

(1984) 03 MP CK 0002
In the Madhya Pradesh High Court
Case No : C. Rev. No. 162 of 1984

Gulshan (Smt., Dr.)	Vs	APPELLANT
Sahdevi Pal (Smt.) and Another		RESPONDENT

Date of Decision : 02-03-1984

Acts Referred:

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

Citation : (1985) JLJ 527

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : Ravish Agarwal, for the Appellant; P.C. Pathak, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.—This revision by defendant Smt. Dr. Gulshan is directed against the order dated 15-12-1983 passed by the Fourth Additional Judge to the Court of District Judge, Bilaspur in Misc. Civil Appeal No. 15 of 1983 arising out of the order dated 1-9-1983 passed by the Second Civil Judge Class I, Bilaspur in Civil Suit No. 15-A of 1983. Both the parties namely plaintiffs Smt. Sahdevi Pal and Ramdeo Pal and defendant Smt. Dr. Gulshan had applied for grant of temporary injunction to them under Order 39, Rules 1 and 2 and Section 151 of the code of Civil procedure. The trial Court allowed the application of the plaintiffs and rejected the one made by the defendant. Being aggrieved by it, the defendant filed a miscellaneous appeal in the appellate Court. The appellate Court dismissed the appeal vide the impugned order.

2. Briefly stated, the relevant facts are these: The plaintiffs had let out the suit accommodation to the defendant on a monthly rent of Rs. 800/- for the purpose of running a maternity home in it. The period of the lease was from 7-5-1982 to 6-4-1983. After the expiry of the said period, the plaintiff instituted the present suit against the defendant for her eviction from the suit accommodation on the grounds specified in Clauses (c) and (f) of subsection 1 of section 12 of the M. P. Accommodation Control Act, 1961. With regard to Clause (I) it was alleged by

them that they required the suit accommodation for starting their business of running a lodge in it. With regard to Clause (c) it was alleged by them that they had proceeded to construct two additional floors over the Chhat of the suit accommodation but the defendant created a nuisance by her acts of obstructing their labourers and Mistris from doing any work of construction and shouting filthy abuses at them. Apart from the relief of eviction, a relief of permanent injunction was also claimed by the plaintiffs against the defendant in the suit. The said relief was for restraining the defendant from interfering with the work of construction of the second and third floors being carried on by the plaintiffs over the Chhat of the suit accommodation.

3. Before the present suit was instituted by the plaintiffs against the defendant, the defendant had filed a suit for permanent injunction against the plaintiffs. It was alleged by the defendants in the said suit that the plaintiffs intended to construct two additional floors over the Chhat of the suit accommodation and that they and their workers were doing such acts on the Chhat of the suit accommodation that made it impossible for her to continue to run the maternity home in the suit accommodation. It was alleged by her that the idea behind such acts of the plaintiffs was to evict her forcibly from the suit accommodation. The permanent injunction claimed by her was for restraining the plaintiffs from evicting her forcibly from the suit accommodation.

4. Now, in the present suit i. e. the subsequent suit for eviction and permanent injunction brought by the plaintiffs against the defendant both the parties made applications for grant of temporary injunction to them under Order 39, Rules 1 and 2 and Section 151 C. P.C. The plaintiffs sought the temporary injunction to the effect that the defendant be restrained from interfering with the work of construction of the second and third floors being carried on by the plaintiffs over the Chhat of the suit accommodation. The defendant sought the temporary injunction to the effect that as the construction work being carried on by the plaintiffs over the Chhat of the suit accommodation caused interference in the running of the maternity home by her in the suit accommodation the plaintiffs be restrained from carrying out the said construction work. As stated above, the trial Court allowed the application of the plaintiffs and rejected the one made by the defendant and on a miscellaneous appeal having been filed by the defendant, the appellate Court dismissed the same vide the impugned order.

5. It needs no saying that the grant of interim injunction being a discretionary relief this Court in exercise of its revisional powers would ordinarily be slow in interfering with the orders passed by the Courts below. But, then, there may be exceptional cases in which the orders passed by the Courts below having not taken into consideration the principles governing the grant of temporary injunction and the situation may be such that if the orders passed by them are allowed to stand they may occasion a failure of justice or cause irreparable injury to the party against whom they have been made. In such exceptional cases, this Court would be failing to exercise the jurisdiction vested in it by law if it does not

come to the rescue of the aggrieved party. In the opinion of this Court, the present case falls in the category of such exceptional cases.

6. It cannot be denied that even after the expiry of her contractual tenancy on 6-4-1983, defendant Smt. Dr. Gulshan had a right to continue as a "tenant" of the plaintiffs in respect of the suit accommodation by virtue of the statutory protection conferred on tenants by the provisions of the M. P. Accommodation Control Act, 1961. The effect of such protection was that as long as her "statutory tenancy" continued in respect of the accommodation, she had the same right of "quiet enjoyment" of the said accommodation for the purpose of running a maternity home in it without interruption by the land-lords or their agents or servants as she earlier had as a contractual tenant under Clause (c) of Section 108 of the Transfer of Property Act. It was this important aspect of the matter that was lost sight of by the Courts below while granting temporary injunction to the plaintiffs-landlords and refusing the same to the defendant-tenant.

7. The Court below failed to appreciate that even if it was assumed that as alleged by the plaintiffs the Chhat of the suit accommodation did not form part of the premises let out by them to the defendant, and their act of commencing the construction work over the Chhat was lawful, inasmuch as the said act had the effect of causing substantial interference with the defendant's use of the suit accommodation as a maternity home, the plaintiffs were liable to be restrained from proceeding with it.

8. In the context of a contractual tenancy, it is recognized that if the act of the landlord causes substantial interference with the tenant's use of the premises for the particular purpose for which they were taken notwithstanding that the act itself is done off the premises, it constitutes breach of covenant for "quiet enjoyment" implied by Clause (c) of Section 108 of the Transfer of Property Act and the tenant has his remedy against the landlord against such a breach. The leading English case on the point is *Aldin v. Latimer Clark, Muirhead & Company* (1894) 2 Ch. 437 It relates, to a case where the lesser demised land for a timber merchant's business and the lessee covenanted to carry on such business, and it was held that assigns of the lessor were not entitled to erect on adjoining property acquired from the lessor buildings which interfered with the passage of air to the drying sheds of the lessee.

9. In the said connection, certain other cases cited in Halsbury's Laws of England, Fourth Edition, vol. 27, Para 329 are these; (i) where, by a heating apparatus of the premises, the premises were overheated so as to become unsuitable for the use contemplated when the lease was granted; (ii) or where the landlord cuts off the gas and electricity supplies to the premises; and (iii) or erected scaffolding in front of the door and windows of a demised shop in such a way as to interfere with the Tenant's trade. See *Robinson v. Kilvert* (1889) 41 Ch. D. 88, C. A., *Perera v. Vandiyar* (1953) 1 All. E.R. 1109 C. A. and *Owen v. Coad* (1956) 2 All. E. R. 28 The principal which underlies all the abovesaid cases

is that where a lease is made for a particular purpose, the landlord is under an obligation not to use the adjoining land retained by him in such a way as to render the demised premises unfit or materially less fit for that purpose. In all such cases if a breach of the said obligation is committed by the landlord, a tenant has certainly his remedy against him. There is no reason why the same remedy should not be available to a tenant against his landlord in a case where though his contractual tenancy has come to an end he lawfully continues to occupy the premises as a statutory tenant.

10. On the question as to whether the act of the plaintiffs i. e., the landlords in the present case in commencing the construction work over the Chhat of the suit accommodation was bound to cause substantial interference with the defendant's i. e., the tenant's use of the said accommodation as a maternity home no elaborate allegations were required to be made by the defendant. It was not at all difficult to imagine the sorry plight of the expectant mothers living under the roof of the maternity home in such a situation. The maternity home worth the name could afford to function in the said situation. It was not to be a case of the defendant being made to suffer some small inconvenience-it was to be a case where the suit accommodation was liable to be rendered unfit for the purpose for which it had been let out to the defendant.

11. There was also one other important aspect of the case lost sight of by the Courts below. The accommodation had been let out by the plaintiffs to the defendant in a single storeyed condition. There was no written stipulation anywhere that the Chhat (i. e. the terrace) over the single storeyed building did not form part of the premises let out by the plaintiffs to the defendant. There was also no written stipulation anywhere about the plaintiffs reserving for themselves the right to make further construction over the Chhat of the suit accommodation whenever they liked to do so. It was too hasty a provisional conclusion drawn by the Courts below to the effect that merely because there did not exist any staircase in the suit accommodation leading to the Chhat, the Chhat did not form part of the premises let out by the plaintiffs to the defendant. From the material on the record of the case it was difficult to draw even such a provisional conclusion at this stage. It was one of the important questions to be tried in the case on the basis of the evidence that the parties might adduce in support of their respective stands. It was not to be forgotten that if the Chhat formed part of the accommodation let out by the plaintiffs to the defendant it would be a case of the plaintiffs landlords needing the accommodation for the purpose of making substantial additions there to and that in such a situation they would not be entitled to make the said additions to the accommodation unless they first pleaded and proved the ground specified in Clause (h) of Sub-section (1) of Section 12 of the M. P. Accommodation Control Act, 1961.

12. From the above said point of view, it was not the plaintiffs but the defendant who had a prima facie good case in her favour that till the plaintiffs-landlords obtained a decree for eviction against her on the above said ground they were

restrained from taking law into their own hands and making any further construction over the Chhat of the accommodation. The balance of convenience was also in favour of the defendant that till a proper and final conclusion was arrived at by the Court on the point whether the Chhat formed part of the premises let out by the plaintiffs-landlords to the defendant they were restrained from interfering with the defendant's use of the accommodation by making any further construction over the Chhat. It was obvious that in case the defendant's interests as a statutory tenant of the accommodation were not protected in the manner stated above, and the final conclusion on the above said point was ultimately in favour of the defendant, the defendant was bound to suffer an irreparable injury in the matter.

13. As already mentioned above, before the present suit was instituted by the plaintiffs against the defendant, the defendant had filed a suit for permanent injunction against the plaintiffs. It was alleged by her in the said suit that the idea behind the acts of the plaintiffs was to evict her forcibly from the suit accommodation. It was not disputed that in the said suit an *ex parte* temporary injunction had been granted in favour of the defendant. It was also not disputed that before the matter relating to grant of temporary injunction could be finally decided by the Court in the said suit after hearing both the parties, the plaintiffs as also the defendant had already made their respective applications for grant of temporary injunction in the present suit. In the opinion of this Court, in the circumstances, the fact that the *ex parte* temporary injunction that had been granted to the defendant in her suit was subsequently vacated by the Court or the fact that the defendant did not take any steps to challenge the order passed by the said Court in that regard did not preclude the defendant in any manner from claiming the relief of temporary injunction in her capacity as a tenant in the present suit. The order in question did not operate as *res judicata* between the parties nor did it create any estoppel against the defendant in the above regard.

14. For the reasons stated above, this revision filed by the defendant deserves to be allowed. The orders dated 15-12-1983 and 1-9-1983 passed by the Courts below are liable to be set aside. The application made by the plaintiffs for grant of temporary injunction to them deserves to be rejected. The application made by the defendant for grant of temporary injunction to her deserves to be allowed. The relief of temporary injunction sought by the defendant was incidental to the cause of action on which the plaintiffs based their suit for her eviction from the accommodation. For the said reason, there existed no obstacle to the said relief being granted to her in the present suit. See *Collison v. Warren* (1901) 1 Ch. 812 and *Suganda Bai v. Sulu Bai and others* AIR 1975 Kar 137 . Again, it might be that the relief sought by the defendant was covered neither by rule 1 nor rule 2 of Order 39 C.P.C. But, then, the Court was vested with inherent power to grant the said relief to her u/s 151 C.P.C. See *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, .

15. The revision is allowed. The orders dated 15-12-1983 and 1-9-1983 passed

by the Courts below are set aside. The application made by the plaintiffs for grant of temporary injunction to them is rejected. The application made by the defendant for grant of temporary injunction to her is allowed. The plaintiffs, their servants, agents and workmen are restrained from carrying on any work of construction over the Chhat of the suit accommodation till the disposal of the plaintiffs' suit by the trial Court.

16. There shall be no order as to cost of this revision.