
(2004) 09 AHC CK 0184
In the Allahabad High Court
Case No : C.M.W.P. No. 35551 of 2004

Sinwah Ahmad Shah and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4

Citation : (2005) 1 AWC 269

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : S.S. Nigam and M.K. Gupta, for the Appellant; A.K. Sharma and R.N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—The dispute in the instant petition revolves round property No. 28/33 situated at Gange Ka Phatak, Kashmiri Bazar, Agra.

2. It would appear from the record that the respondent Nos. 3 to 8 were the tenants of the house in question of which petitioner No. 1 is the landlord. The access to the said house, it would further appear, was through the staircase and it is alleged that the landlord locked the door having access to the tenements through the staircase. It would further appear that respondents initially represented to the District Magistrate for opening of the lock but having failed, they instituted O. S. No. 475 of 2004 along with accompanying application for temporary injunction in the Court of Civil Judge (Senior Division) Agra. In the ultimate analysis, the trial court passed orders mandating by way of interim injunction to the defendants petitioners to unlock the door barring access to the tenements in question. Aggrieved by the said order, the petitioner defendants preferred revision before the appellate court, which held good the view taken by the trial court and dismissed the revision accordingly. It is in the above backdrop that the petitioners have come up to this Court for the reliefs.

3. The learned counsel for the petitioners giving a general view of the controversy involved in this petition stated that the respondents were engaged in flesh trade and on account of public outcry and pressure exerted by certain social organizations as well as by the police posse to cleanse the area of the tenants who according to the learned counsel of fourth petitioner were indulging in prostitution, vacated the premises on their own accord to settle elsewhere in the city of Agra. He further canvassed that once the premises in question have voluntarily been vacated by the respondents, the same cannot be restored to them and the trial court as well as appellate court committed illegality and transcended the bounds of their jurisdiction in making the orders of the nature impugned herein. It has been further submitted that the respondents having voluntarily vacated the premises, are no more in occupation of the premises nor can they be treated as tenants. The learned counsel for the petitioner also raised a question of considerable nicety stating that any ad-interim injunction could be granted to restore possession on the date of suit and such mandatory injunction by which a direction was issued not to maintain status quo on the date of suit but to restore the possession prior to the suit which was the main cause of action in the suit was beyond the jurisdiction of the Court below and on this reckoning, he painted the order as illegal and without jurisdiction. Per contra, learned counsel appearing for the respondents propped up the order passed by the Courts below by contending that it has not been denied that the petitioners were the tenants and further that the respondents had illegally pad-locked the door barring access to the tenements in the tenancy of the respondents without any valid basis and they have concocted the ground that the premises in question had been vacated.

4. At the time of initial hearing of the petitioner on 2.9.2004, the Court framed an issue to the effect "whether temporary mandatory injunction could be granted in favour of the plaintiffs in order to restore a position prior to filing of the suit". It is this question on which hinges the decision of the points raised before this Court.

5. I have been taken through the impugned orders and the learned counsel also advanced arguments at prolific length on the point. In connection with the point at issue, decision of the Apex Court in *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, which is one of the *magnus opus* case on the point may be referred to. In this case, the Apex Court laid down four guidelines : (i) A stronger prima facie case than in normal circumstances; (ii) The resultant injury cannot be compensated in money; (iii) Balance of convenience; (iv) Exercise of judicial discretion on sound equitable principle. It is in the light of the above guidelines that the merit of the questions involved in the instant petition may be scanned.

6. In the light of the above guidelines, I proceed to delve into the reasoning adopted by the trial court in making the impugned order in order to ascertain whether the trial court revolved within the periphery of the afore stated guidelines laid down by the Apex Court or not. It may be noticed that the trial court after considering various shades and aspect of the matter and analyzing

the various documents produced, converged to the conclusion that the plaintiff-respondents were still tenants of the respective accommodations in the premises in question and the defendant petitioner illegally pad-locked the doors of the staircase barring ingress and egress of the plaintiff respondents. Considering the stand taken by the defendants that the plaintiffs had vacated the premises on their own volition and shifted elsewhere in the city of Agra, the trial court disbelieved the theory and reasoned that mere bald statement that after the plaintiffs had vacated the tenements, the premises were pad-locked by the defendant-petitioners out of their solicitude for the safety of the tenements does not merit the view that the tenants had vacated the tenements on their own volition and tenancy rights of the plaintiffs had also come to an end also considering that the petitioners had not named the alternative accommodation to which the tenants had shifted. The trial court also noticed the decisions rendered in Dorab Cawasji Warden and held that it would result in irreparable injury if the mandatory injunction is not granted in the case. The trial court also held that balance of convenience also leaned in favour of the plaintiff-respondents. A kindred question arises whether in granting mandatory injunction of restoring plaintiffs to possession of the tenements, there was any higher risk of injustice involved.

7. It is settled in law that temporary mandatory injunction can be granted to maintain a position of last uncontested situation in a very rare case, if a stronger prima facie case is made out and if the resultant injury cannot be compensated in terms of money. For the answer of this question, it would be appropriate to delve into the facts of the present case. It has not been denied that the plaintiffs were tenants of the respective accommodation in the premises and it has also not been repudiated that they were paying rent without any default. The case of the petitioner that the tenants were indulging in flesh trade and due to police and public pressure the plaintiff respondents fled away voluntarily vacating the premises and for the sake of safety of the premises in question, they pad-locked the door at the staircase. On the other hand, the allegations have been denied by the counsel representing the plaintiff-respondents and emphatically urged that they were still in occupation of the tenements and they never vacated the premises as alleged. It was further urged that the petitioner Illegally pad locked the door at the staircase thereby preventing ingress and egress of the plaintiffs. Nothing has been relied upon by the learned counsel for the petitioners to vindicate his stand that the premises were voluntarily vacated by the plaintiff-respondents. It has been stated by the learned counsel that after the premises had been vacated, new tenants have been inducted into the respective tenements. As stated supra, there being nothing tangible on record that the respective tenements in occupation of the plaintiffs were at all vacated, there arises no question of vacancy of the tenements and induction of new tenants. It leaves no manner of doubt from a perusal of the entire record that the petitioners Illegally pad-locked and prevented Ingress and egress of the rightful tenants of the tenements and in the circumstances, approach of the Court below

was both fair and reasonable and conclusions were convincing and the order passed by it is an eminently just order. It would thus crystallise that a stronger prima facie case was made out for grant of mandatory injunction to undo the wrong inflicted on the plaintiffs.

8. Coming to the next aspect whether it was a fit case in which plaintiff respondents could be restored to status quo ante while considering the application for injunction. It would be eloquent from the facts on record that the petitioner defendants illegally prevented egress and ingress of the plaintiffs by padlocking the doors of the staircase by employing ingenious methods and by colluding with the police and few persons interested and not in accordance with the procedure prescribed and it would thus appear that the plaintiffs were illegally ousted from their respective tenements ex-facie by exerting extrinsic pressure which would amount to a method otherwise than in accordance with the procedure prescribed by law and therefore, it is undeniable that the plaintiffs suffered incalculable hardship. In my firm view in an alike situation, if the wrong inflicted upon the plaintiffs cannot be adequately redressed until they are not restored to status quo ante position to which they were fully entitled. Sometimes, it is rendered imperative that in order to give adequate relief to an aggrieved person, some kind of consequential relief be also granted. In my considered opinion, considering that the plaintiffs were illegally denied ingress and egress by putting lock on the door of stair-case, it is obligatory on the Court that relief of the nature be granted ex-debito Justitiae.

9. The learned counsel for the petitioner relied upon certain cases to give prop to his failing case. The first decision cited is Nandan Pictures Ltd. Vs. Art Pictures Ltd. and Others, . The quintessence of what has been held in this case is that it is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an ad interim order, pending the decision of the application itself are almost unknown. This decision does lend support to grant of mandatory injunction but in rare cases. The next decision cited by the learned counsel for the petitioner is The University of Bihar and Another Vs. Rajendra Singh, . In this decision also, the same principles have been reiterated as in the decision rendered by Calcutta High Court (supra). The third decision relied upon is the decision in Bharat Petroleum Corporation Ltd. v. Hari Chand Sachdeva AIR 2001 Del 307. In this decision also, the essence of ratio is that the mandatory injunction is granted only to restore status quo on the date of suit and not to restore the position to a new state of things prior to suit. This decision, it would appear, dealt with an altogether different point and cannot be called in aid to apply to the facts of the present case. On the other hand, the decision relied upon by the learned counsel for the respondents are the decisions in Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, and Salim Vs. First Additional Civil Judge, Senior Division, Saharanpur and others, . As stated supra, the decisions rendered by the Apex court in Dorab Cawasji Warden's case deals with the similar question as involved in the petition. A decision is worthy of

precedent when it decides a question of law. The decision of the Apex Court in the said case laid down four guidelines on the anvil of which the case for mandatory injunction at interlocutory stage could be considered.

10. the next aspect to be considered is whether the trial court could grant interim mandatory injunction to restore the plaintiffs to possession of the premises prior to the institution of the suit. In this connection, what is deserving of consideration is whether plaintiffs were rightful tenants of the premises in question and whether the manner in which they were allegedly permitted to enter the premises or whether they could be considered to have vacated the premises on their own volition. As established by the facts on record, tenancy of the plaintiffs has not been denied, it was not denied that no notice terminating the tenancy was given to them so far but it is alleged that it would deem to have been determined after they had vacated the premises on their own volition. At the risk of repetition, it may be stated that the stand of the petitioners was that due to public out-cry and pressure of the police and public, the tenants vacated the premises on their own volition. The tenants are old tenants and they have been alleged to be indulging in flesh trade though this fact had been denied by the plaintiffs. In any case, the plaintiffs are in settled position and it does not imply that they can be divested of their rights to accommodation in the manner adopted in the instant case by the petitioners. Quite often than not, landlords have been noticed to have resorted to the short-cuts of ousting a genuine tenants by way of colluding with the police and few interested persons and such ouster is often given the veneer of public pressure and out-cry in order to derive their nefarious ends. The instant case does bear similarity to such situation in which landlords tried to exert extrinsic pressure for ouster of the rightful tenants in possession. In the above conspectus, it does not appear that it was the own volition of the tenants, which could be said to have resulted in the vacation of the premises in question. The manner in which the ouster was sought to be achieved does not appear to be the procedure prescribed by law. In the circumstances, the question that the plaintiffs could not be restore to a position prior to filing of a suit has no merit considering that the element of volition in vacation of the premises was not involved and secondly, the plaintiffs had not been sought to be evicted in the manner prescribed by law. Therefore, the question is supererogatory and does not merit to be given deeper meaning to sustain the stand of the petitioners in the property in question. In this connection, observations of the Apex Court contained in paragraphs 10 and 14 of the decision in *Dorab Cawasji Warden* may also be noticed which reinforces the view being taken by me in the instant petition. In paragraph 10 of the decision, it was observed by the Apex Court to the effect that "The trial court gave an interim mandatory injunction directing the fourth respondent not to continue in possession. There could be no doubt that the Courts can grant such interlocutory mandatory injunction in certain special circumstances." In paragraph 14 of the self-same decision, the Apex Court observed as under :

"The relief of interlocutory mandatory injunctions are thus granted generally to

preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining....."

11. In a situation like the present one, what should be the role of a court of justice when genuine tenants by extrinsic pressure are shooed away from the tenements with the avowed object of grabbing the property which otherwise seemed to be next to impossible to achieve. It bears no scrutiny that a court of justice is also called a court of equity. Even if it is sought to be argued that the jurisdiction of the Court was discretionary and therefore, the Court was not bound to tilt at every approach found not in consonance or conformity with law. It ex-facie appears that the tenants had not vacated the premises on their own volition and it also bears no dispute that the manner in which the tenants were expelled was also not in consonance with the procedure prescribed. Even if it be assumed that the tenants could not be re-inducted in the premises as it would amount to restoring them to possession prior to institution of the suit, I am of the view that there is equitable aspect to be considered by the Court in exercising such discretion. The laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. We are governed by Constitution and rule of law must prevail at all costs. In my considered view, it is obligatory on the Court that it should affirm the law of its element of certainty, but at the same time it should bear in mind that the equity may not stand massacred. While administering law, it is the duty of the Court to temper it with equity and if the equitable situation demands action of the nature as called for in the instant petition, the Court would be failing in its duty if it does not notice equitable considerations.

12. Before parting, I would verbalize my concern about the manner in which the petitioners sought to retrieve possession of the property by employing ingenious means by mustering the help of few disgruntled elements and also the police force in shooing away the tenants. Such unjust and illegal manner employed by the petitioners deserve strongest condemnation and should be viewed with concern. It is also a matter of concern that tenants approach the administrative authorities for help but the petitioners seemed to prove himself smarter and frustrated any endeavours on the part of the tenants to retrieve their possession.

13. In the above conspectus, the trial court passed an eminently just and sound order inasmuch as from the facts on record, there is stronger prima facie case in favour of the plaintiffs and the course adopted by the trial court appears to carry the lower risk of injustice.

14. In the above conspectus, the petition fails and is dismissed.