
(2023) 10 BOM CK 0011

In the Bombay High Court

Case No : Appeal From Order No. 181 Of 2016, Civil Application No.249 Of 2016

K. Gupta

APPELLANT

Vs

Najma W/O. Ramzanali Rasekhinejad And Ors

RESPONDENT

Date of Decision : 09-10-2023

Acts Referred:

Citation : (2023) 10 BOM CK 0011

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : S. P. Shrivastava, Geeta Shastri, Fereshte Sethna

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1. This appeal is full of several mysteries. The mysterious journey begins from a confusion as to who exactly is the Appellant and continues to pose several conundrums as to who contested proceedings before the City Civil Court, who possesses the room in question, how did he come in its possession, who exactly is claiming protection from eviction of that room, etc. There are two persons: 'K. Gupta' and 'Santosh Gupta', who claim to be the Appellant. Appeal is filed in the name of 'K. Gupta', but 'Santosh Gupta' claims that he has filed it. By filing the appeal, 'K. Gupta' wants to protect his possession over the room in question, while 'Santosh Gupta' says 'K. Gupta' has no concern with the room, which is in his possession. During the course of hearing of the appeal, the mystery intensified to such an extent that it put the learned counsel arguing this appeal into puzzle as to whom she actually represents. This court is required to spend time in solving these mysteries rather than concentrating on determining the issue involved in the appeal.

2. This appeal is filed in the name of 'K. Gupta' challenging order dated 27 January 2016 passed by the City Civil Court granting relief in favour of Defendant No.1 in Notice of Motion No.4454 of 2015. By the impugned order, City Civil

Court has directed that 'K Gupta' as well as 'Santosh Gupta' and their family members, agents and servants to be removed from the room in question by delivering possession thereof to the Court Receiver. The Court Receiver has been directed to take possession of the room and submit a report to that effect before City Civil Court.

3. The Suit as originally filed has no connection with either of Guptas: 'K' or 'Santosh'. They are not even parties to the Suit. Their entry in the proceedings is necessitated on account of occupation of one of the rooms of the suit structure by either of them. The Suit is in respect of an eatery by name 'New Persian Restaurant and Stores' which was being operated in partnership by Ramzan Ali Rasekhinejad and Abbas Ali s/o. Ali Akbar Sabarali Rasekhinejad. After death of Ramzan Ali Rasekhinejad, his widow Najma and her three sons Ytusufali, Hussainali and Kasamali filed Suit No. 1789 of 1988 before this Court against Abbas Ali s/o. Ali Akbar Safarali Rasekhinejad seeking various declaratory and injunctive reliefs in respect of partnership business. In that suit, this Court passed order dated 22 September 1988 and appointed Court Receiver in respect of the said partnership business. Accordingly, the Court Receiver took possession of the partnership business, including the premises, where the restaurant was being operated. This Court further passed order dated 02 December 1988 directing Court Receiver to give the partnership business to interested parties for running the same as Receiver's agent. On 02 December 1988, this Court noticed that there was one room which was in Defendant's possession. This Court therefore directed that the Defendant would continue to keep the room in his possession during pendency of the Suit but restrained him from alienating, mortgaging or parting or creating third party interests in the same.

4. The Suit was subsequently transferred to the City Civil Court and has been numbered as SC Suit No.13 of 1988. It appears that during the course recording of evidence on 30 October 2015, Defendant's witness gave an admission that the room covered by order dated 02 December 1988 was in possession of the landlord. This admission possibly created a feeling amongst Defendants that they would be accused of flouting this Court's interim order. The Defendant No. 1A to 1E, who are legal heirs of the original Defendant Abas Ali s/o. Ali Akbar Safarali Rasekhinejad, therefore filed Notice of Motion No.4454 of 2015 impleading 'K. Gupta' as a Respondent to the Motion. They alleged that 'K. Gupta' had taken forcible possession of the room and sought his removal.

5. When the Notice of Motion No. 4454 of 2015 came up before the City Civil Court, 'Santosh Gupta', though not impleaded to the Motion, made an appearance in the Motion. He did not seek his impleadment to the Motion. He filed Affidavit-in-Reply opposing the Motion, describing himself as 'Respondent No. 1' (which is clear from his Advocate's signature as appearing for Respondent No. 1). 'Santosh Gupta' claimed possession of the room since the year 2009 stating that 'K. Gupta' had no right, title or interest in that room. 'Santosh Gupta' claimed possession of the room on the strength of tenancy created by landlords

Birla Industries Group Charity Trust in the year 2009. After hearing the parties, the City Civil Court passed order dated 27 January 2016 disposing of the Notice of Motion No. 4454 of 2015 and directed both 'K. Gupta' as well as 'Santosh Gupta' along with their family members, servants and agents to be removed from the room covered by order dated 02 December 1988, with a further direction to handover possession thereof to the Court Receiver.

6. The present appeal is filed by 'K. Gupta'. However during the course of hearing of the appeal, a new twist is added by Ms. Shastri, the learned counsel appearing for Appellant, by submitting that though the appeal is shown to have been filed in the name of 'K. Gupta', all the documents including Vakalatnama is filed by 'Santosh Gupta'. She made this statement after taking instructions from her attorney. She would therefore submit that the present appeal be treated as having been filed by 'Santosh Gupta'. Ms. Shastri would further submit that the reply opposing Notice of Motion No. 4454 of 2015 before the City Civil Court was also filed by 'Santosh Gupta'. If that was the case, to the question as to why the present appeal is instituted in the name of 'K. Gupta', she has no answer. Her statement based on her Attorney's instructions that Vakalatnama is signed by 'Santosh Gupta' is found to be incorrect in that even the Vakalatnama is signed by 'Kamlesh S. Gupta' with an endorsement 'i.e. K. Gupta'. Also, an affidavit dated 09 February 2016 is filed in the present appeal by 'K. Gupta'. Verification of the affidavit is also in the name of 'K. Gupta'. It appears that the Affidavit bears signature of 'Kamlesh S. Gupta'. Also, Civil Application No. 249 of 2016 has been filed in the present appeal seeking stay of the order of the City Civil Court, which is also verified by 'K. Gupta' and the person signing the same appears to be 'Kamlesh S. Gupta'. It is therefore difficult to believe that the present appeal is filed by 'Santosh Gupta'. During the course of hearing of this appeal on 29 September 2023, copy of affidavit is tendered which is shown to have been affirmed by 'Santosh Gupta'. Thus, in K. Gupta's appeal, 'Santosh Gupta' has filed some of the pleadings. This approach indicates the total casualness in the manner in which the proceedings before the City Civil Court and this Court are being conducted.

7. Apart from ambiguity in the manner in which the present appeal is being prosecuted, such ambiguity also creates a doubt as to who exactly amongst 'K. Gupta' and 'Santosh Gupta' can be said to be in possession of the room in question.

8. Ms. Shastri, the learned Counsel appearing for Appellant would submit that the room in possession of 'Santosh Gupta' is not the same in respect of which order is passed by this Court on 02 December 1988. That it was for Defendant No. 1(b) to demonstrate before the City Civil Court that 'Santosh Gupta' has been occupying the very same room in respect of which this Court has passed order dated 02 December 1988. She would submit that 'Santosh Gupta' has no connection with the suit and the room occupied by him is not covered by the controversy between Plaintiffs and Defendants.

9. Ms. Sethna, the learned counsel appointed by Legal Aid representing Respondent No.1 would oppose the Appeal and submit that the appeal has been filed with mala fide intention of retaining possession of the room, which Defendants have illegally handed over to an outsider in breach of order passed by this Court on 02 December 1988. She would submit that the Defendant realised commission of breach of order of this Court dated 02 December 1988 on account of admission given during cross examination on 30 October 2015 and the Motion was filed to save themselves from the consequences of such breach. That now rank outsiders viz. 'K. Gupta' and 'Santosh Gupta' are seeking rights in respect of the room, possession of which ought to have been retained by Defendants with themselves. She would submit that in such circumstances the City Civil Court has rightly directed the Court Receiver to take possession of the room in question.

10. Having considered the submissions canvassed by the learned counsels for the parties, it is seen that an utter confusion prevails as to who exactly is prosecuting present appeal and who is in possession of the room in question. Appeal is filed in the name of 'K. Gupta' and a claim is made that 'Santosh Gupta' is prosecuting the same. 'Kamlesh S. Gupta' (who appears to be 'K. Gupta') seems to have signed and verified some of the pleadings/ applications in the present case, whereas one of the affidavits is filed by 'Santosh Gupta'. Why and how 'Santosh Gupta' could file pleadings in appeal instituted in the name of 'K. Gupta' has not been explained in any manner. For this confusion created by Appellant, present appeal could be dismissed on this count alone. However even if the said confusion is to be ignored, no case is made out for grant of any relief in the present appeal in favour either of 'K. Gupta' or 'Santosh Gupta'.

11. In the suit, the dispute is about running of partnership business. By interim order dated 02 December 1988, this Court directed an interim arrangement by ordering that the said business of restaurant by name 'New Persian Restaurant and Stores' be put in possession of Court Receiver. The Court Receiver was directed to handover the business to interested parties with liberty to Plaintiffs and Defendants to apply for distribution of funds received by the Court Receiver. While directing said interim arrangement, this Court came across one room which was locked and the key of the said lock was with the Defendant. However, while the entire premises of the restaurant were given in possession of Court Receiver, this Court made an exception in respect of that room, by permitting Defendant to retain its possession. This Court however prohibited the Defendant from creating any third party rights or parting with possession of that room.

12. It appears that during pendency of Suit, the Defendant parted with possession of that room, which is apparent from admission given during cross examination of Defendant's witness on 30 May 2015. The relevant portion of the deposition reads thus-

"I am now shown the order dtd.02.12.1998 passed in Notice of Motion no.1793/88. The room mentioned in the said order is in possession of its

landlord.”

13. Coupled with the admission of Defendants’ witness about the room being in possession of landlord, the claim is raised by ‘Santosh Gupta’ that he is occupying the room as tenant since the year 2009. Some rent receipts beginning from 01 April 2009 issued by Birla Industries Group Charity Trust (landlord) in the name of ‘Santosh Gupta’ are placed on record. It is on the strength of these rent receipts that ‘Santosh Gupta’ claims possession of the room in question. He also placed some documents on record to claim possession of the room such as ration card, aadhar card, passport, electricity bill, etc. Therefore, it appears that the Defendants have handed over possession of the room in favour of landlord in breach of the order passed by this Court on 02 December 1988. The landlord appears to have handed over possession of the room to ‘Santosh Gupta’. Such handing over of possession by the landlord in favour of ‘Santosh Gupta’ is also in breach of order passed by this Court on 02 December 1988. In such circumstances ‘Santosh Gupta’ cannot claim any right to continue possession of the room in violation of the order passed by this Court on 02 December 1988.

14. Dispute is sought to be created by ‘Santosh Gupta’ that he is occupying Room No.55 which is different from the room covered by the order dated 02 December 1988. I am unable to accept this submission. He has not placed on record any sketch or plan to indicate existence of two separate rooms. Neither in his affidavit filed before the City Civil Court nor in the present appeal memo, any specific assertion is made about existence of two rooms or that he is not occupying the room covered by the order passed by this Court on 02 December 1988. Therefore, the claim sought to be raised by ‘Santosh Gupta’ about possession of different room than the one covered by the order dated 02 December 1988 cannot be accepted.

15. In my view, therefore the City Civil Court has rightly directed that the possession of the room shall be taken back by the Court Receiver.

As a matter of fact, this Court by its interim arrangement dated 02 December 1988 had directed Court Receiver to take possession of entire premises, in which suit business was being carried out, which would ordinarily include even the room in question. However, this Court made an exception by permitting Defendant to retain its possession since it was found locked at the relevant time. Merely because this Court made an exception in respect of the room in question, it did not mean that the Defendant was entitled to deal with that room in breach of the order passed by this Court. In the light of this position, the order passed by the City Civil Court directing taking over possession of the room by Court Receiver would be in tune with the order passed by this Court on 02 December 1988.

16. I therefore do not find any error in the order passed by the City Civil Court. The Appeal, being devoid of merits, is dismissed. The manner in which the appeal is prosecuted calls for imposition of costs. However, with a view to avoid further confusion as to who amongst the two Guptas would pay the costs, I feel

it appropriate to make costs easy.

17. Since the appeal is disposed of nothing survive in the Civil Application and it is also disposed of.

18. After the order pronounced, Ms. Shastri requested for continuation of ad-interim relief granted by the City Civil Court for a period of 6 weeks. Considering the findings recorded in the judgment, the request is rejected.