

**(1971) 02 DEL CK 0003**

**In the Delhi High Court**

**Case No :** Election Second Appeal No. 12 of 1969

Industrial and Trade Publications (Private) Limited

APPELLANT

Vs

Automobile Association of Upper India and Others

RESPONDENT

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**Date of Decision :** 25-02-1971

**Acts Referred:**

**Citation :** (1972) ILR Delhi 49

**Hon'ble Judges :** P.N. Khanna, J

**Bench :** Single Bench

**Advocate :** R.M. Lal, Arun Mohan, R.L. Aggarwal and Sultan Singh, for the Appellant;

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## **Judgement**

P.N. Khanna, J.

(1) The appellant, Industrial and Trade Publications Private Limited, is in occupation of the premises in dispute. which is shop No. 6, in Partap Building, Connaught Circus, New Delhi. belonging to one Partap Chand, who had let it out to the Automobile Association of Upper India, respondent No. 1. The latter, in turn had sublet the premises to the Automobile Association of India, and Shri Karam Singh Sobti, respondents Nos. 2 and 3 respectively. As the respondents-sub-tenants did not pay rent. respondent No. filed an application for their eviction under clause (a) of the proviso to section 14(1) of the Delhi Rent Control Act, 1958, herein called the Act" The rent was not deposited even after an order u/s 15(1) of the Act, directing payment within one month, was passed and then confirmed in appeal. The defense of respondents Nos. 2 and 3 against eviction was accordingly struck out u/s 15(7) of the Act. After some ex parte evidence, an order for the recovery of the possession of the said premises was passed on September 18. 1964, in favor of respondent No. 1 against respondents Nos. 2 and 3.

(2) On the issue of warrants of possession in execution taken out by respondent No. 1 decree-holder, its representative along with the Court bailiff visited the

premises in dispute on March 6, 1965 and took out the goods and furniture lying inside the premises, which were then locked. The decree-holder's representative recorded a note on the back of the warrant that he had obtained vacant possession of the premises in dispute by breaking open the lock through the Court bailiff and requested, as recorded in the said note, that after preparing a list of the goods taken out of the premises, the same be made over to Gopal Krishen, Sapurdar, for whom. Ram Dass, general attorney of the decree-holder himself offered to be the surety. An undertaking was also recorded in the note that the receipt of possession would be filed in Court by respondent No. 1 on the next date of hearing in the execution case. When the bailiff was still preparing the list of the goods, Surinder Sobti, son of respondent No. 3, along with some associates, appeared on the scene and offering threats and breaking open the lock forcibly entered in the premises, took away the goods from the bailiff and placed them inside the premises. The bailiff recorded the above facts in his report on the back of the warrant. Report was also made to the Police who arrived at the scene.

(3) On March 30, 1965, the decree-holder respondent No. 1 filed an application narrating the above facts and saying that obstruction had been offered on behalf of the judgment-debtor to the delivery of possession of the premises to it in execution of the decree, and praying that possession of the premises be got delivered to it with the Police aid after breaking open the locks.

(4) On April 9, 1965, an application was made on behalf of the appellant u/s 151, Code of Civil Procedure, read with section 25 of the Act, on the signatures of one Surjit Singh, son of judgment-debtor-respondent No. 3. styling himself as the Managing Director, of the appellant-company, explaining the appellant's standpoint. It stated that the appellant-company was carrying on publishing business in the premises in dispute since June 1, 1951. that respondent No. 1. on knowing that full well took delivery of its possession on March 6, 1965, through the Court bailiff and threw out the appellant's goods and furniture; and that Surinder Singh, the appellant's General Manager, and Surjit Singh, its Managing Director, on learning about this, reached the spot and took back the possession of the premises, as also of their effects. It was further stated in the application that as the decree had been satisfied by actual delivery of possession of the premises and its locking up by the decree-holder, the executing Court had become functus officio, and that the decree-holder's demand for possession was a matter for a fresh civil suit. It was prayed that the fresh application of the decree-holder for execution of the decree be dismissed as being incompetent. It was also stated that the appellant-applicant took possession of the property "in assertion of its own rights", from the "decree-holder, who had no authority to execute the decree against" it. On November 3, 1966, respondent No. 1 filed another application u/s 11 read with section 151 of the Code of Civil Procedure, saying that the appellant filed a suit for perpetual injunction against Partap Chand, the paramount landlord, and respondent No. 1, respondent No. 3 and others, inter alia, pleading that the appellant was a " subtenant in actual

possession" of the premises, and, Therefore, declaration was sought that it may not be evicted from the premises in suit. Respondent No. 1 had filed its written statement in the said suit controverting the allegations of the appellant. After the issues were framed, the appellant withdrew the suit, which was dismissed on June 3, 1966. As the objections raised by the appellant were said to be substantially the same as had been pleaded in the suit, it was prayed that the same be dismissed as having been finally decided by a competent Court on the dismissal of the said suit.

(5) The learned executing Court (the Controller) before whom these applications came up for disposal came to the conclusion" that no effectual delivery of possession had been given to the decree-holder. as the Managing Director of the appellant-Company had forced his entry into the suit premises when the plaintiff was still in the midst of execution proceedings on the spot. The decree-holder had not succeeded in getting effective possession. There was, Therefore, no bar to the issue of a fresh warrant of possession, if the appellant-objector failed in its claim put forth in its said application. It was, however. held that there was ample evidence to prove that the appellant objector had been in actual possession of the premises since 1951. As such it was deemed to have become, u/s 16(1) of the Act, a lawful sub-tenant under the judgment-debtors, notwithstanding the consent of the decree-holder not having been obtained. The appellant's claim u/ s 25 of the Act was held, not barred on the grounds of res judicata, by the dismissal of its civil suit as withdrawn. The appellant's application was accordingly accepted and the execution application was dismissed with costs.

(6) The learned Rent Control Tribunal in appeal, was of the view that the Court bailiff was not able to complete his proceedings in respect of delivery of possession to the decree-holder, owing to the illegal intervention by the appellant and to submit his report in respect of this to the Court. Just a formal delivery of possession was held not by itself capable of effecting dispossession of the appellant. The Tribunal. Therefore, affirmed the findings of the Controller (the executing Court) on the question of delivery of possession to the decree holder.- The Tribunal, however, found for a fact that although the appellant was in occupation since 1951, neither the judgment-debtors nor the appellant had given notice to the landlord of the creation of the subtenancy within six months of the commencement of the Act as required under sub-section 17(2) and 18 of the Act in order to claim the rights of a direct tenant, entitled to protection from eviction. For this reason the appeal was accepted and the order of the Controller was set aside. The decree-holder was directed to be put in effective possession of the premises in dispute. A warrant of delivery of possession was ordered to be issued. It is against this order that the Industrial and Trade Publications Private Limited, the appellant- company, has come up to this Court in second appeal.

(7) The facts are not in dispute. In execution of the eviction decree. the appellant's lock on the premises in dispute was broken open through the Court bailiff, the furniture and goods were removed there from and the decree-holder's

lock was placed on the premises. The decree-holder's representative recorded, as stated earlier, a note on the back of the warrant for possession to this effect stating further that complete possession had been obtained by him on behalf of the decree-holder. The appellant's representatives, then broke open the decree-holder's lock and forced their entry in the premises in dispute, while the bailiff was still preparing the inventory of the goods taken out of the premises and had yet to record his report.

(8) According to the appellant's learned counsel, these were two separate and distinct acts, one of taking possession by the decree-holder in complete satisfaction of the decree and the other of the appellant's forcible entry in the suit premises. The preparation of the inventory of the goods lying outside the premises would not render the execution of the decree for eviction incomplete. The forcible entry in the premises in dispute by the appellant may give respondent No. 1 a separate cause of action, which may enable him to file a civil suit. It does not enable him to execute a decree, which already stands executed and exhausted. The executing Court, urged the learned counsel, had become *functus officio*. For the proposition that after the decree-holder had obtained possession, that was the end of the matter; and the decree-holder was left with no right to again ask for execution of the decree, he relied on *Chindha v. Narayan Gobind Rao*, Air 1927 Nagpur 360(1); *Jagadish Nath Roy Vs. Nafar Chandra Paramanik and Others*, and *Shew Bux Mohata and Others Vs. Bengal Breweries Ltd. and Others*, . In the aforesaid authorities, it was held that the person in occupation and bound by the decree was to be removed only if the decree was to be removed only, if the decree-holder asks for it. It was open to the decree-holder to accept delivery of possession without actual removal of the person in possession. These were cases of delivery of symbolical possession and are of no assistance for the decision of the present case. On the other hand in *Ramchandra Subrao v. Ravji Bip Virhu Parit*, 20 Bom. 351(4), the Full Bench of the Bombay High Court observed that "the delivery of possession u/s 263 of the CPC contemplates the decree-holder being placed in actual possession by possibly dispossessing, in the eye of law, a third person who is not affected by the decree. The mere formal delivery of possession cannot of itself effect such dispossession unless the deprivation of possession be complete as a fact, a conclusion which the Court has to form on the whole of the evidence." In *Ghanashyam Das Mour Agarwalla v. Fatik Chandra Das* Air 1957gua 123(5), it was held that there was no effective delivery of possession obtained by the decree-holder in the previous execution there was nothing to debar him from executing his decree by a fresh delivery of possession.

(9) Rule 35 of Order 21 of the Code of Civil Procedure, provides that in the case of a decree for the delivery of any immovable property, possession is delivered to the decree-holder, if necessary, "by removing any person bound by the decree, who refused to vacate property." u/s 25 of the Act, when the interest of a tenant in any premises is determined and an order is made by the Controller for the recovery of possession of such premises, the order is binding on all persons who

may be in occupation of the premises and the possession thereof is required to be given to the landlord "by evicting all such persons there from". The question, Therefore, is whether the person in occupation of the premises in dispute has been removed or evicted from the premises concerned.

(10) The appellant, in its application dated April 9, 1965 stated that its Managing Director and General Manager (both of whom are sons of judgment-debtor-respondent No. 3), "on learning about the unlawful breaking open of the premises" took back "the possession of the premises and also of their effects of which the decree-holder's party was preparing an inventory". The appellant then insisted in his said application that it had "in assertion of its own rights taken possession of the property from the decree-holder who had no authority to execute the decree against the Industrial & Trade Publications Private Limited". Explaining its said rights, the appellant asserted that it had been "carrying on publishing business in premises known as 43-N Connaught Circus, 6 Partap Building, since 1.1.51". The emphasis of the appellant was on the continuity of its own occupation, the brief locking up of the premises by the decree-holder, being disregarded as "unlawful". The decree-holder's intervention is not considered by the appellant as an end of his earlier occupation and then a beginning of its new occupation of the premises, after its forcible re-entry. The appellant's possession, thus, is being claimed on April 9, 1969, the date on which the said application was made. to be uninterrupted from January 1, 1951 onwards. According to the appellant, it had not been dispossessed. Rather it continued in possession as before.

(11) So far as respondent No. 1, the decree-holder is concerned, it had not obtained effective possession at all. The goods taken out of the premises had not been disposed of and entrusted to a Sapurdar. A note had been recorded by the decree-holder's representative on the back of the warrant in expectation of obtaining effective possession. The receipt of possession had still to be filed in Court. The bailiff had not completed his proceedings and made his report, when forcible entry of the appellant took place. Another note was then recorded by the decree-holder's representative stating that forcible entry had been made by Surinder Sobti and his companions. It was then that the bailiff recorded his report describing the aforesaid events. It cannot. under the circumstances, be said that the bailiff had completed" his proceedings or that the person, in occupation had been removed or evicted from the premises in dispute and possession had been delivered to the decree-holder.

(12) It is significant that in the two Courts below the appellant had been insisting, that being in possession of the premises in dispute since before June 9, 1952, it was a lawful sub-tenant under the judgment- debtors, respondents Nos. 2 and 3, in accordance with section 16(1) of the Act and was, Therefore, not liable to eviction. The learned counsel for the appellant, seeing the futility of this argument and its adverse effect on his earlier argument that the appellant's possession had come to end on March 6, 1964, gave up this argument in this

Court.

(13) Both the Courts below have held as a matter of fact, that no effective possession had been delivered to the decree-holder. And :this finding is fully supported by the record of the case, and the appellant's own assertion that he continuous in possession. It is, Therefore, a case where the decree for possession had not been executed by removing the judgment-debtor or evicting him from the premises in suit. The contention of the learned counsel for the appellant, under the circumstances, is without any merit and cannot be accepted.

(14) The appeal, in the circumstances, fails and is dismissed with costs.