
(2008) 11 CAL CK 0036

In the Calcutta High Court

Case No : G.A. No. 4243 of 1998, A.P.O. No. 719 of 1998 and Suit No. 737 of 1991

ABL International Pvt. Ltd.

APPELLANT

Vs

Sunita Ramchand Sadarangani and Others

RESPONDENT

Date of Decision : 04-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 94
West Bengal Premises Tenancy Act, 1956 — Section 17

Citation : (2009) 1 CALLT 1 : (2009) 1 CHN 56

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Surojit Nath Mitra, Harish Tandon, U.S. Menon and Rajeev Kumar Jain, for the Appellant; Anindya Kumar Mitra, Anirban Roy and A. Jhunjhunwalla for Respondent Nos. 4 and 5 and Ahin Chowdhury and Arindam Mukherjee for Respondent Nos. 1 and 2, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the defendant No. 4 in a suit for declaration and permanent injunction and is directed against order dated 19th June, 1998 as modified on 24th June, 1998 passed by a learned Single Judge of this Court on the application filed by the appellant in the suit by which the appellant prayed for the following orders:

(a) The Id. Receiver be directed to recover, realise and receive the sum of Rs. 1,08,573.79 for the period up to November, 1997 from the plaintiffs in respect of shop room No. A-8 as per Annexure "X-21" and the sum of Rs. 9,66,356.29 for the period up to November, 1997 from the defendant Nos. 2 and 3 in respect of shop room Nos. A-6 and A-7 as per Annexure "X-20" and the plaintiffs and the defendant Nos. 2 and 3 be directed to pay the said respective sums of Rs. 1,08,573.79 as per Annexure "X-21" and Rs. 9,66,356.29 as per Annexure "X20" to the learned Receiver within a week from the date of order to be made herein and the learned Receiver to hold and invest the said sums in fixed deposit subject to further orders of this Hon'ble Court;

(b) Leave be granted to your petitioner to raise current bills on the Id. Receiver, with copies thereof simultaneously endorsed to the plaintiffs and the defendant Nos. 2 and 3 respectively in respect of rent, service and air-conditioning charges in respect of the disputed shop room No. A-8 and shop room Nos. A-6 and A-7 on the ground floor of premises No. 1, Shakespeare Sarani, Calcutta, on the basis of the rates leviable under the said agreement dated 9th September, 1991 between your petitioner and the plaintiffs and the plaintiffs and the defendant Nos. 2 and 3 be directed to pay such current bills within a fortnight from date of such presentation and the Id. Receiver to hold and invest the amounts received in fixed deposits subject to further orders of this Hon''ble Court;

(c) Direction be given to the defendant Nos. 2 and 3 to pay Rs. 25,000/- to your petitioner in terms of order dated 7th April, 1992 as pleaded in paragraph 18 of the petition and leave be granted to accept such payment without prejudice to the rights of your petitioner;

(d) Suitable direction be given to the Id. Receiver to enquire and submit a report to this Hon''ble Court as to the persons in actual physical possession, control management of the business in the said shop room Nos. A-6 and A-7 on the ground floor of premises No. 1, Shakespeare Sarani, Calcutta-700 0071, within such time as may seem fit and proper;

(e) Ad interim order in terms of prayers (a), (b), (c) and (d) above;

(f) Directions be given for expeditious hearing of the suit;

(g) Such further order or orders be made and/or direction or directions be given as to this Hon''ble Court may seem fit and proper.

2. The facts giving rise to filing of such application in the said suit may be summed up thus:

On 9th October, 1991, the respondent Nos. 1 and 2, as the plaintiffs, filed a suit before the Original Side of this Court being Suit No. 737 of 1991 against the respondent Nos. 3 to 5 and the appellant thereby praying for the following relief:

(a) Declaration that the plaintiffs are monthly tenants in respect of shop room being block Nos. A-6, A-7 and A-8 on the ground floor of premises No. 1, Shakespeare Sarani, Calcutta, more fully described in the schedule being Annexure "A" to this plaint;

(b) Perpetual injunction restraining the defendant Nos. 1, 2 and 3, their servants, agents and/or assigns from disturbing in any way the plaintiffs possession in and enjoyment of the said shop room being block Nos. A-6, A-7 and A-8 on the ground floor of the said premises with all existing facilities;

(c) Receiver:

(d) Possession of shop room Nos. A-6 and A-7 in premises No. 1, Shakespeare Sarani, within the municipal limits of Calcutta from the defendant or any of them;

(e) Costs;

(g) Further or other reliefs.

3. The case made out in the plaint by the respondent Nos. 1 and 2 herein may be summed up thus:

(a) Since 1981, the plaintiffs had been the tenants under the defendant No. 4 in respect of a shop room on the ground floor known as A-8 of the said premises on the terms and conditions contained in an agreement dated 14th May, 1981 and the plaintiffs had been carrying on business as dealers of the watches under the name and style of "Ram"s" at the said shop room, known as A-8.

(b) Since 1972, the defendant Nos. 1, 2 and 3 had been the tenants in respect of the shop rooms known as A-6 and A-7 on the ground floor of the said premises and those defendants had been carrying on business of shirting and suiting under the name and style of "Akashdeep" at those rooms.

(c) For sometime past, the plaintiffs were looking for additional shop rooms to cope with their expanding business and in the month of August 1991, B.S. Baid, a Director of the defendant No. 4, the landlord, approached the plaintiffs with an offer to let out the said shop rooms A-6 and A-7 which were adjacent to the plaintiffs' shop room, i.e. A-8, of the said premises.

(d) In course of negotiation with the said B.S. Baid, the plaintiffs came to learn that the defendant Nos. 1, 2 and 3, the tenants in respect of the shop rooms A-6 and A-7, had been defaulters in payment of rents and other charges including service and air-conditioning charges since June, 1981 and that those defendants had ceased to carry on any business from those shop rooms since 1981 and those shop rooms had been lying closed.

(e) The said B.S. Baid further represented to the plaintiffs that in the aforesaid circumstances, the defendant Nos. 1, 2 and 3 expressed their desire to surrender their tenancy with effect from 31st August, 1991.

(f) On the basis of representation made by B.S. Baid, a Director of the defendant No. 4, the plaintiffs agreed to surrender their existing tenancy in respect of the said shop room A-8 and to enter into a new tenancy agreement in respect of the shop rooms being Block Nos. A-6, A-7 and A-8 on the ground floor of the said premises.

(g) Accordingly, by an agreement in writing dated 9th September, 1991, the plaintiffs were inducted as monthly tenants with effect from 1st September, 1991 in respect of the shop rooms being block Nos. A-6, A-7 and A-8 on the ground floor of the said premises at a monthly rental of Rs. 625/- and other terms and conditions contained therein.

(h) By a separate agreement in writing, also dated 9th September, 1991, the defendant No. 4, in considering of charges mentioned therein, agreed to provide various services and facilities to the plaintiffs for proper use and enjoyment of

the demised shop rooms.

(i) Pursuant to those two agreements, the plaintiffs by two separate cheques both dated 19th September, 1991 paid a sum of Rs. 52,000/- and Rs. 625/- towards interest-free security deposits and rent to the defendant No. 4 who duly accepted the said payment. The defendant No. 4 also gave possession of those shop rooms to the plaintiffs on 1st September, 1991.

(j) Immediately thereafter, the plaintiffs started the work of interior decoration and furnishing of the shop rooms and while those shop rooms were being decorated and furnished, the plaintiffs continued to transact business from a portion of those shop rooms.

(k) On 7th October, 1991 at about 11 a.m., some officers of the Park Street Police Station accompanied by the defendant Nos. 2 and 3 and several other unknown persons forcibly dispossessed the plaintiffs from an area which was formerly known as block Nos. A-6 and A-7 and took away the keys of the said shop room after locking the same. The said police officers and the men forcibly put up a makeshift partition wall of plywood which they themselves had brought into the said shop room. The said sub-inspector also forced the plaintiff No. 1's husband and the father of the plaintiff No. 2 to write on a plain sheet of paper that such plywood partition was put up for safety. The police authorities took possession of the said shop room being block Nos. A-6 and A-7 of the said premises.

(1) On the same day, namely, 7th October, 1991, at about 3 p.m., the defendant Nos. 2 and 3 again came to the said shop room of the plaintiffs and forcefully obtained from the plaintiff No. 2 a statement in writing to the effect that he had handed over peaceful possession of the said shop room being block Nos. A-6 and A-7 on the ground floor of the said premises.

4. Simultaneously with the institution of the said suit, the plaintiffs filed an application for appointment of a Receiver in respect of portion of the demised shop room formerly known as A-6 and A-7 with a direction for taking possession forthwith and injunction restraining the defendant Nos. 1, 2 and 3 from interfering with the right, title and interest, possession and enjoyment of the said demised shop room. Prayer for temporary injunction was also made for directing the respondent Nos. 1, 2 and 3 and their servants, agents, and assigns to remove all obstructions and impediments in any way so that the plaintiffs' possession and enjoyment of the shop rooms are not interfered with.

5. On 9th October, 1991, upon the said application, a learned Single Judge of this Court passed an order appointing Mr. Arijit Banerji, Advocate, as Receiver to take formal possession of the shop room being Block Nos. A-6 and A-7 on the ground floor of the said premises. The Receiver was directed to take constructive possession but not actual physical possession.

6. On the basis of the said order, the learned Receiver went to the said shop

rooms on 10th October, 1991 at about 4 p.m. and took constructive possession and not actual possession of the said shop rooms.

7. The defendant Nos. 1, 2 and 3 were served with the application in the meantime, and on 11th October, 1991, in presence of the said defendants, the interim order earlier passed on 9th October, 1991 was modified and the Receiver was directed to take not only formal possession but also the actual physical possession by putting padlock on the shops in question till the disposal of the application.

8. On 12th October, 1991, the Receiver again visited the said shop rooms when the said defendant Nos. 1, 2 and 3 refused to handover the possession of the said shop rooms to the Receiver and also refused to remove the locks on the shutters and as such, the Receiver had to come back without taking possession.

9. During the Puja Holidays, the defendant Nos. 1, 2 and 3 moved an appeal before the Vacation Bench of this Court for stay of operation of the order dated 11th October, 1991 but such prayer for stay was refused and thereafter, the said appeal had not been pursued by the defendants.

10. The plaintiffs moved an application before the Vacation Bench for a direction on the Receiver to break open the locks to obtain possession and carry out the order of the Court dated 11th October, 1991 and on the said application, an order was passed by the Vacation Bench on October 14, 1991 by which the Receiver was directed to remove the locks put up by the defendant Nos. 1, 2 and 3 and fix his own padlock if the said defendants did not remove their locks. The Receiver was directed to take proper police help for taking actual possession.

11. In terms of the said order, the Receiver took possession of the shop rooms on 15th October, 1991 when an inventory was also made of the goods lying in the said shop rooms, from which it will appear that there was virtually nothing remained in the shop rooms even on 15th October, 1991.

12. To the application for interim relief taken out by the plaintiffs an affidavit-in-opposition was filed by the defendant Nos. 2 and 3 claiming for the first time that the defendant No. 1 was not a partner of Akashdeep and he had ceased to be a partner a long time back. The said statement was contrary to the statements made in the appeal filed by the defendant Nos. 1, 2 and 3 on 14th October, 1991. It was farther stated that the possession of the said shop rooms was never handed over by those defendants to the defendant No. 4.

13. The defendant No. 4 filed affidavit stating that the possession had been surrendered by those defendant Nos. 1, 2 and 3 on 31st August, 1991 and on and from 1st September, 1991, the possession of those shop rooms have been delivered to the plaintiffs and on 9th September, 1991 a formal agreement had been entered into by and between the plaintiffs and the defendant No. 4.

14. Ultimately, the learned Single Judge by order dated 12th December, 1991 directed the Receiver to return possession of the said shop rooms A-6 and A-7 to

the defendant Nos. 1 to 3 and he was directed to take constructive possession and with a further direction not to interfere with actual physical possession of the said shop rooms till the disposal of the suit.

15. Thereafter, at the instance of the defendant Nos. 1, 2 and 3 the matter was mentioned before the learned Trial Judge on 16th December, 1991 and the said Trial Court passed a further order recording that a complaint was made to the police and the police took over possession of the said shop rooms and thereafter, it was returned to Dr. Mishra, the defendant No. 2, The Court directed that the actual physical possession was given by the Receiver but was made clear that the Court gave no permission to carry on business.

16. Being dissatisfied with the orders dated 12th December, 1991 and 16th December, 1991, the plaintiffs preferred an appeal in which the order was passed on 20th December, 1991 by which it was recorded that the Receiver was in symbolic possession of the disputed shop rooms upon the undertaking of the defendant Nos. 1, 2 and 3 through Mr. Chatterjee, their learned Counsel, that in the event the appeal succeeded and the Court directed to make over possession to the landlord, Mr. Chatterjee's client would make over such possession to the Receiver or the person concerned as may be directed by the Court and no permanent structure would be created or constructed.

17. The said appeal before the Appellate Court was ultimately disposed of by an order dated 25th March, 1992 by which the Court confirmed the earlier order dated 20th December, 1991 with a modification that the said order would not prevent the defendant Nos. 1, 2 and 3 from carrying on business of the disputed premises subject to further order. It was further made clear that the order would not prevent the defendant Nos. 1, 2 and 3 from constructing a brick wall instead of plywood wall upon their undertaking to Court that such wall should be demolished if directed by the Court.

18. Being aggrieved by the order dated 25th March, 1992, the plaintiffs filed a petition for special leave to appeal before the Supreme Court wherein on 3rd April, 1992 an interim order was passed directing that the status quo in regard to the partition wall should be maintained and the case was directed to be listed before an appropriate Bench. Ultimately, on 7th October, 1992, the Division Bench after hearing the submission of the parties directed that the landlord would supply electricity without prejudice to the rights and contentions pending in the appeal as well as in the SLP pending in the Supreme Court of India and the defendant Nos. 1, 2 and 3 were directed to deposit a sum of Rs. 25,000/- with the landlord for supply of electricity.

19. On 24th October, 1992, the petition for special leave to appeal was heard by the Hon'ble Supreme Court of India and the same was disposed of by directing that the Receiver should remain in symbolic possession of the premises in question and he should allow the parties to carry on business in the respective portions of the premises. It was further directed that no permanent wall

partitioning the premises should be constructed but the Receiver might allow the temporary partition to remain intact. Electric connection, the Supreme Court held, might be taken by the Receiver in his name. It was further held that the occupation of the defendant Nos. 2 and 3 of shop room Nos. A-6 and A-7 and the plaintiffs' occupation of shop room No. A-8 should be allowed to continue pending the suit and the Receiver should collect the rent from the premises in question and give account to the Court.

20. On 6th July, 1992, the Division Bench of this Court passed an order by extending the time for restoration of electricity to the suit premises till 13th July, 1992 and Mr. Arijit Banerjee was discharged on his personal reason and Mr. Ashoke Pal was appointed as Receiver in his place.

21. In the month of March, 1993, the defendant Nos. 2 and 3 filed an application thereby praying for direction upon the respondent No. 4 to carry out necessary repair of internal wiring of the telephone so as to ensure restoration and smooth running, alternatively an order of injunction from restraining the defendant No. 4 from obstructing the necessary repair to the said telephone line. The said application was heard and ultimately a Division Bench of this Court was pleased to pass an order directing the defendant No. 4 to carry on the necessary repair to the concealed or internal wiring of the telephone line so as to ensure restoration and smooth running of the telephone line.

22. On 14th January, 1998 the defendant No. 4 came up with an application before the learned Trial Judge thereby praying for the relief already mentioned earlier.

23. Affidavit-in-opposition was given by the defendant Nos. 2 and 3 thereby contending that the rent and charges relating to the tenancy in respect of shop room Nos. A-6 and A-7 had been duly paid to the learned Receiver and those were being paid on the basis of the last rent and charges paid by the partnership firm to the defendant No. 4. The plaintiffs by a separate affidavit contended that they were prepared to pay all rents that are payable in respect of the shop room No. 8 to the Receiver after adjustment of the amount that have been paid for the shop room Nos. A-6, A-7 and A-8 between the period September, 1991 and March, 1994. As regards the other charges, i.e. service charges, airconditioning charges and generator charges, the plaintiffs expressed their desire to pay all amounts that might be payable in respect of shop room No. 8 only but not on the basis of apportionment.

24. The learned Single Judge, after hearing the learned Counsel for the parties, by order dated 19th June, 1998, disposed of the application by recording the following order:

The Court: Receiver shall visit the premises in question and find out what charges are being paid by all other occupiers/shop owners in respect of the same are held by them. Petitioner shall be at liberty to take all these points at the time of hearing of the suit for adjudication and I make it clear that I have not gone

into the merits of the case.

This application stands disposed of.

Receiver and all parties are to act on a xerox signed copy of this dictated order on the usual undertaking.

25. Thereafter on 24th June, 1998 upon mentioning by the Counsel of the defendant Nos. 2 and 3, the learned Single Judge modified the order in the following terms:

The Court: Let the sentence "Receiver shall visit the premises in question and find out what charges are being paid by all other occupiers/shop owners in respect of the same area held by them" in the first paragraph of the dictated order dated 19.6.98 passed by this Court be deleted.

Let the word "these" after the word "all" in the fifth line of the dictated order dated 19.6.98 passed by this Court be deleted and the word "the" be incorporated in place of and instead of the word "these".

Let the words "in this application" after the word "points" in the fifth line of the dictated order dated 19.6.1998 passed by this Court be incorporated.

Let this order be incorporated in the dictated order dated June 19, 1998 passed by this Court.

Receiver and all parties are to act on a signed copy of the minutes of this order.

26. After such modification, the order dated June 19, 1998, thus, stood as follows:

Petitioner shall be at liberty to take all the points in this application at the time of hearing of the suit for adjudication and I make it clear that I have not gone into merit of the case.

This application stands disposed of.

Receiver and all parties are to act on a xerox, signed copy of this dictated order on the usual undertaking.

27. Being dissatisfied with the aforesaid modified order, the present appeal has been filed.

28. Mr. Surojit Nath Mitra, the learned Advocate appearing on behalf of the appellant, has attacked the order impugned passed by the learned Single Judge on the ground that His Lordship while disposing of the application filed by his client did not take into consideration the contents of the same and rather refused to exercise jurisdiction vested in the Court by not entering into the merit of the dispute between the parties. According, to Mr. Mitra, the learned Court below having appointed a Receiver over the suit property belonging to his client and having permitted the parties to carry on business therein, his client is entitled to

pray before the learned Court for appropriate direction upon the defendants to pay the electricity charges for maintaining the air-condition facility at the prevailing rate fixed by the CESC limited. According to Mr. Mitra, the learned Single Judge did not take into consideration the aforesaid aspect while disposing of the application filed by his client and permitted the defendants to pay the electricity charges at the old rate prevailing in the year 1981 although such charges are being recovered from his client by the CESC at the existing rate, Mr. Mitra, therefore, prays for setting aside the order impugned and for a direction upon the defendants to pay the electricity charges at the enhanced rate till date and go on paying at the prevailing rates during the pendency of the suit. A chart has been relied upon by the appellant by filing affidavit dated June 25, 2008 showing the prevailing rates of charge of consumption of electricity throughout the period during the pendency of the suit and the appellant has also shown the amount payable by the defendants during the entire period even on the basis of their agreement of tenancy of the year 1972.

29. Mr. Anindya Mitra, the learned Senior Advocate appearing on behalf of the defendant/respondents, on the other hand, has opposed this appeal on various grounds set forth below;

1) The relief claimed in the application cannot be granted to the appellant who has not yet filed any suit against the defendants because the interim relief can be granted only in aid of the final relief claimed in the suit.

2) No sufficient material has been filed either before the learned Trial Judge or before the Appellate Court in support of the rate of electricity charges claimed.

3) The electricity charges being payable as part of rent, only the Rent Controller could decide the rate payable by his clients.

4) The appellant, not having accepted the defendants as its tenant, was not even entitled to claim any amount from them as rent or occupation charge, inasmuch as, according to the appellant, the plaintiff is its tenant.

5) Any direction given on the prayer of the appellant would be in violation of the order passed by the Supreme Court which merely directed the Receiver to collect rent.

30. Mr. Ahin Chowdhury, the learned Senior Advocate appearing on behalf of the plaintiffs, has maintained the stance taken by his clients in the affidavit filed by his clients.

31. Therefore, the first question that arises for determination in this appeal is whether the relief claimed in the application filed by the appellant who was the defendant No. 4 in the suit should be refused simply because it was in the nature of an interim relief and that the appellant was not the plaintiff in the suit.

32. In our opinion, the submission of Mr. A. Mitra, the learned Senior Advocate appearing on behalf of the defendant Nos. 2 and 3, that interim relief can only be

granted in aid of final relief claimed in the suit and consequently, should be given only to the plaintiff is not a sound proposition of law.

33. Part IV of the CPC deals with supplemental proceedings and Section 94 contained in that part of the Code is the substantive provision of the Code which gives power to a Court to grant interim relief principally in order to prevent the ends of justice from being defeated. While Clauses (a) and (b) thereof deal with the situations where the relief should be granted only to the plaintiff, the power conferred under the other three clauses viz. (c), (d) and (e) can be exercised at the instance of both the plaintiff and the defendant. Correspondingly, Order 38 to Order 40, mentioned in the First Schedule of the Code, are the procedural parts of Section 94. Although the provisions contained in Order 38 are intended to benefit the plaintiff alone, Order 39 Rule 1(a) can be availed of by both the plaintiff and the defendant. Similarly the power conferred under Order 40 can be invoked at the instance of both the plaintiff and the defendant. The law is equally settled that even in a case where a particular situation does not come within the purview of Order 39 of the Code, the Court, in exercise of its inherent power, can pass such other form of injunction as may be necessary to complete justice between the parties and such power can be invoked also at the instance of the defendant of a suit.

34. In the case of *Vareed Jacob Vs. Sosamma Geevarghese and Others*, , a bench consisting of three Judges of the Supreme Court was dealing with a case where the question was if a suit is dismissed for default and subsequently restored, whether the interim injunction, subsisting in the suit before dismissal for default, is automatically revived with the restoration of the suit. The majority of the Judges answered the question in affirmative, while S.B. Sinha, J answered in negative. While delivering the minority judgement, His Lordship incidentally dealt with the question whether an interim injunction is granted only in aid of the final relief claimed in the suit and the majority view did not express any opinion which was in conflict with those observations of Justice Sinha on that question. Those are quoted below:

54. The Parliament consciously used two different expressions "incidental proceedings" and "supplemental proceedings" which obviously would carry two different meanings.

55. The expression "ancillary" means aiding, auxiliary subordinate; attendant upon; that which aids or promotes a proceeding regarded as the principal.

56. The expression "supplementary proceeding" on the other hand, would mean a separate proceeding in an original action, in which the Court where the action is pending is called upon to exercise its jurisdiction in the interest of justice.

57. The expression "incidental" may mean differently in different contexts. While dealing with a procedural law, it may mean proceedings which are procedural in nature but when it is used in relation to an agreement or the delegated legislation, it may mean something more; but the distinction between an

incidental proceeding and a supplemental proceeding being obvious cannot be ignored.

58. Indisputably, the effect of an order passed under different provisions of Section 94 of the CPC would be different. They have been so legislated keeping in view different exigencies of circumstances but it must not be forgotten that the power there under is to be exercised in the interest of justice. The statutory scheme therefore is that supplemental proceeding should be taken recourse to only when the interest of justice is required to be subserved, although the interlocutory order may not have anything to do with the ultimate decision of the Court.

(Emphasis supplied by us).

34. In the case before us, the dispute is between the plaintiffs in one hand and the defendant Nos. 2 and 3 on the other, on the question whether the defendant Nos. 1 to 3 surrendered their tenancy in respect of room Nos. A-6 and A-7 and thereafter, the plaintiffs were granted a fresh tenancy in respect of the room Nos. A-6, A-7 and A-8 or the plaintiffs' tenancy was limited only to the room No. A-8 and the tenancy of defendant Nos. 1 to 3 was still continuing in respect of room Nos. A-6 and A-7.

35. The plaintiff filed the suit by making the defendant No. 4 as a party so that the dispute could be resolved in the presence of the landlord. In such a suit, the Court has appointed a Receiver who is in symbolical possession and the parties are permitted to carry on their respective businesses without changing the nature and character of the property. Therefore, the plaintiffs and the defendants are now occupying the respective portion under the control of the Receiver and the fate of such possession, it is needless to mention, will abide by the result of the suit. If the plaintiffs succeed in the suit, the defendant Nos. 2 and 3 will be bound to hand over the portion in their occupation in favour of the plaintiffs through the Receiver; similarly if the suit fails, the Receiver would be discharged and the plaintiffs will remain a tenant in respect of room No. A-8 only while the defendant Nos. 2 and 3 will continue with their tenancy in respect of room Nos. A-6 and A-7. The order appointing Receiver over the property has attained finality up to the Apex Court and the parties were directed to maintain status quo as regards the respective possession as mentioned above and the Receiver was directed to collect rent and was also at liberty to take electricity in his own name.

36. Once the Court has appointed a Receiver over the property, in our opinion, the landlord, who is a party to the proceedings, is entitled to approach the Court for direction upon the occupants to pay the electricity charges in accordance with the actual rate at which the landlord is compelled to make payment to the CESC. In the case before us, there is no dispute that it is the defendant No. 4 who is supplying the electricity and the air-condition facility to the occupants and is also making payment of electricity charges to the CESC.

37. We, therefore, find substance in the contention of the appellant that in a

situation like the present one, where the parties are enjoying the electricity and air-condition facility, they should be directed to pay at the existing rate of electric consumption. Both the plaintiffs and the defendant Nos. 2 and 3, claim to be tenant under the defendant No. 4. The defendant Nos. 2 and 3 claim to be governed by the agreement between the parties of the year 1972, which provided for enhancement of electricity charge whereas according to the plaintiffs and the defendant No. 4, those defendants - have already surrendered their tenancy. In such circumstances, the Court having ordered the parties to maintain status quo under the supervision of the Receiver, it is its duty to pass necessary direction upon the Receiver to collect electricity charges at the prevailing rates for the time being when even according to the defendant Nos. 2 and 3, the rent is separated from the electricity charges which is a variable figure.

38. The decision of the Supreme Court in the case of Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others, , relied upon by Mr. A. Mitra, learned Senior Advocate for the defendant Nos. 2 and 3, in our opinion has no application to the facts of the present case. In the said case, the appellant, society, filed a suit in the Court of Second bench, City Civil Court, Calcutta against the respondents claiming, inter alia, declaration that the first respondent ceased to be the Assistant Teacher and Headmaster of the boys school; that respondent Nos. 2 and 4 to 6 ceased to be the members of the society; and the fifth respondent ceased to be the member of the Executive Committee of the society. It also sought temporary injunction restraining them from entering into school premises and causing any interference in the functioning of the school. On January 29, 1998, the Trial Court granted the injunction sought for by the society. The respondents filed the appeal against that order. On 18th September, 1998, a Division Bench of the Calcutta High Court set aside the order of injunction granted by the City Civil Court, and appointed two Joint Administrators in place of the society's Managing Committee, trust and also issued certain consequential directions and thus, disposed of the appeal. It is the validity of that order that was assailed in the appeal before the Supreme Court.

39. In that context, the Supreme Court observed as follows:

We have perused the order of the High Court under appeal as well as the order of the Trial Court. The High Court observed that:

(i) the Trial Court perhaps did not apply its mind properly or carefully to the important aspect of the matter and yet in the absence of any prima facie case having been established by the respondent in this suit, granted temporary injunction in favour of the plaintiff and passed the order of restraint against the respondents, including the appellants before it; (ii) valuable rights of the defendants relating to the holdings of offices were under adjudication before the Trial Court and yet without prima facie coming to even a provisional conclusion as to whether they had ceased to hold such office the temporary injunction was granted; and (iii) the Trial Court did not even satisfy about the correctness of the claim of the plaintiffs in this suit or for that matter, the person claiming to the

Secretary of the society.

Having gone through the order of the Trial Court dated January 29, 1998 we noticed the following findings:

(1) It has been alleged by the contesting OPs. that I.P. Manot who has verified the plaint has since been expelled from the secretary ship, but on perusal of the documents at present the said allegation cannot be accepted....The rules and regulations and special rules of the petitioner have also been challenged by the contesting OPs. but I find nothing to accept the said allegation at this stage.

(2) The service of O.P. No. 1 as Headmaster was terminated by resolution of the Executive Committee of petitioner. That OP claims that he is still the headmaster. I find from the materials on record that his service as Headmaster was terminated and O.P. No. 6 was appointed Teacher-in-Charge to discharge the functions of the Headmaster. At present there is nothing to suggest that there is substance in the said of O.P. No. 1. It has been submitted before me on behalf of petitioner that in a suit being T.S. No. 1197 of 1997 of this Court which was instituted by O.P. No. 6 at present before us, that O.P. No. was injuncted and the said order of injunction passed by this Court recently was confirmed by the Hon"ble Court. The said submission has not been disputed from the end of the contesting OPs.. On perusal of the materials before us in this case I am of the opinion that there are prima facie materials to substantiate the allegations made against O.P. No. 1. (3) Regarding O.P. Nos. 2 to 5 they have since been suspended/expelled by resolution of the Executive Committee of petitioner. There is nothing to suggest that the said suspension/expulsion has been set aside by any competent authority. On perusal of the materials before us I am of the opinion that there is prima facie case against them.

The Trial Court further recorded the finding:

Petitioner has been successful, in my opinion, to establish the prima facie cases in its favour. I am of the opinion that if the order of temporary injunction, as prayed for, is not passed the interest of petitioner as well as students, staff and guardian will be adversely affected in view of the fact that the allegations against O.P. Nos. 1 to 5 which have been established prima facie are very serious. In view of that I am inclined to allow the instant petition for temporary injunction.

It may be pointed out that it is one thing to conclude that the Trial Court has not recorded its prima facie satisfaction on merits but granted the temporary injunction and it is another thing to hold that Trial Court has gone wrong in recording the prima facie satisfaction and setting aside that finding on the basis of the material on record because it has not considered the relevant material or because it has erroneously reached the finding or conclusions on the facts established.

In the first situation, the Appellate Court will be justified in upsetting the order under appeal even without going into the merits of the case but in the second

eventuality, it cannot set aside the impugned order without discussing the material on record and recording a contrary finding. The High Court proceeded to set aside the order of the Trial Court on the first ground ignoring the aforementioned findings of the Trial Court, the order under appeal is, therefore, unsustainable.

40. After recording the aforesaid observations, the Supreme Court in paragraph 19 made the following statements which were strongly relied upon by Mr. A. Mitra:

We may observe that in an adversarial litigation the relief has to be granted to the parties based on their pleadings. No relief should be granted in interlocutory proceedings beyond the scope of the suit. It may be noted that the present suit out of which the appeal has arisen was filed by the appellant society for declaration and injunction, the suits filed by the contesting respondent Nos. 2, 4 to 6 challenging their expulsion from the society, were dismissed except the suit of respondent No. 4, which is pending. No material is placed before us to show that any relief is granted to him in that suit. No legal proceeding has been filed by any of the contesting respondents either under the Societies Registration Act or any other law applicable to the society for appropriate relief in respect of the management of the society and the schools run by it. Though we share the concern of the High Court that the rival groups are fighting with each other and 60 cases are pending in various Courts, in these circumstances of the case, in our view, ousting the Managing Committee from the management of the society and the schools run by it and appointing the joint administrators would neither be legal nor just and proper. The principle laid down in the aforementioned cases will, therefore, be inapplicable. For these reasons, we are not inclined to continue administration of society/trust by the joint administrators pending disposal of the appeal by the High Court.

41. It is therefore apparent that in the said case, the Supreme Court did not approve the order of the High Court in ousting the existing Managing Committee of the plaintiff and placing the same in the hands of the administrators although such an order was passed by the High Court in an appeal preferred by the defendants who suffered an order of injunction on an application filed by the plaintiff. The High Court in such a situation was required to decide whether the order passed in favour of the plaintiff was in accordance with law and if the order was illegal, the High Court could, at the most, set aside the order of injunction; but there was no scope of removing the existing Managing Committee of the plaintiff from the management of the society as the same was beyond the scope of the suit. In the case before us, the order of appointment of Receiver over the property has already attained finality up to the Apex Court and in such circumstances, the defendant No. 4, the owner of the property, has come up with an application for passing necessary direction upon the Receiver for proper implementation of the earlier order and such prayer is always maintainable. Therefore, the principles laid down, in the case of *Sree Jain Swetambar*

Terapanthi Vid (supra), has no application to the facts of the present case. At this juncture, we cannot help mentioning the following well-settled proposition of law reiterated by the Supreme Court in the case of Punjab National Bank Vs. R.L. Vaid and Others, ;

There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks the path of justice, but you must cut out the dead wood and trim off the side branches else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents.

42. The decision of the Supreme Court in the case of Sree Jain Swetambar Terapanthi Vid(S) v. Phundan Singh and Ors. (supra), is, thus, of no assistance to the defendant Nos. 2 and 3.

43. The other decision cited by Mr. A. Mitra, viz. Vipin Bhimani and Anr. v. Sunanda Das and Anr. reported in AIR 2006 SC 209, is equally inapplicable to the facts of the present case. In that case, a Division Bench of this Court held that the plaintiff having failed to prove prima facie case and the suit filed by him being prima facie not maintainable, no relief by way of temporary injunction could be granted in favour of the plaintiff. In the case before us, an order of appointment of Receiver, an interlocutory order, has already been affirmed up to the Apex Court and as a consequence to such order, by filing an application, the appellant has prayed for direction upon the Receiver to collect electricity charges in accordance with the prevailing rates. Thus, we are unable to appreciate how the said decision can be of any avail to Mr. Mitra's clients.

44. We also do not find any substance in the contention of Mr. A. Mitra, the learned Senior Advocate appearing on behalf of the defendant Nos. 2 and 3, that the dispute can only be resolved by the Rent Controller. The defendant No. 4 has not recognised the defendant Nos. 2 and 3 as its tenant in this suit and at the same time, has not claimed any rent from those defendants but has prayed for direction upon the Receiver already appointed to realise the electricity charge for the amenity supplied to them by virtue of the order of status quo. The Court, passing direction for preservation of status quo and appointment of Receiver, is entitled to pass appropriate direction to the Receiver regarding realisation of the electricity charges in addition to the admitted amount of rent and the service charge offered by the defendant Nos. 2 and 3. The other contention of Mr. Mitra, the learned Senior Advocate for the defendant Nos. 2 and 3, that any direction passed on the application will amount to violation of the order of the Supreme Court is equally devoid of any substance. The Supreme Court has upheld the order appointing Receiver and maintenance of status quo and no direction has been passed prohibiting collection of electricity charges at the prevailing rate in

addition to the rent which admittedly does not include air-conditioning charges. Therefore, there is no impediment in passing suitable direction for payment of electricity charges at the prevailing rates during the pendency of the suit. In this case, it is established from the materials on record that the defendant Nos. 2 and 3, by virtue of their admitted agreement of tenancy, were liable to pay air-conditioning charges in accordance with the prevailing rates in addition to the agreed amount of rent and service charge. Therefore, the variable amount of electricity charges cannot be said to be rent within the meaning of Section 17 of the West Bengal Premises Tenancy Act, 1956 and thus, claim of electricity charges at the rate subsequently increased by the CESC cannot amount to the prayer of re-fixation of the fair rent within the meaning of the Act and consequently, invocation of the jurisdiction of the Rent Controller in this situation, as suggested by the learned Counsel for the defendant Nos. 2 and 3, is not tenable in the eye of law.

45. The next question is what will be the amount payable by the occupants.

46. So far the plaintiffs are concerned, they are bound by their agreement for tenancy of the year 1991 with the defendant No. 4 as regards the mode of payment of rent and other charges but having regard to the fact that they are in possession of only room No. A-8 by virtue of the order passed by the court, in our opinion, for the time being, they should be asked to pay the proportionate amount of charges in comparison to the total area covered by the room Nos. A-6, A-7 and A-8, which was the subject-matter of their agreed tenancy subject to the final decision of the suit, out of which the present appeal arises. They should, however, get adjustment of the excess amount, if any, paid to the defendant No. 4 in the meantime in accordance with the agreement for the full area. From the affidavit filed by the plaintiffs, we find that they have also agreed to pay such amount for the room No. A-8 after adjustment of the excess amount, if any, already paid subject to the decision of the suit.

47. As regards the amount payable by the defendant Nos. 2 and 3 are concerned, they, in our opinion, cannot at this stage be compelled to pay at the rate mentioned in the agreement between the plaintiffs and the defendant No. 4 as they are admittedly not parties to such agreement. But they cannot evade their liability to pay at least the amount agreed to in their agreement of the year 1972 even if they succeed in this suit in the long run. If they ultimately fail, the Court can ask them to pay additional amount on the basis of actual market rent for the benefit they enjoyed by virtue of the interim order passed by the Court. Therefore, at this stage, the defendant Nos. 2 and 3 should be asked to pay the enhanced air-conditioning charges in accordance with the mode of enhancement prescribed in the agreement between the parties of the year 1972.

48. From the report submitted by the learned Receiver, it appears that the defendant Nos. 2 and 3 have been paying a fixed amount of Rs. 125/- a month as rent, Rs. 42/- as service charges and Rs. 797.01 as air-conditioning Charges for the area of 236 sq. feet enjoyed by them since 1992 after the court directed

the learned Receiver to handover such portion. The basis of such figure of Rs. 797.01p., however, has not been disclosed by the defendant Nos. 2 and 3. From the short notes of submission made by those defendants, it, however, appears that they have accepted the position that at the time of induction in the year 1972, the air-conditioning charges was Rs. 170/- a month and that it was agreed that the said charges would automatically increase in the ratio equal to the ratio of increase of the rates of electricity charges as per High Tension Rates of CESC and that the tenant would pay monthly air-conditioning charges at such increased rate. They, nonetheless, contended that the rate of Rs. 170/- a month was fixed when the rate of charges of electricity fixed by the CESC was 27.75 paise per unit. It appears from the affidavit affirmed on June 25, 2008 on behalf of the appellant that in the year 1972, the rate was really 14.20 paise per unit which was increased to 18 paise per unit from November 29, 1973 and consequently, the air-conditioning charges were increased from Rs. 170 to Rs. 215.49, the increased rate being 26.76%. Subsequently, from May 16, 1974, the rate was increased to 22.90 paise per unit and the charges were increased to Rs. 274.15. Again from April 1, 1975, the rate was increased to 26.63 paise per unit and the consequent charges were increased to Rs. 318.74 and payment at such rate is supported by the receipt annexed. In the said affidavit, subsequent increases of the rate up to June 1, 1981 and the receipts showing realisation at such increased rates have been annexed and the genuineness of those receipts has not been disputed by the defendant Nos. 2 and 3. From June 1, 1981, the defendant Nos. 2 and 3 stopped making payment of rent and charges to the defendant No. 4. Therefore, it is established from those documents that the initial rate of Rs. 170/- as Air-conditioning charges was fixed when the rate of consumption was 14.20 paise per unit and the Annexure C to the said affidavit, in details discloses the amount payable by the defendant Nos. 2 and 3 towards air conditioning charges at the different prevailing rates of consumption charge for the period from June, 1992 till May, 2008. According to such calculation, the total amount of air-conditioning charges comes to Rs. 10,74,115.59 paise. If we calculate at the last rate of Rs. 7043.43 paise a month for further four months, the total amount of air-conditioning charges comes to Rs. 10,74,115.59 + (Rs. 7043.43 x 4) = Rs. 11,02,289.31 paise up to September, 2008. It appears that the defendant Nos. 2 and 3 have deposited the total amount of Rs. 797.01 x 196 = Rs. 1,56,213.96 paise at the rate of Rs. 797.01p towards air-conditioning charges up to September, 2008. Therefore, the defendant Nos. 2 and 3 should be directed to pay the balance amount of Rs. 11,02,289.31p - Rs. 1,56,213.96p Rs. 9,46,075.35p with interest at the rate of 8.33% per annum from the date the same was payable till actual deposit before the learned Receiver.

49. The defendant Nos. 2 and 3 being in occupation of the rooms under the Receiver appointed by the Court, the law of limitation does not stand in the way of the Court in passing appropriate direction upon the learned Receiver for collecting the said amount payable for the consumption of electricity by the defendant Nos. 2 and 3 during the period of protection given by the Court

subject to the final decision of the Court. The learned Receiver will pay the amount to the defendant No. 4 who has admittedly made payment of the air-conditioning charges consumed by the defendant Nos. 2 and 3 after the interim order passed by the Court.

50. The amount be paid within two months from today. The defendant Nos. 2 and 3 will henceforth go on paying the monthly air-conditioning charges at the rate of Rs. 7043.43p. so long the charges are not further increased by the CESC.

51. Similarly, the plaintiffs will go on paying in accordance with their agreement with the defendant No. 4 in respect of the proportionate area they are now in possession of by virtue of the order of the Court. The arrears, if any, after adjustment of the amount paid by them for the full area, be paid within two months from today.

52. The appeal is, thus, allowed to the extent indicated above. The order impugned is set aside. The application filed by the appellant in the Trial Court is disposed of in terms of this order. As the learned Single Judge did not enter into merit and the application is pending for about 10 years, we have instead of remanding the matter, passed this direction by calculating the dues up-to-date. In view of disposal of the appeal itself, all pending applications in this appeal are treated to have been disposed of by this order. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

I agree.