
(2020) 10 DEL CK 0006

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 484 Of 2020, Civil Miscellaneous Application No. 24599, 24600 Of 2020

Parnita Kapoor & Ors

APPELLANT

Vs

Arvind Malik & Ors.

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0006

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Ranjan Tyagi, Abhinav Singh

Judgement

Prathiba M. Singh, J

1. This hearing has been held through video conferencing.
2. The present petition has been filed challenging the order dated 27th August, 2020 by which the application of the Petitioners/Defendants/Landlords (hereinafter, "Landlords") of the property in question, seeking use and occupation charges, has been dismissed by the Id. Civil Judge.
3. The case of the Landlords is that they had given the property on rent vide agreement dated 15th October, 2018 for a period of 11 months only to one Mr. Roshan, who is also an advocate.
4. The Landlords are not aware as to the manner in which Respondent No.1, who is also an advocate, came into possession of the property. Respondent No.1 has filed a suit for permanent and mandatory injunction claiming that the monthly rent is Rs.1,60,000/-. The prayer is for an injunction restraining the Landlords from interfering in his enjoyment of the property and from getting the property vacated without following the due process of law. The application for use and occupation charges was then filed by the Landlords alleging that the property was never given on rent to Respondent No.1 and the rent was Rs. 3,80,000/- per

month. The Landlords had even purchased stamp duty for getting the rent deed registered. In any event, the Landlords prayed that since Respondent No.1 is in occupation of the property, he should pay monthly use and occupation charges.

5. The Id. Trial Court has rejected the application for use and occupation charges on the ground that the suit does not relate to monthly occupation charges which the Landlords may be entitled to, as the cause of action is different.

6. Having heard Id. counsel for the Landlords, issue notice to the Respondents. As per the plaint, the Plaintiff/Respondent No.1 admits that the rent is Rs.1,60,000/- per month. The relevant extract of the plaint reads:

"3. That in the month of May, 2019, the defendant No.1 to 4 agreed to let out the suit property on rent to the plaintiff on monthly rent of Rs.1,60,000/- per month excluding the water and electricity charges for the residential for a period of three years and the plaintiff also agreed for taking the suit property on rent from the defendant No.1 to 4 and the defendant No.1 to 4 demanded the advance security amount of Rs.6,00,000/- from the plaintiff alongwith two months advance rent. ..."

7. Respondent No.1, even though he may be having various allegations against the Landlords, cannot enjoy the suit property without paying any use and occupation charges. Since the question as to whether the rent is Rs.3,80,000/- or Rs.1,60,000/- is yet to be adjudicated, to the extent that Respondent No.1 admits that monthly rent is Rs.1,60,000/-, he ought to pay the said amount in order to continue to enjoy the suit property. It is not necessary in every suit that a counterclaim ought to be filed for the defendant to seek relief. In *Liberty Sales Services Vs. Jakki Mull & Sons*, (1997) 41 DRJ 26 (DB), the Id. Division Bench of the Delhi High Court has held that:

"...In any event, there is sufficient legal authority that in certain exceptional circumstance, a defendant can obtain an injunction against a plaintiff. This principle sometimes is applied in our country to interim injunctions i.e. while dismissing the temporary injunction applications of a plaintiff, temporary injunctions have been granted in favour of the defendant against the plaintiff. But the real basis of the principle in England appears to be that it is applied to suits, i.e. while dismissing injunction suits, a decree of injunction is passed against plaintiff and in favour of defendants, in certain situations.

In *Suganda Bai v. Sulu Bai* (AIR 1975 Karn. 137) which no doubt related to Order 39 proceedings, G.K. Govinda Bhat CJ quoted *Collisions v. Warrens* (1901) 1 Ch. 912. There Buckley J. after referring to a number of decisions of the English Courts, quoted Lopes LJ in *Carton v. Fey* (1894(2) Ch. 541 (CA) (at 545) as follows:

"The question is this whether the defendant can move an injunction against the plaintiff without filing a counter claim or issuing a writ in a cross action. In my opinion, he can in some cases, but only in cases where the defendants claim to

relief arises out of the plaintiff's cause of action, or is incidental to it."

Buckley J, also referred to the view of Davey LJ in *Carter v. Fey* to the following effect"

"In my opinion, it must be relating to or arising out of the relief sought in the action which is before the Court, and that any other injunction cannot be properly be granted in the action."

This case was followed by the Calcutta High Court in *Ashis Ranjan Das v. Rajendra Nath Mullick* (AIR 1982 Cal. 529) quoting Lindley L.J. in *Carter v. Fey*:

"If the defendants application for an injunction were in any way connected with or incidental to the object and purpose of the plaintiff's action, he would have good ground for his contention."

It will be noticed therefore that a defendant can move for an injunction against the plaintiff without filing a counter-claim or suit or cross-action provided such a claim to relief arises out of the plaintiff's cause of action or is incidental to it. Halsbury's Laws of England, Vol. 24, 4th Ed, para 1048 refers to these case. It is, as already stated, significant that the principle was applied by the English Courts in the main suit itself for they say that relief can be claimed in the suit by the defendant by filing an application and without a counter-claim or cross-action or by issuing a writ. The condition is that it should arise out of the plaintiff's cause of action or is incidental to it. In fact, in *Collision v. Warren* 1910(1) Ch. 812, both plaintiff and defendant relied upon the same agreement, and it was held that defendant was entitled to apply for an injunction against the plaintiff. In that case, the plaintiff who was the owner of a business of running a hotel appointed defendant as trustee and executed a deed of arrangement describing the defendant as trustee to pay the plaintiff's creditors and agreed to occupy the lease hold house as manager. Later the defendant terminated the plaintiff's services as manager and requested plaintiff to leave the premises. The plaintiff sued for a declaration that he was to be continued as manager and sought for injunction, damages etc. Defendant gave notice of motion against plaintiff to restrain plaintiff from remaining in or upon the hotel and not to interfere in the management. Plaintiff contended that the defendant's request was in ejectment and could not be granted in plaintiff's suit for injunction. Buckley J. applied *Carter v. Fey* (1894)(2) CR. 541 while holding plaintiff has no right to continue in occupation or retain possession held:

"What is the defendant's cause of action? It is identically the same thing from the opposite point of view. He negatives the plaintiff's claim to be employed and claims to prevent him from interfering with the management. In the state of things. I think he is entitled to move in the plaintiff's action. It is a novelty to me that an order can be obtained to restrain a person from remaining in a house, which is, of course equivalent to a mandatory order upon him to go out".

After referring to *Spurgin v. White* (1860) 2 Giff. 473 where such an injunction of

a mandatory nature was held could be issued, Buckley J. held:

"That appears to me to be a precedent for an order I am prepared to make, which will have the effect of restraining the plaintiff from remaining in possession of the premises."

The said order was affirmed by the Court of Appeal, in the same report, by Rigby, Vaughan Williams and Stirling L.JJ.

Following the aforesaid ruling, we hold that the relief claimed by the defendants in their IA against the plaintiff arises out of the same contract upon which appellant had filed the suit and the relief is also incidental to the refusal of the plaintiff's injunction. The learned Judge was right in directing plaintiff to remove its stock, furniture and ornamental items..."

8. Thus, the Defendant in a suit would be entitled to claim relief without filing a counter-claim if the same arises out of the proceedings filed by the Plaintiff itself. Since the Plaintiff's/Respondent No.1's case in the Plaint is that the rent is Rs. 1,60,000/-, at least to that extent the Plaintiff/Respondent No.1 would be liable to pay the said amount to the Landlords.

9. Accordingly, as an interim order, it is directed that Respondent No.1 pay to the Landlords a sum of Rs.1,60,000/- per month on or before the 10th of every month w.e.f. 1st October, 2020. Ld. Counsel submits that the last paid rent was in November 2019. Thus, for the previous period i.e., since November, 2019 to 1st September, 2020, directions shall be issued after notice is served. Respondent No.1 shall also ensure that no third-party rights are created in the suit property and status quo is maintained as to title and possession.

10. Notice be served upon Respondent No.1 - Mr. Arvind Malik (M: 9560300364) and Respondent No.2 - Mr. Neeraj Kumar Singh (M: 8750889988).

11. List on 8th December, 2020.