
(1992) 11 GUJ CK 0004
In the Gujarat High Court

Dhirajlal Vithaldas Kavaiya

APPELLANT

Vs

Rasiklal Chandulal Patel

RESPONDENT

Date of Decision : 15-11-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151, 151

Citation : (1993) 1 CivCC 264 : (1993) 1 GLR 206

Hon'ble Judges : C.K. Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker, J.—This revision application is filed against an order below applications Exs. 5 and 15 in Rent Suit No. 8 of 1989 passed by the Court of Small Causes, Baroda and confirmed by the Assistant Judge Baroda in Misc. Civil Appeal No. 193 of 1989.

2. To appreciate the controversy in question few relevant facts may now be stated.

The petitioner is the original defendant while the opponent is the original plaintiff. The plaintiff filed a Rent Suit No. 8 of 1989 in the Court of Small Causes, Baroda. It was his case that he was tenant of the defendant and was doing business in selling and repairing electric motors in the name and style of "Baroda Winding Corporation". The suit shop is situate at Varaimata Chowk, Lakkad Pitha, in the City of Baroda. The defendant, who was having a shop adjacent to the disputed shop, wanted the plaintiff to vacate the suit shop and hence was harassing the plaintiff. The plaintiff, therefore, filed the above suit for declaration that he was the tenant of the suit shop and the defendant was not entitled to deprive him of legal possession. He also prayed for permanent injunction restraining the defendant from interfering with possession of the plaintiff. Alongwith the plaint he filed an application, Exh. 5 for interim injunction under the provisions of Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). The prayer was granted by the learned Judge and after hearing Advocate for the other side status quo was ordered to be

continued. It was the case of the plaintiff that violating that interim order, the defendant broke open the lock of the plaintiff and applied his own lock as also sealed the shutters by welding. He, therefore, filed application Exh. 15 for mandatory relief directing the defendant to hand over possession of the suit shop to him.

3. The defendant resisted the suit as well as applications Exhs. 5 and 15 by filing a consolidated reply at Exh. 18, inter alia contending that the plaintiff was not the tenant of the suit shop and he had no right to remain in possession of the property. Allegations of breaking open of the lock have been denied and it was contended that the plaintiff agreed to hand over possession of the suit shop to the defendant and did hand over possession of the shop on January 1, 1989. Possession receipt (Kabaja Pavati) was also executed by him. Some goods belonging to the plaintiff were lying in the shop and the defendant permitted the plaintiff to take away the goods subsequently. It was, thus, averred that the plaintiff voluntarily handed Over possession of the suit property to the defendant and, therefore, both the applications were required to be dismissed.

4. The learned Judge after hearing the learned Counsel for the parties and after appreciating evidence-documentary as well as oral-came to the conclusion that there was prima facie case in favour of the plaintiff that he was tenant of the suit property; balance of convenience was in his favour and-irreparable injury would be caused to him if injunction would be refused. He was, therefore, of the opinion that the plaintiff was entitled to interim relief. Regarding the prayer in Application Ex. 15, the learned Judge held that looking to the documentary evidence, including panchnama drawn at the instance of the Court Commissioner, it appeared that the plaintiff had not handed over possession to the defendant on 1st of January, 1989, as asserted by the defendant and the possession receipt appeared to be fraudulent and of a doubtful nature. In view, of that finding, the learned Judge allowed both the applications by making the-rule absolute continuing interim relief till the disposal of the suit and also directed the defendant by mandatory injunction to break open lock and welding applied by him on the shutter of the suit shop and to hand over possession of the. shop to the plaintiff.

5. Being aggrieved by that order, the defendant preferred Misc. Civil Appeal No. 193 of 1989. Agreeing with the trial Court, the appellate Court also dismissed the appeal and confirmed the order and direction issued by the trial Court. It is against this order that the present revision application is filed by the defendant.

6. Mr. P. B. Majmudar, learned Counsel for the petitioner contended that a jurisdictional error is committed by the Courts below in ignoring the fact that possession of the suit shop was handed over by the plaintiff to, the defendant on January 1. 1989 and it was, therefore, not open to the Courts below either to grant prohibitory relief in application Exh. 5 or mandatory relief in application Exh. 15. He submitted that the orders were clearly in excess of jurisdiction. In the alternative, he submitted that when possession was not with the plaintiff, the

Courts below ought not to have directed the defendant to hand over possession of the suit shop by a mandatory direction. Instead, the Courts should have applied their seal by keeping the key in custody of the Court till the final disposal of the suit. He also submitted that when there is a documentary evidence in the form of possession receipt said to have been executed by the plaintiff in favour of the defendant, the Courts below had no jurisdiction to grant mandatory relief as sought by the plaintiff. Finally, Mr. Majmudar stated that revision application is admitted as early as in January 1990 and status quo is ordered to be maintained since then. This Court may, therefore, continue that position and may direct the trial Court to dispose of the suit instead of directing the petitioners to hand over possession to the plaintiff.

7. Mr. A. J. Patel, learned Counsel for the opponent, on the other hand, supported the order passed by the trial Court and confirmed by the Appellate Court. He submitted that the Courts below have rightly come to the conclusion that prima facie the plaintiff was right in submitting that possession receipt was forged one and could not be solely relied upon. In view of that finding, if the Courts below have ordered restitution of possession to the plaintiff by directing the defendant to implement the interim order which was passed after hearing,, both the parties, no fault can be found against that order. He finally submitted that the petitioner has invoked jurisdiction of this Court u/s 115 of the Code. As per settled law, even if the conditions laid down in Section 115 are satisfied, the High Court may refuse to exercise discretion if there is no miscarriage of justice. The impugned order is clearly in the interest of justice, and does not require interference under the revisional jurisdiction of the Court.

8. Having gone through the order passed by the trial Court as well as by the Appellate Court, I am of the opinion that there is no merit in this revision application and the orders passed by the Courts below are not required to be disturbed. From the record, it clearly appears that the relations between the parties were strained. A suit came to be filed by the plaintiff and interim relief was granted in application Exh. 5." It also seems to me that the Courts below were right in observing that ordinarily in such a situation the plaintiff would not hand over possession of the property to the defendant. Again, other circumstances have also been considered including the documentary evidence in the form of panchnama and Commissioner's report dt. January 4, 1989. From the documentary evidence, it clearly transpires that the story put forward by the defendant that the plaintiff had voluntarily handed over possession of the suit shop to him cannot be believed. It is clear that a number of articles belonging to the plaintiff were found in the suit shop. A blank cheque book and telephone were also present. For preparation of the panchnama, when the Commissioner approached the suit shop on January 4, 1989, it was found that there was a wooden partition between the shop of the plaintiff and the defendant. There was a door in the partition but it was closed from the side of the suit shop occupied by the plaintiff. There was another door also. But even that door was found closed from inside the suit premises. Now had the plaintiff handed over

possession of the suit shop to the defendant on January 1, 1989 as asserted by the defendant, in all probability, the defendant would have opened both the doors and they would not have been found closed from the plaintiffs side. Again, had the possession of the suit shop handed over by the plaintiff to the defendant as contended by him on 1st January, 1989, normally, the defendant would not allow the plaintiff thereafter to put any article in the suit shop. Looking to the " panchnama "however, it appears that certain goods purchased by the plaintiff on 3rd January, 1989 were also found from the suit shop. The Courts below also considered the possession receipt and observed that prima facie the contention of the plaintiff that the defendant had taken undue advantage of some writing or forged his signature could not be ruled out and, therefore, did not place reliance on it. In my opinion, the finding cannot be said to be without jurisdiction or in excess of jurisdiction and, therefore, cannot be disturbed in exercise of revisional jurisdiction u/s 115 of the Code.

9. The question then remains whether the Courts below were justified in directing the defendant to hand over possession of the suit shop to the plaintiff during the pendency of the proceedings by breaking open lock and welding applied by the defendant on the shutter of the suit shop as ordered by them. Mr. Majmudar vehemently contended that when the plaintiff is dispossessed, no such order of a mandatory nature could have been passed by the Courts during the pendency of the proceedings and the defendant ought to have been allowed to remain in possession. In the alternative, he submitted that the Courts should have taken custody of the suit shop and should not have allowed either the plaintiff or the defendant to use the premises till final disposal of the proceedings. On the other hand, Mr. A. J. Patel submitted that when the Courts have recorded a finding that in spite of interim order passed by it the plaintiff was dispossessed, it was not only power but the duty of the Court to see that the order is implemented and if such order is passed by the Courts, no objection can be taken by the petitioner.

10. In my opinion, the direction issued by the trial Court and confirmed by the Appellate Court does not require any interference or modification.

11. A number of High Courts have held that in such circumstances, by exercising inherent powers u/s 151 of the Code, the Court can direct the party who is at fault to remedy wrong committed by him by granting appropriate relief to the aggrieved party. In Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others, , a Division Bench of the High, Court of Allahabad held that if a party is dispossessed after the order of interim injunction is issued in his favour, the chapter cannot be said be "closed". If a person has been dispossessed by willfully disobeying the order of injunction, the Court which has issued the order of injunction, can undo wrong done to the party in whose favour the, order of injunction had been made. The exercise of inherent power vested in the; Court is based on the principle that no party can be allowed to take undue advantage of his own wrong. In Satish Chandra Maity Vs. Sm. Saila Bala Dassi and Others, , it

was held that a party cannot be allowed to illegally reap the fruits of his misdeeds and unlawful actions. If the party has taken undue advantage and by violating the order of the Court has dispossessed the other side, it is the duty of the Court to do justice to the aggrieved party by vindicating his right and by restoring him possession. An ingenious argument was advanced before the High Court of Rajasthan in *Magna v. Rustam* reported in AIR 1963 Rajasthan 8. It was contended that if during the pendency of the suit, the order of injunction was violated, it might warrant penalty for disobedience of the provisions of Rule 2(3) of Order 39 of the Code. But there was no scope for exercise of inherent power by the Court. The contention was, however, negatived by the Court holding that imposition of penalty on the party guilty of the disobedience does not provide any relief to the party in whose favour the order of temporary injunction was passed. The object of such an order is to safeguard the rights of a party against a threatened invasion by the other side. In such situation, therefore, the Court can exercise inherent powers.

12. A similar view was taken by the High Court of Kerala in *Kochira Krishnan Vs. Joseph Desouza*, . In that case also, rejecting a similar argument, the Court held that any action by which the process of the Court was attempted to be thwarted had to be viewed seriously. If an order of injunction was violated, that violation had to be dealt with sternly and seriously, for. Otherwise, it would undermine the very basis of the Rule of Law. The Court in such an eventuality could direct compliance of order. Such an action might also be punishable under the provisions of Order 39 Rule 2-A of the Code. The same view has been reiterated recently by the same Court in *Lakshmikutty Amma Retnamma Vs. P.N. Krishna Pillai and Others*, .

13. An interesting situation arose before this Court in *Bhupatlal Govindji Vs. Bhanumati Dayalal*, . The plaintiff filed a suit against the defendant for declaration that she was tenant and occupier of the cabin situated in the City of Jamnagar and the defendant had no interest therein. Since the defendant attempted to interfere with her possession, she prayed for injunction which was granted. During the pendency of the suit, the injunction operated. The trial Court, however, dismissed the suit holding that the plaintiff had failed to prove that she was a tenant. Interim injunction came to be vacated with the dismissal of the suit. Against that decree, the plaintiff filed an appeal and obtained interim relief. But during the interregnum, namely, the period between dismissal of the suit and filing of the appeal, the defendant put some articles in the cabin and applied his lock. The District Court allowed the appeal and held that the plaintiff was tenant of the suit property. Consequently, the Court granted mandatory injunction and directed the defendant to put the plaintiff tenant in possession of the premises by removing locks. The said order was challenged by the defendant by filing Second Appeal in this Court. Dismissing the appeal, the single Judge of this Court (R.H. Bhatt, J.) held that when the plaintiff was in possession of the property during the pendency of the suit tillad interim relief granted in her favour came to be vacated because of the dismissal of the suit and before she could get

the injunction from the Appellate Court the decree came to be executed and the defendant applied his locks and stepples, the Court could restore status quo ante by directing the defendant to restore possession to the plaintiff. In the opinion of this Court, an act of taking over possession by the defendant during interregnum of about 9 days, when the injunction did not operate could be said to be taking undue advantage by him because of the procedural delay in the system of the administration of justice. In view of such situation, the direction of the Appellate Court to the defendant to hand over possession to the plaintiff was not disturbed by this Court.

14. In my opinion, the instant case stands on a stronger footing. To recall the facts stated in earlier part of the judgment, both the Courts have held that there is a prima facie case in favour of the plaintiff and, therefore, have granted interim injunction in an application Exh. 5. It is the case of the plaintiff that though status quo was continued by the trial Court after hearing the learned Counsel for both the sides, the defendant without consent and knowledge of the plaintiff and by taking law in his hand disturbed the possession of the plaintiff by applying his lock. He, therefore, filed an application Exh. 15 for mandatory relief directing the defendant to hand over possession of the suit shop to him and the said application came to be allowed by both the Courts. It seems clear to me that the orders passed by the Courts below must be allowed to operate. The possession of the plaintiff during the pendency and final disposal of the suit requires to be protected. If the defendant will be allowed to remain in possession, it would be permitting the defendant to take undue advantage of his own wrong. That situation cannot be allowed to operate. Similarly, the request of the learned Counsel for the petitioner that the premises may be kept locked by keeping the key in the custody of the Court would also tantamount to denial of granting relief to the deserving party. When the Courts have recorded a finding that possession receipt said to have been issued by the plaintiff in favour of the defendant, could not be said to be genuine the defendant could not have disturbed the possession of the plaintiff. As per settled law, if a party is dispossessed after an order of interim relief is granted in his favour by a competent Court, the chapter cannot be said to be closed. If a person is dispossessed by willfully and intentionally violating the order of injunction, it is not only the right but the duty of the Court to undo wrong done to the party in whose favour it has passed such order. The exercise of inherent powers u/s 151 of the Code are based on doctrine that no party can be allowed to take undue advantage of his own wrong. A party who has committed illegality cannot be allowed to reap fruits of his unlawful action and the Court must intervene by preventing him from doing so as also by protecting an innocent party and by safeguarding his interests. The provisions of Order 39 Rule 2A of the Code are not an answer in such cases to deprive a party to legitimate benefits to which he is otherwise entitled. The person who has violated the order of the Court may also be held liable for disobedience of such order and may be punished but that will not be a ground to deny an appropriate relief to the party to whom injustice

is done. If the Court does not exercise inherent powers in such cases and remains a silent spectator, it would undermine the very basis of the Rule of Law. In my judgment, such a situation must be dealt with seriously and sternly by directing the party who has committed breach or violation of the order to comply with the order forthwith.

15. In my opinion, therefore, the Courts below have not committed any error in granting relief in favour of the plaintiff and all the contentions of the petitioner must be rejected.

16. The matter can be looked at from a different angle also. As per well settled principle of law, the exercise of revisional jurisdiction by the High Court is discretionary and the High Court is not bound to interfere merely because any of the conditions laid down in Clauses (a), (b) or (c) of Section 115 is satisfied. The petitioner, for invoking revisional jurisdiction of this Court, will have to show not only that there is a jurisdictional error in the order passed by the subordinate Courts, but also that interest of justice calls for interference. The revisional power u/s 115 of the Code are intended to be exercised with a view to subserve and not to defeat the ends of justice. When substantial justice is done, this Court will not interfere in revisional jurisdiction even if the order is vulnerable. In the present case, in my opinion, the impugned orders have really served the cause of justice. I, therefore, do not consider it proper to interfere with them. Therefore, even on that ground, the revision application deserves to be dismissed.

17. For all these reasons, I do not find any substance in the revision application filed by the petitioner and it is accordingly dismissed. Rule is discharged. Interim relief is vacated with costs.

Mr. P. B. Majmudar, learned Counsel for the petitioner prays that the order passed by me may be kept in abeyance for some time so as to enable the petitioner to approach the higher forum. In the facts and circumstances of the case, status quo granted earlier is ordered to be continued till January 11, 1993.