

(2004) 07 GUJ CK 0064

In the Gujarat High Court

Case No : Appeal from Order No. 392 of 2003 and Civil Application No. 7665 of 2003 in Appeal from Order No. 392 of 2003

Modi Rajkumar Kishanlal

APPELLANT

Vs

Swashryi Mahila Seva Sangh (Seva)

RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Citation : AIR 2005 Guj 38

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Sunit S. Shah, for the Appellant; Megha Jani, for the Respondent

Judgement

Ravi R. Tripathi, J.—This Appeal From Order is filed against order dated 1st October, 2003 passed by the learned Judge, City Civil Court, Ahmedabad below Exh.6 and Exh.23 in Civil Suit No. 2199 of 2001. The learned Judge was pleased to reject Exh.6-Application i.e. Notice of Motion taken out by the plaintiff and was pleased to allow Exh.23-Application i.e. Notice of Motion taken out by the defendant.

2. The subject matter of the suit is a dispute between the parties with regard to use of staircase. The relief prayed for by the appellant, original plaintiff, is that the respondent, original defendant, should not obstruct the use of staircase. As against that, the defendant has prayed that the plaintiff should not use the staircase as he has no right to use the same.

3. The facts of the case, which warrant mention, are: the defendant had purchased two upper plaza offices No. 22 and 23 in 1993 in Goyal Towers, whereas the plaintiff is the owner of one shop on the ground floor of the same building. To the north of this shop of the plaintiff is situated the staircase around which the dispute between the plaintiff and the defendant revolves. The staircase is used by the defendant for egress and ingress to the upper plaza offices. The plaintiff, after having purchased the shop, made a mezzanine floor in his shop

and had put up a curved wooden staircase to use the said mezzanine floor. In or about 1996, the plaintiff made an aperture in the northern wall which was abutting to the above stated staircase of the defendant. An objection was raised by the defendant and on that objection being raised, the plaintiff had agreed to close down the same, but, instead of closing down the said aperture, after some time, the plaintiff put a door in the said wall for making use of this mezzanine floor through this staircase. Thereafter, the plaintiff affixed an iron shutter, to which again an objection was raised by the defendant. However, the plaintiff did not close the door falling on the staircase and filed this suit. In this very suit, the parties are seeking the reliefs against each other.

The learned Judge, after having considered the facts of the case in detail and also the authorities cited before him, has come to a conclusion that the plaintiff had no right to use the staircase and, therefore, rejected Exh.6-Application filed by the plaintiff and allowed Exh.23-Application filed by the defendant and restrained the plaintiff, his servants, and agents from using the staircase for going to the mezzanine floor till the final hearing of the suit by the order aforesaid.

4. Taking into consideration the fact that the defendant (Self Employed Women Association - SEWA) is an organisation rendering services to the women, allowing the door to be kept open, is to hamper the right of privacy of the visitors of the office of the defendant.

5. Mr.Sunit S.Shah, learned Advocate appearing for the appellant-plaintiff, strenuously submitted that by the order passed by the learned Judge whereby the learned Judge has restrained the plaintiff from using the staircase for going to the mezzanine floor, the plaintiff is adversely affected as he will not be able to use his mezzanine floor. He further submitted that in case the Court is inclined to approve the order passed by the learned Judge, then, in that case, the plaintiff may be permitted to use the door in question for some reasonable time so that during that time, the plaintiff can make an alternative arrangement to use the mezzanine floor. The learned Advocate submitted that it will take about 10 to 15 days to put up a staircase within the shop of the plaintiff and, therefore, the order dated 1st October, 2003 be not effected for a period of two weeks.

6. Taking into consideration the fact that the order was passed on 1st October, 2003, the plaintiff-appellant ought to have made an alternative arrangement immediately and should not have waited for such a long time, hence, the request of the learned Advocate is rejected. Having heard the learned Advocates at length and having gone through the record of the case, this Court is of the considered opinion that the learned trial Judge has not committed any error, which calls for an interference at the hands of this Court. This Court finds no substance in this Appeal From Order. The Appeal From Order is dismissed. The appellant is directed to stop using the staircase for going to the mezzanine floor, as ordered by the learned trial Judge forthwith, but, in no case beyond 12th July, 2004.

7. In view of dismissal of the Appeal From Order, Civil Application No. 7665 of 2003 does not survive and the same is disposed of accordingly. Notice is discharged. Interim relief granted earlier shall stand vacated. No order as to costs.