

(2021) 04 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : CM(M) No. 44 Of 2020, CM No. 2075, 2076 Of 2020

Commissioner State Taxes And Anr

APPELLANT

Vs

Zaffar Abass Din

RESPONDENT

Date of Decision : 20-04-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80
Constitution Of India, 1950 — Article 227

Citation : (2021) 04 J&K CK 0037

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Sajad Ashraf, Fayaz Ahmad Sodagar

Final Decision : Allowed

Judgement

1. Petitioners herein have filed instant petition under Article 227 of the Constitution of India while seeking setting aside of orders dated 18.02.2020 and 12.03.2020 (for short impugned orders) passed by Principal District Judge, Anantnag (for short trial court).

2. Facts those emerge from perusal of the petition reveals that the petitioners herein on account of floods of 2014 shifted from the Office Complex of Deputy Commissioner, Anantnag, to a private building of the respondent herein upon being taken on rent.

3. It is being stated that during the pendency of the case of the building of respondent herein taken on rent by the petitioners, before the Rent Assessment Committee, Anantnag, a civil suit came to be filed by the respondent herein for recovery of arrears of rent amounting to Rs. 1,00,97,767,50/- along with the interest @ 16% on the ground rent due from 01.11.2014 till February 2020 as also future rent.

4. It is being stated that in the application for interim relief accompanied with the said suit, trial court passed impugned order dated 18.02.2020 directing the

parties to maintain status quo on spot with respect to the suit property.

5. It is being stated that during the pendency of the suit and application for interim relief, respondent herein filed an application on 12.03.2020 before the trial court seeking a direction that the defendant-petitioners herein be directed to pay the balance amount of arrears of rent upto February 2020. The trial court is stated to have endorsed on the said application an order on 12.03.2020 as under:-

"Copy of application forwarded to non-applicant no. 2 for compliance by or before 23.03.2020".

6. The above orders dated 18.02.2020 and 12.03.2020 impugned in the instant petition are being challenged inter alia amongst others on the grounds that the same have been passed against law and facts inasmuch as are contrary to the provisions of law and that the reliefs granted in terms of impugned order could not have been granted in favour of the respondent and that the impugned orders have caused grave and serious prejudice, loss and injury to the petitioners and that impugned orders have been passed while adopting an alien procedure and that the impugned orders have been passed in the application for interim relief accompanying the suit being not maintainable owing to non-issuance of notice under section 80 CPC and that impugned orders as well as the proceedings conducted by the trial court are contrary to the provisions of law so on and so forth.

7. Heard learned counsel for the parties and perused the record.

8. Perusal of the record reveals that the respondent herein has filed a suit for recovery of arrears of rent seeking following reliefs:

1. A decree for Rs. 10097767/- with interest @ 16% as rent dues from 01.11.2014 till February 2020 and future rent in favour of plaintiff.

2. A decree/order for payment of future rent dues be also passed against the defendants in favour of plaintiff.

3. Costs of the suit be awarded against defendants and, in favour of plaintiff.

4. Any other and further relief as this Hon'ble Court may deem fit and proper in the circumstances of the case be also issued in favour of plaintiff, against defendants.

9. Perusal of the application for interim relief accompanying the suit would reveal that the plaintiff-respondent herein prayed that till final disposal of the main suit the moveable property in the office of defendant no.2 (in the demised premises) in the shape of office files, documents, furniture etc be attached and also the defendants/non-applicants be directed not to shift their office to some other areas from the demised premises at Khanabal belonging to applicant/plaintiff till final disposal of the main suit.

10. The moot point that emerges for consideration of this Court would be as to whether in the facts and circumstances of the case, the trial court could have passed the impugned orders in a suit seeking recovery of arrears of rent.

11. Law is settled that power to grant injunction is extra ordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to an interim relief as a matter of right. Grant of injunction is discretion of the court and such discretion has to be exercised in favour of the plaintiff only if the court is satisfied that unless the defendant is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff.

12. The court grants injunction to meet the ends of justice. Power to grant injunction is equitable. Being an equitable relief, before deciding an application for interim relief, a court of equity would exercise discretionary power in granting temporary injunction normally applying three golden principles viz:-

- i. Whether plaintiff-respondent herein has a prima facie case;
- ii. Whether the balance of convenience is in his favour; &
- iii. Whether he would suffer the irreparable injury if his prayer for injunction is disallowed.

13. The aforesaid three principles described as three pillars on which foundation of every order of injunction rests are of extreme importance.

14. Law is also settled that all the three aforesaid principles must co-exist i.e all of them must be present. If one or more are not there, no interim injunction can be granted. All the three principles in law are required to be examined independently and not interdependently.

15. A reference in regard to above to the judgment of Apex court passed as Best Seller Retail (India) Pvt. Ltd. V.s Aditya Birla Nuvo Ltd. & Ors., reported in AIR 2012 SC 2448, would be advantageous and appropriate herein wherein at para 14 following has been noticed and observed.

Yet, the settled principle of law is that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable. In *Dalpat Kumar & Anr. V. Prahlad Singh & ors.* {MANU/SC/0715/1991: (1992) 1 SCC 719} this Court held: Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages.

16. The perusal of the instant case manifestly demonstrates that the plaintiff-respondent herein is seeking recovery of rent qua the demise premises stated to be under the occupation of the petitioners. The rent so claimed is quantified and measured.

17. The amount of money claimed by way of rent by the plaintiff-respondent herein is ascertainable and in the event the plaintiff succeeds in the suit, he can be compensated appropriately thereof for the use and occupation of the premises by the defendant-petitioners herein.

18. In this view of the matter it can safely be said that the plaintiff-respondent herein could not suffer an irreparable loss and injury in the event the injunction/interim relief as prayed is not granted.

19. The trial court while passing impugned orders has grossly erred and observed the aforesaid golden principles and the law laid down by the apex court in breach while granting injunction.

20. Although the impugned orders are appealable yet going by the principles and proposition laid down by the Apex court qua exercise of supervisory jurisdiction under Article 227 of the Constitution of India in the case titled as Shalini Shayam Shetty & Anr Vs. Rajendra Shankar Pati, reported in 2010 (8) SCC 3291, & Radhey Shyam and Anr. V.s. Chhabinath & Ors, reported in 2015 (5) SCC 423, it is manifest that the trial court has failed to be within the bounds of its authority warranting exercise of supervisory jurisdiction.

21. Viewed thus what has been observed, considered and analyzed hereinabove the petition is allowed and impugned orders are set aside. The trial court, however, is free to reconsider and revisit the application for interim relief afresh after affording an opportunity of hearing to the defendant-petitioners herein.

22. It is however made clear that nothing hereinabove shall be construed to be expression of any opinion about the merits of the case.