation of plaintiff's fundamental right granted under Article 19 (I) (g) of the Constitution of India i.e. right to business.



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- 12.** Hence, the Plaintiff has instituted the title suit before the learned Munsiff No.2, Dibrugarh, which was registered as T.S No. 48/2020 praying for the following reliefs:

**i).** a decree for declaration that the Plaintiff is a qualified bidder to take part in the further bidding process initiated by the Defendant No.3 and their department in the tendered work described in the schedule.

**ii).** For declaration that the plaintiff is illegally thrown out of the bidding process by the

Defendant No:3 including the evaluation committee.

iii). For granting a permanent injunction restraining the defendants from proceeding the allotment process of the scheduled tendered work pending disposal of the present suit and

iv). For granting such other relief/ Further reliefs as the Court deems fit and proper in the circumstances of the case.

13. Along with the said title suit, a petition U/O 39, Rule 1&2 read with section 151 C.P.C. was also filed praying for ad-interim injunction restraining the defendants from proceeding the allotment of the tendered work scheduled pending disposal of the suit, which was registered as Misc(J) 32/20.
14. The learned trial court has vide the impugned order dated 25.11.20 passed in Misc (j) 32/20, while issuing notice to the opposite parties refrained from passing any ex-party order,
15. Being highly aggrieved by and dissatisfied with the impugned order dated 25.11.2020 passed by learned Munsiff No.2, Dibrugarh in



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Misc.(J) Case 32/20 arising out of T.S No. 48 of 2020, the petitioners as appellants preferred this appeal basically on the following amongst other grounds:

(i) For that, the learned Munsiff No.2 erred in law in arriving in the judgment.

(ii) For that learned Munsiff No.2 failed to appreciate the urgency of filing the present petition u/O 39; Rule 1 and 2 that delay in granting relief may frustrate the entire suit and also highly prejudice the appellant.

(iii) For that the learned Munsiff No.2 did not take note of the time bound allotment process of the Government agencies where agencies will not wait for hearing of the suit on given date (i.e. on 04.01.2020) without any status-quo order and if the allotment process will not stay on time it will make difficult to rectify causing damage of reputation and good will of the appellant which is irreparable in nature.

(iv) For that documents file in the suit specially the document No.4 and 5 speaks the illegality of the Government agencies itself to make out a prima-facie case in favour of the appellant but the learned Munsiff No.2 do



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oversight that apparent arbitrariness of the Government agencies and thereby reluctant to provide any urgent relief to the appellant.

(v) For that the arbitrary acts of Government agencies and deprivation of deserving parties cannot be allowed to advance as these practices not only cause damage or losses of an individual but also deprives the society at large in availing public goods.

vi) For that if the respondents are not restrained on time or allowed to complete the tender allotment process than it will result multiplicity of suits in future.

vii) For that in any view the order is bad in law and liable to be set aside.

16. Considering the grounds set forth in the appeal memo and hearing the learned counsel for both the sides, the following point for determination is formulated to address the grievances.

**POINT FOR DETERMINATION**

1. Whether the order dated 25.11.2020 passed by learned Munsiff No.2, Dibrugarh in



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Misc.(J) Case 32/20 is just and proper or needs interference ?

**DISCUSSION, DECISION AND REASONS**

**THEREFOR:**

17. During the course of appeal hearing learned counsel for the appellants basically confined himself on the grounds set forth in the appeal memo and submitted that the learned Court below very whimsically without application of judicial mind issued notice to the opposite party to show cause as to why the order of temporary injunction should not be passed against them and did not consider the urgency of the matter to pass ex-parte interim order restraining the defendants from proceeding the allotment of the tender work mentioned in the petition pending disposal of the suit.



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18. On the counter, learned counsel for the respondents submitted that the grounds set forth in the petition filed by the appellants/petitioners are vague one and the court has rightly passed the order issuing show cause notice which does not deserve any interference and as such prayed for

affirming and upholding the said order. The learned counsel further argued that no appeal lies against an order of issuance of notice and hence the instant Misc appeal be dismissed with heavy cost.



19. Before entering into the intrinsic legality of order dated 25.11.2020 passed by learned Munsiff No.2, Dibrugarh in Misc.(J) Case 32/20, it's perusal is necessary and the operating part of the order is reproduced below :

*"Now, upon such consideration and hearing it appears that the petitioner stated in the petition that the ground of rejection as mentioned is completely illegal, arbitrary and irrational. Now, only after hearing the petitioner's version; this Court cannot blindly hold that the Opposite Party has done the same illegally and arbitrarily and most importantly when the subject matter of this petition involves greater interest of public good and utility; this Court is definitely not inclined to pass any coercive order without hearing the O.Ps as the same will be detrimental to the public interest.*

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*As such in light of the discussion made herein above this Court deems it fit to give a reasonable opportunity to the Opp. Party to show cause as to why order of temporary injunction should not be passed against them. Accordingly, issue notice to the Opp. Parties."*



20. The moot question involved in this appeal is about the legality of issuing notice to the opposite party before proceeding to pass an injunction order against the opposite party/defendant u/o 39 rule 1 and 2 CPC. The provision of order 39 rule 1 and 2 CPC are quoted below:

**Order 39, Rule 1 CPC provides the cases where temporary injunction be granted which is as below :**

[.....] Where in any suit it is proved by affidavit or otherwise-

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

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(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further Orders. 4[\*\*\*]

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2. Injunction to restrain repetition or continuance of breach

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind

arising out of the same contract or relating to the same property or right. (2) The Court may by Order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit. Rule 3 of order 39 further provides that ... The Court shall in all case, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party :



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1[Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant- (a) to deliver to the opposite party, or to send to him by registered post, immediately after the Order granting the injunction has been made, a copy of the application for injunction together with-

- (1) a copy of the affidavit filed in support of the application;

- (ii) a copy of the plaint; and
- (iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.]



**21.** From the above provision it appears that legislature intended that the defendant be given an opportunity to show cause against the injunction order in all cases, except where the object of granting injunction would be defeated by delay.

**22.** In this instant case the court below has thoroughly examined the matter in dispute and formed the opinion that hearing of the opposite parties are necessary before passing any injunction order, which is but the basic principle of natural justice. In this matter at hand, as the court is exercising the power of appellate jurisdiction, which are very limited in nature, to set aside the impugned order as sought by the appellant, it must be shown to full satisfaction that the trial court has acted arbitrarily or capriciously in passing the

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impugned order. However considering the facts and circumstances under which the impugned order was passed, this court is of the opinion that the court was only exercising the principle of natural justice of ***audi alteram partem***, in hearing the other side, which is inherent under order 39 CPC and the order of the court clearly reflects that as the subject matter of the petition involves greater interest of public good and utility hence any coercive order if passed without hearing the O.P.s, the same will be detrimental to the public interest. Hence, considering all, I do not find any illegality or infirmity in the order of the trial court which deserves any interference.



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23. For the above reasons the order 25.11.2020 passed by learned Munsiff No.2, Dibrugarh in Misc.(J) Case 32/20 arising out of T.S. No. 48/2020 suffers from no infirmity and deserves no interference and accordingly it is affirmed and upheld.
24. From the above discussion it follows that the present appeal is devoid of merit and deserves dismissal.

**ORDER**

25. In the conclusion the appeal stands dismissed on contest.
26. Send down the original case record of Misc.(J) Case No.32/20 and T.S. No.48/2020 along with a copy of this judgment and order to the learned trial Court.
27. The Judgment and order is prepared on separate sheets and tagged with the case record. Judgment and order is delivered in the Open Court.

Given under my hand and seal of this Court on this the 12<sup>th</sup> day of July, 2022 at Dibrugarh.

Dictated & corrected by me,

  
*Devi*  
12.7.22  
Civil Judge, Dibrugarh  
Civil Judge  
Dibrugarh

*Devi*  
12.7.22  
Civil Judge, Dibrugarh  
Civil Judge  
Dibrugarh