
(2003) 10 CAL CK 0011
In the Calcutta High Court
Case No : G.A. No. 1152 of 2001

Punjab National Bank

APPELLANT

Vs

Delite Properties Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 14
Transfer of Property Act, 1882 — Section 52

Citation : AIR 2004 Cal 114

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kalyan Jyoti Sengupta, J.—The plaintiff has taken out this application for eviction of a number of persons as mentioned in paragraph 16 of the petition from suit premises being No. 111 Park Street Calcutta, principally, on the ground these persons have taken possession in breach of the interim order of status quo and further disturbing possession of the Receiver appointed by this Court, during pendency of the suit.

2. The short fact of the case is that the plaintiff Bank entered into three agreements with the defendant No. 1 for purchase of five floors namely 1st, 2nd, 3rd, 4th and 5th of the aforesaid premises at an agreed price on or about 22nd August 1989. At that point of time the proposed building was not constructed. So, in terms of the agreements possession and/or occupation of the respective floors were to be delivered in phase-wise and gradually. The defendant No. 1, however in breach of the said agreement failed and neglected either to give possession of the respective floors as agreed upon or to execute and register necessary conveyance.

3. It appears from the records that defendant No. 1 was the promoter and defendant Nos. 5, 6 and 7 were the owner of the land and old structure. It was

the plea of the defendant No. 1 that the agreement was lawfully terminated. Thus the plaintiff took out an application for interlocutory relief for appointment of Receiver and for order of injunction. The defendant No. 1 had also taken out an application for rejection of the plaint filed in this suit. Both these two applications were heard together by Justice Shymal Kumar Sen (as His Lordship then was). From time to time various interim orders were passed by Justice Sen on the application of plaintiff. On 19th December 1994, Justice Sen was pleased to dispose of the application for rejection of the plaint without passing any order, however, His Lordship kept the point raised in that demurer application open to be tried at the time of hearing of the suit. As far as the application for interlocutory relief of the plaint is concerned the same was dealt with by His Lordship. On 6th December 1994 in that application the learned counsel for the defendant No. 1 made submission that the defendant No. 1 had already sold and transferred 1st to 5th floors, roof and the car-parking space of the premises in question before institution of the suit and the possession had also been delivered to the respective purchasers.

4. In view of the aforesaid submission on 20th December 1994 Mr. Justice Sen was pleased to appoint three learned Lawyers of this Court Joint Special Officer to visit the 1st to 5th floors of the premises in question and to submit report to the Court about possession of the said floors, and also the car-parking space. On 2nd January 1995 Justice Sen was pleased to pass order directing that no transfer will be effected in respect of the premises in question until further order of the Court.

5. Pursuant to the order of Justice Sen Joint Special Officers submitted report on 20th December 1994 and it was found then the following persons were in possession and/or occupation in the respective floors as follows :

1st Floor Regards Sarees, G. P. Chokhany 2nd Floor Aakanksha, Exxon Bandana Sangeet 3rd Floor J. L. Agarwal, Beejay 4th Floor Vivek Gupta, Gallop Wheelers 5th Floor R. K. Gupta, R. K. Gupta, Ashok Gupta

6. When the aforesaid information of transfer of various floors was given to the Court, the defendant No, 1 was directed to supply the particulars of the names of the occupants as was required to be given statutorily under the Income Tax Act 1961 in form 37-I. It was not supplied by the defendant No. 1. So, in terms of the Court's order the Income Tax department produced 12 numbers of Forms 37-I dated 14th September and submitted dated 14th September 1994. In this form it was found only Bandana Sangeet and Gallop were stated to be in occupation on 1st floor and 2nd floor.

7. The aforesaid interlocutory applications were ultimately disposed of by Justice Sen by order dated 3rd May 1995 directing the parties to maintain a status quo with regard to the flats and car-parking spaces which are subject-matter of dispute, as on 20th December 1994.

8. It appears that plaintiffs not being contended with the aforesaid order of

status quo, preferred an appeal in order to get further interim relief. The appeal Court on 19th May 1995 dismissed the appeal observing that the interim order of status quo was sufficient enough to protect the plaintiffs interest. However, the said order of the appeal Court kept reserved the right and interest of the parties for future action. Thereafter the plaintiff took out another interlocutory application being GA No. 641 of 1995 for order of injunction and appointment of Receivers and also for eviction of 3rd party namely, one M/s. Modi Olivette.

9. In that application it was the grievance of the plaintiff/petitioners that in breach of the order of status quo, the said 3rd party had taken possession, therefore, it should be evicted and further the properties in question shall be brought to the custody of the Court by appointing Receiver so that in future there might not be any repetition of breach of the interim order of status quo.

10. On that application another Special Officer was appointed by the Court for submitting a report to ascertain who were in possession and/or occupation of the suit premises on that date as there was an allegation that meanwhile, there was change of hands of possession and occupation of the suit premises. The Special Officer submitted report to the Court stating floor-wise possession and occupation of the persons as on 8th August 1995 and 4th September 1995. From the reports I find excepting "Regards Sarees" on the 1st Floor, "Aakanksha" represented by Mr. R. K. Agarwal on the 2nd Floor, J. L. Agarwal, "Beejay Investment" on the 3rd Floor, "Gallop Granite" on the 4th Floor, R. K. Gupta on the 5th floor there were number of new occupants in the suit premises. The respondent No. 1 also supplied information to the Court on 10th May 1996 to the effect that other different persons were in occupation. I am not concerned with the statement of the defendant No. 1 and the names of the occupants.

11. The question here is whether any person in breach of the order of status quo has come into possession or occupation. The said application was finally heard by Justice Mrs. Ruma Pal (as His Lordship then was) appointing Joint Receivers over the suit premises and further directing the Receivers not to allow the status quo in the premises to be disturbed by any person in any manner whatsoever. The Receiver was also directed to take possession of vacant portion of the aforesaid floors. Further, direction was given upon the Receiver to take possession within 24 hours from one M/s. Modiolivette. In default of handing over possession the Receiver was directed to evict Modiolivettee from the flats in its occupation forthwith, as the said person was found to have been in possession in gross breach of the order of this Court.

12. Justice Mrs. Pal, however, was pleased to grant stay of operation of the aforesaid order for temporary period to enable, presumably, the defendant No. 1 and the other persons to prefer appeal therefrom.

13. On 7th June 1996 the appeal was admitted. Stay of operation of the order of the learned trial Judge appointing Receiver and direction for eviction of the said Modiolivettee was stayed, but an order of injunction restraining the appellants

from taking any further step to effect any further work of construction or to take any step to complete the building until further orders, was passed.

14. Ultimately the said appeal was heard on 15th September 1999 appeal Court affirmed the judgment and order of the learned trial Judge, Justice Mrs. Pal. The present application has been taken out subsequent to disposal of the aforesaid appeal alleging as observed hereinabove.

15. At the ad-interim state Justice Dilip Kumar Seth was pleased to pass an order directing the Receiver to ascertain who are in possession and/or occupation, as by passage of time number of persons are alleged to have committed breach of order of status quo as well as disturbed possession and occupation of the Receivers. So also I did one year later.

16. From the two reports I find there is change of hands of possession. Under those circumstances I was of the prima facie view that the new entrants in the said floors came in possession and occupation of the suit premises in breach of the order of status quo and further interfering with and/or disturbing in the possession of the Receiver. Accordingly I directed the Receiver to serve notices upon all the occupants and to state their locus to remain in possession and/or occupation. A number of persons have come to object against the Court's action for their eviction.

17. It is settled position of the law that if any person or persons in breach of the order of Court comes in possession in a suit property they do not acquire any right or authority and they are to be dealt with amongst other by passing the order of eviction and further with an appropriate order of punishment. In this connection the decisions of the High Courts reported in Sujit Pal Vs. Prabir Kumar Sun and Others, , and Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others, are good enough to be referred to.

18. Relying on the aforesaid authorities Justice Mrs. Pal in past had granted relief to the plaintiff/petitioner substantially. I have no reason to depart from the principle followed and adopted by Justice Mrs. Pal while dealing with the present application since the allegations are identical and same if not worst than those made in the previous application.

19. Now the question remains as to what is the effect of the interim order passed by this Court from time to time and further to what extent the same are binding upon the parties vis-a-vis third parties.

20. Before I deal with the factual aspect as to the locus and right of the third parties to remain in possession and occupation I must address to the aforesaid points pressed before the Court by the learned counsel for the parties and the third parties.

21. Mr. Hirak Mitra the learned Senior Counsel for the plaintiffs submits that all along the order of status quo has been in operation, thereafter order of injunction and of appointment of the Receiver being comprehensive interlocutory

reliefs were granted by this Court on affirmation of the judgment and order of Justice Mrs. Pal by the Appeal Court.

22. He submits that from the report of the special officer it will appear, undoubtedly, that there is flagrant breach of the status quo as regard possession and/or occupation. His further contention is that though the order of status quo was directed to be maintained by the parties to the suit but then intention of the Court was to make it binding upon the person or persons, who subsequently took possession from the defendant No. 1. The third party occupiers have taken possession with specific knowledge of pendency of the suit as well as the agreement of the defendant No. 1 with the plaintiffs. Therefore, it cannot be said their right of possession as a proposed purchaser and the occupant is that of a transferee for value without notice.

23. Each and every person is liable to be evicted summarily on this application as they are the rank trespassers when the subject-matter of the property is in custody of and being preserved by the Court.

24. Mr. Anindya Kumar Mitra, learned Senior Advocate appearing for the Defendant No. 1 contends that order of status quo was passed by this Court binding the parties only not the third party. His client always maintained this order of status quo. Even before filing of the suit his client had lawfully transferred and/or had given possession of the respective flats on the respective floors to the third parties who are not parties to this suit. If the third parties have changed their hands during pendency of the suit and in breach of the order of status quo his clients cannot be made responsible. He contends that as far as law is concerned in this matter none of the parties can be evicted as order of status quo does bind them.

25. Mr. Utpal Bose appearing for a group of objectors/occupants submits that his clients are bona fide purchaser for value without notice. They do not have any knowledge of the order of status quo nor it was made known to them. The respective properties have been purchased, though no conveyance has been executed upon payment of full consideration. His clients are not parties to the suit and until and unless they are added as parties defendant" order of status quo cannot be made binding upon them. The effect and interpretation of the order of Justice Sen is very clear the same is intended to make binding upon the parties only.

26. Mr. Debangshu Basak appearing for one of the objectors namely Regards Sarees submits that his client has been in occupation even before the order of status quo was passed and since beginning, and that will be apparent from the report of the first group of special officers. Therefore, his client has not taken possession of any floor of the premises in breach of the Court's order.

27. Mr. Shyama Prasad Sarkar, Senior Advocate appearing on behalf of the some of the objectors/occupants submits that initial order of status quo passed by Justice Sen has been merged with the order of Justice Mrs. Pal and no separate

effect can be given to the order of Justice Sen, as order of Justice Mrs. Pal has been affirmed by the Appeal Court.

28. The order of Justice Mrs. Pal was stayed till the disposal of the appeal. As such the Receiver had no occasion to take possession of the property and only order of injunction was operative against the parties namely defendants by virtue of the ad-interim order of the appeal Court. This order of injunction is not enforceable against the third parties. He further submits that his clients are also transferee for value without notice or knowledge of the pendency of the suit and existence of any order of injunction, Therefore, he submits that at the highest his clients may be bound by the agreement said to have been executed by and between the plaintiffs and the defendant No. 1 as assignee and/or transferee of the property and that shall be decided at the time of trial of the suit not otherwise.

29. All the arguments advanced by the learned counsel are considered and so also the documents and affidavits filed by the third party occupants and the affidavit of the defendants. In this application point for consideration is that whether third parties who are admittedly in occupation and possession are liable to be evicted or not on this summary proceeding.

30. I find from the records on and from 20th December 1994 till the date of submission of the report of the Special Officer in terms of my order dated 16th August 2002 from time to time third parties changed their hand of possession excepting the person and/or persons carrying on business under the name and style of "Regard Sarees", Regard Sarees is a third party and it also has filed affidavit of objection. I am of the view that Regard Sarees cannot be affected by this application on the allegations of breach of order of status quo. So its objection is accepted and no order is passed as against it on this application, however, this observation and decision will not be a binding factor at the time of the trial of the suit for rendering decision.

31. As far as the question of eviction of other third parties are concerned one common fundamental point of law argued by the parties is to be discussed and decided. It is stated that order of status quo passed by Justice Sen dated 3rd May 1995 binds parties only and not the third parties. On 20th December 1994 it appears from the reports that a group of persons were in possession but the substantial portion of the aforesaid building then incomplete, was in possession and/or occupation of the defendant No. 1. Such fact is also recorded and/or observed by Justice Mrs. Pal by order dated 10th May 1996, as such Receivers were directed to take vacant possession of the same.

32. Now it appears from the records that almost all the six floors have now been in possession and/or occupation of the third parties. Twelve Forms in 37-I were filed and it was submitted to the Income Tax Department on 9th February 1995. However, none of the so-called transferee as described in Form 37-I was found in physical possession of any portion of the said building by the Special Officers at

any point of time. This Court is concerned for the time being, with the maintenance of status quo order as regard physical possession. Filing of the agreement and declaration in Form 37-I dated 14th September 1994 for dealing with this application to my mind are of no relevance for the purpose of this application.

33. The contention of defendant No. 1 as advanced by Mr. A. K. Mitra learned Senior Counsel that before passing of the order of status quo his clients had parted with possession to third, parties is not factually correct.

34. So, I am of the view that defendant No. 1 had certainly in breach of the order of status quo brought a number of persons namely Nikita Chokhani on the 1st floor, Saraf International on the 2nd floor; Modi Olivetti on the 3rd floor, who subsequently went away in view of the order passed by this Court; Rajlaxmi Merchants on the 4th floor; A. Agarwal on the 5th floor; S.K. Goenka and M.L. Dewan on the 6th floor.

35. The aforesaid persons had taken possession from defendant No. 1 directly who has in complete breach of the order of status quo passed by this Court changed the hands of possession then. Therefore, those persons and/or any other persons subsequently who took possession, have taken possession in the suit premises illegally through the intermediaries, who too in their turn originally took possession from the defendant No. 1 illegally during pendency of the suit. I am of the view that the order of status quo though expressly binds the parties the same is applicable to the assignee and/or transferee who subsequently had taken possession, because whatever clog being operative against the transferror is also applicable against transferee too.

36. It is the primary and paramount obligation of all the parties particularly defendant No. 1 to see that order of status quo is maintained. So the defendant No. 1 was obliged to see that there should not have been any change of possession either through its assignee and/or transferee or through anybody else. It is absurd to suggest that order of status quo does not bind intermediary third parties.

37. Ignorance of the order of status quo of the third parties is of no defence to remain in possession and/or occupation, where the original transferee was restrained from parting with possession. From the documents annexed to the affidavit of objectors, which are almost identical in nature, I find every body has traced his right of occupation from the defendant No. 1 and, as rightly argued by Mr. H.K. Mitra, in the agreement itself it appears that all the occupants had and have specific knowledge of pendency of the suit. Had it been a case of bona fide transaction of taking possession then each of them should have carried out searches and enquiries into the records of this case as to whether any prohibitory order of injunction in any form was there or not. There is no such whisper that such searches were made. It is stated in the affidavit that large number of agreements were entered into between the numbers of intermediaries, however,

such agreements have not been disclosed nor filed. In absence of such agreements I think the other so called intermediaries are imaginary and/or fictitious,

38. I find considerable force in the arguments of Mr. H.K. Mitra that with the order of injunction/status quo the intention of the Court was to prevent transfer of any portion of the suit premises. The transfer has been effected in favour of the present occupiers after the orders of status quo and injunction are passed and are therefore in derogation and violation of the said orders too. As such no right could lawfully be nor indeed was created in favour of the third party occupants in breach of the order of status quo. In support of my observation I find the decision of the Supreme Court rendered in case of Krishna Kumar Khemka Vs. Grindlays Bank P.L.C. and others, .

39. It is argued by Mr. Sarkar that order of status quo passed by Justice Sen was not in force and the same has merged with the order of Justice Mrs. Pal since affirmed by Appeal Court. I do not find any substance in this submission as it is clear from order of Justice Mrs. Pal the Receiver was directed to see that earlier order of status quo by Justice Sen is not breached. Moreover, the question of merger of the order of Justice Sen with the order of Justice Mrs. Pal did not and cannot arise, as the two orders were passed on two different applications as correctly pointed out by Mr. H. K. Mitra. Rather I find order of Justice Sen was approved by the Appeal Court presided over by Justice Umesh Chandra Banerjee (as His Lordship then was).

40. I hold that order of status quo of Justice Sen was and still is in operative, over and above order of appointment of Receiver by Justice Mrs. Pal is also in operative. It was further contended that clients of Mr. Sarkar have taken possession, when order of Justice Mrs. Pal was stayed by the Appeal Court, as such possession taken by the persons during pendency of the appeal cannot be said to have been done in breach of order of this Court.

41. In my view such contention is advanced in desperate attempt to legalize an illegal act. Possession was taken during this period by the persons playing mischievous tricks and to circumvent the Court's process. When the order of learned trial Judge is affirmed by the Appeal Court though stay was granted during the pendency of the matter, effect of the same will relate back to the date on which it was passed. Therefore, the possession taken during this period by the persons are deemed to have been in complete breach of the order of Justice Mrs. Pal as well as the order of Justice Sen, and further disturbing the possession of the Court through Receiver.

42. Therefore, I uphold the contention of H.K. Mitra Senior Advocate who is appearing with Mr. Sandwip Mukherjee, Advocate that the objectors who have filed their affidavits and other persons who are found to be in possession excepting Regard Sarees, are held to be in illegal possession and occupation.

43. Now the last question remains whether they are liable to be evicted on the

summary proceedings or the Court should wait for the final decision to be rendered on the trial or not. In my view the Court is not required to wait till the trial of the suit adding these person as parties to the suit, as rightly contended by Mr. H.K. Mitra that one cannot claim any right either legal or otherwise to occupy any portion of the said building where prohibitory order of injunction and further order of status quo has been operative in relation to possession and occupation.

44. The Court has passed an order for protecting and preserving properties by appointing Receiver to take possession, if such possession is disturbed by any of the parties or by third party or parties, to the suit the Court shall see in exercise of its inherent power the status on the date of passing interim order is restored. Order of the Court is meant for compliance not for violation either by the parties or by anybody else. If any third party has violated the order of status quo which may not be binding then the parties at least the defendant No. 1 should have come before this Court to tell that the status quo could not be maintained. The plaintiff has come forward to draw the attention of the Court complaining status quo having been breached. Moreover third party cannot get any benefit of illegal act or omission. As rightly contended by Mr. H.K. Mitra that in a suit for specific performance the subsequent transferees during pendency of the suit are not required to be brought in the suit by the plaintiffs since any decree is passed in favour of the original defendant/ transferor such decree will automatically bind the subsequent transferee. It is for the alleged subsequent transferee to come forward to the Court and establish its right if it has at all. It is neither for the Court nor for the plaintiff to bring them.

45. By reason of the aforesaid fact none of the objectors nor even the persons excepting "Regard Sarees" are entitled to remain in possession and they are liable to be evicted on this application. Therefore, I overrule their objections. Accordingly I direct all the persons who have filed their objections namely M/s. Nirmal Creations, Savera Enterprises, Kripa Fashions Pvt. Ltd., M/s. Ridhi Sidhi Sarees Pvt. Ltd., M/s. Chitrakar Apparels Pvt. Ltd., M/s. Sarbani Sarees Pvt. Ltd., M/s. Nirmal Fashions Pvt. Ltd., M/s. Rajlakshmi Merchants Pvt. Ltd. and M/s. Swastika Sarees Pvt. Ltd. to vacate their respective portions within one month from the date of communication of this order. On vacating, the Joint Receiver shall take physical possession, failing which the Receivers are directed to evict them with the help of the local Police Station and costs of such Police assistance shall be realized by the Receivers and/or the Police authority from the aforesaid persons. Those persons who have not filed their objections are also to be evicted by the Receivers with the help of the Police if possession is not handed over to them.

46. Let xeroxed certified copy of this judgment and order be given to the parties on urgent basis.

47. Let signed copy of the operative portion of this judgment and order be supplied to the parties on the usual undertaking.