

(1998) 11 CAL CK 0025

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 2855 of 1998

Estate Officer, Burn Standard Co. Ltd. and Another

APPELLANT

Vs

Awardesh Narayan Singh alias A.N. Singh

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 3, Order 39 Rule 9

Constitution of India, 1950 — Article 226, 227

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5(1), 9(3)

Citation : (1999) 1 CALLT 444

Hon'ble Judges : Dibyendu Bhusan Dutta, J

Bench : Single Bench

Advocate : Mr. R.N. Chatterjee and Miss Madhumita Dutta, for the Appellant;
Mrs. Samapti Chatterjee, for the Respondent

Judgement

D. B. Dutta, J.—An, interim order staying the operation an order of Eviction, which was passed under "section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called the said Act) and was appealed against before the learned District Judge u/s 9 of the Act, forms the subject matter of the present revisional application under Article 227 of the Constitution of India.

2. The facts and circumstances leading to that appeal may, in short, be stated as follows :--

The Respondent was the General Manager (Commercial) of the petitioner Company. He was posted at Calcutta and was occupying a Flat being No. A-I, 22 Raja Santosh Road, Alipore, Calcutta-700 027 which was allotted to him by the Company. By the office order dated 16.8.1997, he was transferred to Jabbalpur from Calcutta and by a letter dated 16.9.1997 he was requested to vacate the flat by the end of the month of September 1997. Being aggrieved by the order of transfer as well as the letter asking for vacation of the flat, he approached this court in a writ petition under Article 226 of the Constitution of India being W.P.

No. 21677(W) of 1997 and Mr. A. Kabir, J. by his order dated 25.9.97 was pleased to pass an Interim order directing the Company to maintain status quo with regard to the flat in question till 30th September, 1997. On 6.11.1997 when the said writ application came up for consideration of the question of extension and/or granting of any interim order. His Lordship was not inclined to interfere with the order of transfer but extended the interim order with regard to the flat till the expiry of eight weeks from that date or until further order, whichever is earlier.

3. Upon expiry of eight weeks from 6.11.1997, the matter came up for hearing before Mr. A. N. Ray, J. sometime in July 1998 and His Lordship was not pleased to extend the said interim order.

4. At the Instance of the Company, a proceeding for eviction of the respondent from the concerned flat was Initiated under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act and a notice was accordingly Issued by the Estate Officer, whereupon the respondent moved another writ application being W.P. No. 14316(W) of 1998 against the issuance of the notice by the Estate Officer and Mr. Samaresh Banerjea, J. was not inclined to interfere with the continuance of the eviction proceeding but was pleased to pass an order of injunction restraining the Estate Officer from passing the final order till one week in the month of November, 1998 In view of the fact that the civil court would remain closed due to puja vacation.

5. The Company preferred an appeal being A.S.T. No. 2023 of 1998 before the Division Bench of this court comprising Mr. A. N. Ray and Mr. D. P. Kundu, JJ., and the said Bench by an order dated 16.10.1998 gave the liberty to the Estate Officer to pass a final order in the eviction proceeding with a direction that in the event of final order being passed in the said proceeding, the said order should not be given effect to till 31.10.1998. The said appeal is still pending disposal. The Estate Officer had already concluded the hearing in the proceeding passed the final order u/s 5(1) of the Act on 26.10.1998 and the Respondent preferred an appeal against that final order u/s 9 of the Act before the learned District Judge, Allpore.

6. By the Impugned order dated 6.11.1998, the learned District Judge registered the said appeal and called for the record of the proceeding before the Estate Officer fixing 23rd November, 1998 for production of the record.

7. The Respondent/Appellant did pray before the learned District Judge for stay of the operation of the order of eviction passed by the Estate Officer. Copy of the relevant application was served upon the Respondent/Petitioner and on hearing both the parties, the learned Judge by his impugned order was pleased to grant an Interim stay of operation of the order of eviction till 23rd November, 1998 fixing that date for final hearing of the stay matter. The court also directed the Estate Officer to cause production of the concerned record positively on the date fixed.

8. In assailing the impugned order of ad-interim stay, the learned counsel appearing for the petitioner company submitted that the order of stay is not a speaking order and the learned Judge granted the stay without assigning any reason and that on that score alone the stay is liable to be vacated.

9. It is contended on behalf of the petitioner that mere filing of an appeal or registration thereof would not entitle the appellant to the grant of stay. According to the learned counsel, it is within the discretion of the court and It is submitted that the said discretion has not been exercised in accordance with the established principles of law. Reliance was placed by the learned counsel for the petitioner on the Supreme Court case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, . Relying on the decision. It was submitted by the learned counsel that before any ad interim stay is granted by the court, the court should have been satisfied that a strong prima facie case has been made out by the appellant including the question of maintainability of the appeal and the balance of convenience as also the consequence in the event of refusal of the intended stay. It is strenuously contended on behalf of the petitioner company that the Impugned stay should be vacated only on the ground of reasons being not recorded. Reliance was also placed by the learned counsel for the petitioner on the observations made in paragraph 5 of a Bombay Decision reported in Mrs. Komalam Vardarajan Vs. The Union of India and another, and it was contended that the learned Judge was not Justified in granting the ad interim stay. It is also contended that in view of the orders passed in the two writ petitions and the appeal preferred against the order passed in the second writ petition, the respondent does not have any prima facie case and the appeal par se was not maintainable and in the circumstances the learned District Judge commuted the jurisdictional error in granting the interim stay.

10. In repealing the contentions put forward on behalf of the revisionist, the learned counsel appearing for the respondent, on the other hand, contended that the Bombay decision has no relevance to the facts and circumstances of the present case. It is also contended that Chadda's case (supra) does not apply here in as much as this is not a case involving grant of an exparte ad interim injunction as contemplated under Order 39 rule 3 of the Code of Civil Procedure. It is further contended that there is hardly any scope in the facts and circumstances of this case to invoke the extraordinary jurisdiction of this court as enjoined under Article 227 of the Constitution of india. Reliance was placed in this behalf on two Supreme Court decisions reported in Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, and Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, It is contended on behalf of the Respondent that the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is a special legislation in which the Legislature has in Its wisdom, not provided for second appeal or revision to the High Court and that the High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong

decisions, and that It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or Justice, where grave injustice would be done unless the High Court interferes. Reference was also made to Sm. Muktakesi Dawn and Others Vs. Haripada Mazumdar and Another, and it is sought to be contended on behalf of the the Respondent that the mandate in the proviso to Rule 3 of Order 39 CPC to record reasons is not that mandatory to warrant reversal of an order solely on the ground of omission to record reasons and that if there are materials on record to show that there were good reasons to pass an ex parte injunction Order, the order cannot be set at naught solely on the ground that court, while making the order, did not record the reasons for proceeding ex parte. The learned counsel for the Respondent did also refer to another Supreme Court case reported in Mool Chand Yadav and Another Vs. Raza Buland Sugar Company Limited, Rampur and Others, wherein the apex court observed that Judicial approach requires that during the pendency of the appeal the operation of an order having serious civil consequences must be suspended and more so when appeal is admitted. it is also contended on behalf of the respondent that this interim stay was granted by the appeal court in exercise of its Jurisdiction vested in it under sub-section 3 of section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which does not mandate recording of reasons for granting such a stay and as such it is contended that the mere fact that reasons were not rendered, the Impugned stay could not rendered Illegal and without Jurisdiction it is also contended on behalf of the respondent that none of the orders passed by this High Court in the two writ petitions referred to above and the appeal being AST No. 2023 of 1998 could legally operate as bar to the grant of a stay by the learned District Judge exercising powers vested in him by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. it was pointed out by the learned counsel for the respondent that this court could not interfere with the right of appeal that was conferred by the Legislature and in fact none of the orders passed in the writ petitions or the appeal (AST No 2023) of 1998 did in no way foster the discretion of the appeal court that was vested by sub-section (3) of section 9 of the Act to grant ad-interim stay pending full fledged disposal of the application for stay. Reference was made on behalf of the Respondent to Rule 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Sub-rule (2) makes it incumbent upon the Appellate Officer on receipt of the appeal to calling for and perusing the record of the proceeding before the Estate Officer and thereafter to appoint a time and place for hearing of the appeal. In the instant case, the appellate officer had called for the concerned record for his perusal which is due to be produced before him on 23rd November, 1998 and it is submitted on behalf of the respondent that if the execution of the order appealed against is no stayed for a limited period, pending disposal of stay matters, the appeal itself would be infructuous.

11. For the reasons aforesaid, it was contended on behalf of the respondent that it is not at all a fit the case for exercising the extraordinary Jurisdiction of this

court under Article 227 of the Constitution of India to justify any interference with the limited stay that was granted awaiting the receipt of the record and pending the disposal of the stay application that has been filed on behalf of the appellant before the learned District Judge.

12. The point for my consideration would be as to whether indeed it is a fit case for an interference as asked for on behalf of the revisionist. Unlike the provisions of the CP Code governing an appeal, there is no provision in the Public Premises (Eviction of Unauthorised Occupants) Act or the Rules framed thereunder empowering the Appellate Officer to dismiss an appeal summarily. There is also no provision summarily admission of an appeal filed u/s 9 of the Act. Rule 9 of the relevant Rules as I have already observed enjoins upon the Appellate Officer on receipt of the appeal to call for and peruse the record of the proceeding before the Estate Officer and thereafter to appoint a time for the hearing of the appeal. It is pertinent to note here that the stay that was granted in the instant case was not granted *ex parte*, as in the case of grant of interim injunction Under Order 39 rule 3 without notice to the other side and it was granted after giving a hearing to the petitioner. Now *Muktakesht's case (supra)*, it must be said is no longer a good law in view of the *Chandda's case (supra)*. It is true that mere filing of an appeal will not entitle the appellate officer u/s 9(3) of the Act to grant a stay as a matter of course and it is needless to comment that the power of granting stay under sub-section (3) of section 9 of the Act is in the discretion of the appellate officer and there is no doubt about the proposition that such a discretion should be exercised in accordance with the well established principles of law. It is also pertinent to note that, in case this court now proceeds to examine the question of maintainability of the appeal, it would tantamount to prejudging the merits of the appeal even before the occasion arises for the competent officer to deal with the same. We must not be oblivious of the observations made by the Supreme Court in *Mool Chand Yadau and another (supra)* cited on behalf of the respondent that the operation of the order having serious civil consequences must be suspended during the pendency of the appeal. The fact remains that an appeal has been preferred before the appellate officer u/s 9 of the Act and the Appellate Officer has already called for the record of the proceeding. The record is scheduled to be produced by the Estate Officer on 23.11.98 which is not far off from today. After it is produced, the appellate officer will have the occasion to peruse the record and decide the question of maintainability of the appeal that has been raised on behalf of the petitioner company, in the appeal also to finally decide the stay application on that very date. It goes without saying that if the stay is not granted even before the question of maintainability of the appeal is decided, the appeal itself would be infructuous.

13. Thus, giving the matter of my anxious consideration, I am of the view that the instant revisional application should be disposed of with a direction upon the appellate officer, namely, the learned District Judge, Alipore, not only to finally dispose of the stay application but also to hear out the appeal itself on the date already fixed, without granting any adjournment to either party, in accordance

with law.

14. In such view of the matter. I am not inclined to interfere with the limited stay has been granted by the learned District Judge, in exercising of the Extra Ordinary Jurisdiction under Article 227 of the Constitution of india.

The revisional application is, thus, disposed of there will be, however, no order as to costs. Let a copy of this judgment be communicated to the learned District Judge, Alipore forthwith through Special Messenger at the cost of the petitioner to be deposited by Monday next.

15. Application disposed of