
(1985) 05 CAL CK 0034
In the Calcutta High Court
Case No : Civil Order No"s. 42-43 of 1985

Sri Krishna Investment Co. Ltd.

APPELLANT

Vs

Smt. Parameshwari Devi Lohia and Another

RESPONDENT

Date of Decision : 02-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 115, 151
Constitution of India, 1950 — Article 226

Citation : AIR 1986 Cal 171

Hon'ble Judges : Sukumar Chakravarty, J

Bench : Single Bench

Advocate : P.K. Mallick and P.K. Ghosh, for the Appellant; Sakti Nath Mukherjee and Biman Kumar Bose, for the Respondent

Final Decision : Allowed

Judgement

Sukumar Chakravarty, J.—The caveat having been lodged in each case, the revisional applications in C. O. No. 42 of 1985 and C. O. No. 43 of 1985 have been taken up analogously for contested hearing for the convenience of the parties as the same question is involved in both the cases.

2. In C. O. No. 42 of 1985, the order dated 7-11-84 passed by the learned Additional District Judge 1st Court, Howrah in Misc. Appeal No. 50 of 1984 has been challenged. Similarly in C. O. No. 43 of 1985, the order dated 7-11-84 passed by the learned Additional District Judge 1st Court Howrah in Misc. Appeal No. 49 of 1984 has been challenged.

3. The facts leading to the filing of the present revisional applications are as follows : --

The petitioner Sri Krishna Investment Co. Ltd., of C. O. No. 42 of 1985 as plaintiff filed Title Suit No. 52 of 1984 in the 4th Munsif Court, Howrah against its tenant Smt. Parameshwari Devi Lohia and also the Chairman, Howrah Municipality in respect-of the suit premises of that Title Suit for a decree of

declaration that the suit premises were let out for residential purpose and for injunction to restrain the defendant from dismantling the walls of the rooms for running a hotel business and filed a petition for temporary injunction for restraining Smt. Parameshwari Devi Lohia from converting two rooms in the suit premises into one room by dismantling the walls and opening a hotel therein and for restraining the Chairman, Howrah Municipality from issuing trade licence to Parameshwari Devi Lohia to open the hotel business. Similarly Sri Krishna Investment Co. Ltd., filed Title Suit No. 51 of 1984 against its tenant Biswanath Poddar for similar relief in respect of the suit premises of that suit in the same Munsif Court and filed also a petition for temporary injunction for similar type of relief in Title Suit No. 52 of 1984.

4-5. The learned Munsif by his order dated 2-4-84 in each suit allowed the prayer for temporary injunction against the tenant-defendant but rejected the same against the Chairman, Howrah Municipality.

6. The tenants-defendants in Title Suit No. 51 of 1984 and 52 of 1984 filed Misc. Appeals Nos. 49 of 1984 and 50 of 1984 respectively against the order dated 2-4-84 passed by the learned Munsif and both the said Misc. Appeals were heard analogously by the learned Additional District Judge concerned and by his order dated 31st May, 1984, the learned Additional District Judge dismissed the Misc. Appeals and confirmed the Judgment and order of the learned Munsif subject to the modification that the tenants would be entitled to carry on lawful business in the suit premises without causing any mischief to the premises within the meaning of Clauses (m), (o), and (p) of Section 108 of the Transfer of Property Act.

7. On 11-6-84 the tenant-defendant-appellant in each Misc. Appeal filed a petition u/s 151 of the CPC for clarification of the order dated 31st May, 1984 and for permission to carry out repairs in the suit premises.

8. The learned Additional District Judge rejected the aforesaid application u/s 151 of CPC after analogous hearing, by his order dated 16-6-84 with the observation that the appellate court had become functus officio in giving any clarification or interpretation to its order dated 31-5-84 by which both the Misc. Appeals were disposed of in the way already mentioned, and that the Misc. Appeals having been disposed of, the appellate court had no jurisdiction to express any opinion in the matter and that the tenant-defendant might approach the trial court for the purpose of getting permission to effect repairs in the premises.

9. The tenant-defendant in each case moved the High Court in revision against the order dated 16th June, 1984 and G. N. Ray, J. rejected the revision applications by his order dated 9th July, 1984.

10. The tenant-defendant of each suit together then filed writ petition under Article 226 of the Constitution of India on 8-8-84 against (1) State of West Bengal, (2) D. M. Howrah, (3) S. P. Howrah, (4) Inspector-in-charge, Golabari P. S., Howrah, (5) Sri Krishna Investment Co. Ltd., (plaintiff of each suit) praying

for writ of mandamus commanding the respondents to forbear from interfering with the rights of the petitioners in effecting repairs in the premises at their own cost, before A. K. Sengupta, J. alleging at what stage and how the learned Additional District Judge in Misc. Appeals Nos. 49 of 1984 and 50 of 1984 passed the order dated 31 st May, and stating also that the said order did not restrain the tenant-defendant to effect repairs in the suit premises which the tenants-defendants were entitled to do under the law and that the respondent No. 4 inspector-in-Charge, Golabari, P. S.) at the instance of the respondent No. 5 had been threatening the petitioner with arrest if repairs were being done, but without disclosing the facts in the writ petition that the tenants-defendants' petitions for clarification of the order dated 31-5-84 and for permission to effect repairs were rejected by the learned Additional District Judge by his order dated 16-6-84 and that the revision in the High Court against the said order was rejected.

11. The said writ application was disposed of by A. K. Sengupta, J. without issuing any rule and notice against the respondents with the following order : "Petitioner is directed to make appropriate application before the learned Additional District Judge, Howrah for clarification of the order dated May 31, 1984 granting permission to the petitioner to carry on the business. The petitioner will be at liberty to make an application before the first Additional District Judge, Howrah for appropriate orders for effecting repairs of the premises and upon such application being made the learned Additional District Judge will pass appropriate orders on merits".

12. While obtaining such order from A. K. Sengupta J., in the aforesaid writ application, it was not brought to the notice of the Writ court that the tenants-defendants also filed application for clarification of the learned Additional District Judge's order dated 31-5-84 and for permission to effect repairs in the suit premises and that the applications were rejected in the manner as already mentioned and that the revision in the High Court against that order was also rejected.

13. Being armed with the order dated 8-8-84 of A. K. Sengupta, J. in the writ application, the tenants-defendants filed again the applications dated 21-9-84 u/s 151 CPC before the learned Additional District Judge concerned for clarification of his order dated 31-5-84 and for permission to effect repairs in the premises.

14. The learned Additional District Judge by the impugned order dated 7-11-84 allowed the prayer for permission to effect the repairs and thus accorded permission to the tenants-defendants to effect the repairs in the suit premises at their own costs without in any way, causing mischief to the suit premises which would come within the meaning of Clauses (m), (o) and (p) of Section 108 of Transfer of Property Act by way of clarification to his order dated 31-5-84.

15. Being aggrieved by the said order dated 7-11-84 of the learned Additional District Judge concerned, the plaintiff-landlord has filed the aforesaid revisional

applications.

16. Mr. P. K. Mallick, learned Counsel appearing on behalf of the petitioner has submitted (i) that the learned Additional District Judge had no jurisdiction to entertain the petitions dated 21-9-84 u/s 151 of CPC for clarification of his order dated 31-5-84 and for permission to effect repairs in the premises when he became functus officio after passing the order dated 31-5-84 which disposed of the Misc. appeals finally at his end; (ii) that the Id. Additional District Judge's order dated 16-6-84 rejecting similar application u/s 151 CPC previously filed by the opposite party-tenant-defendant before the Id. Additional District Judge and the rejection of the revision against such order by the High Court on 9-7-84 stand as a bar upon Additional District Judge to entertain similar petition u/s 151 of CPC again, and (iii) that the order dated 8-8-84 of A. K. Sengupta, J. as a writ court in its Original Side directing the tenants-defendants to file petition before the Additional District Judge for clarification of his order dated 31-5-84 and for permission to effect the repairs in the suit premises and directing the Additional District Judge to pass the appropriate orders on merits, is void as the writ court of the Original Side had no jurisdiction to give such direction in the matter which was decided by the Additional District Judge as the 1st appellate court and against the decision of which the revision filed before the High Court in its general appellate jurisdiction was rejected.

17. Mr. Sakti Nath Mukherjee, learned Counsel appearing for the opposite party-defendant has submitted that the tenants-defendants filed the petitions dated 21-9-84 u/s 151 of CPC for clarification of the Additional District Judge's order dated 31-5-84 and for permission to effect the repairs in the suit premises, pursuant to the High Court's writ court order dated 8-8-84 and that accordingly the Additional District Judge had his jurisdiction to entertain and hear these petitions in connection with Misc. appeals which were finally disposed of by the Additional District Judge's order dated 31-5-84; because the order dated 31-5-84 being an order in an interlocutory matter like the temporary injunction, the court of Additional District Judge did not become functus officio. Mr. Mukherjee has further submitted that the Additional District Judge's order dated 16-6-84 upon the similar application u/s 151 of CPC previously filed, cannot stand as a bar upon the Additional District Judge to entertain similar application specially when the High Court by its order dated 8-8-84 in the writ matter has given direction to file such petition. According to Mr. Mukherjee, the writ court in connection with the writ matter can give the direction as given in the order dated 8-8-84 although no such relief was prayed for in the writ petition, and accordingly, the order dated 8-8-84 passed by A. K. Sengupta, J. as a writ court was not void and the Additional District Judge was bound to act according to that order. Mr. Mukherjee has further submitted that the material irregularity in the procedure may be ignored if it is shown that the impugned order has promoted justice.

18. The facts leading to the filing of the revisional applications as already stated

are admitted by the parties. There is no dispute to this fact also that the plaintiff-landlord in another Civil Rule No. 3% 1-62 of 1973 admitted tenant-defendants' right to undertake the repair work in the suit premises at their own cost when necessary.

19. The learned Additional District Judge finally disposed of the Misc. Appeals Nos. 49 of 1984 and 50 of 1984 by his order dated 31-5-84 which confirmed the learned Munsif's order dated 24-84 granting temporary injunction in favour of the plaintiff-landlord subject to the modification that the tenant would be entitled to carry on lawful business in the suit premises without causing any mischief to the premises within the meaning of Clauses (m), (o) and (p) of Section 108 of Transfer of Property Act. The tenants-defendants filed on 11-6-84 applications u/s 151 of CPC for clarification of the order dated 31-5-84 and for permission to effect repairs in the suit premises before the learned Additional District Judge. The learned Additional District Judge by his order dated 16-6-84 rejected the said applications u/s 151 of Civil Procedure Code, with the observations that his court was functus officio to give any clarification or interpretation to his previous order dated 31-5-84 and that the Misc. appeals having been disposed of, his court had no jurisdiction to accord any permission for effecting repairs in the suit premises if necessary and that the tenant-defendant might approach the trial court for the purpose. The revisional application against that order dated 16-6-84 of the learned Additional District Judge was rejected by the High Court on 9-7-84 and no rule was issued. It is therefore clear that the High Court in exercise of its general appellate jurisdiction exercised its revisional power to reject the revisional application. So, following the principle of law as laid down in the case of Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , I hold that the order dated 16-6-84 of the learned Additional District Judge had merged into the order dated 9-7-84 of the High Court in its general appellate jurisdiction whereby the revision against the learned Additional District Judge's order dated 16-6-84 was rejected. In the case reported in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, the Supreme Court has laid down the principle that the order of the 1st appellate court having been dismissed or rejected on revision by the High Court in exercise of its general appellate jurisdiction cannot be again challenged in the High Court in its writ jurisdiction.

20. The revision in the High Court against the order dated 16-6-84 of the learned Additional District Judge having been rejected, the tenant-defendant appears to have rightly realised that any further application before the learned Additional District Judge for clarification of the order dated 31-5-84 and for permission to effect the repairs in the premises would not legally lie and even if filed might not be entertainable by the learned Additional District Judge. The Tenant-defendant however did not approach the trial court for permission to effect repairs as ordered by the learned Additional District Judge in his order dated 16-6-84 but moved the writ jurisdiction of the High Court by filing a writ application under Article 226 of the Constitution of India with the prayer for issue of the writ of mandamus upon the Inspector-in-Charge, Golabari P. S., Howrah on the

allegation that the order dated 31-5-84 passed by the learned Additional District Judge did not restrain the tenant-defendant to effect repairs in the premises which the tenant-defendant was entitled to do under the law but the Police Inspector, Golabari P. S., Howrah at the instance of the plaintiff-landlord was threatening the tenant-defendant with arrest if tenant-defendant would go to effect the repairs in the premises and accordingly prayed for issue of the writ of mandamus against the Police Inspector. It has already been stated in the facts what the writ court did upon that petition. The writ court disposed of the writ petition without issuing any rule and notice upon the parties by its order dated 8-8-84 whereby the writ court directed the tenant-defendant to make appropriate petition before the learned Additional District Judge for clarification of the order dated 31-5-84 granting permission to carry on the business and also make an application for effecting repairs in the premises before the learned Additional District Judge and directed also the learned Additional District Judge to pass appropriate orders on merits. It has already been stated while describing the facts that nowhere in the writ petition it was disclosed that the learned Additional District Judge by his order dated 16-6-84 rejected the tenant-defendant's petition u/s 151 of CPC for clarification of the learned Additional District Judge's order dated 31-5-84 and for permission to effect the repairs in the premises and that the revision in the High Court against that order was rejected and that neither at the time of obtaining the order dated 8-8-84 from the writ court, the said facts were brought to the notice of the writ court even by way of submission.

21. Mr. Mallick, learned Counsel for the plaintiff petitioner submits that the order dated 8-8-84 passed by the writ court was void as the writ court had no jurisdiction to pass such order giving direction inter alia upon the 1st Appellate Court and in support of his such submission, he has relied on the decision in the case of Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, . Mr. Mukherjee, learned Counsel for the tenant-defendant on the other hand submits that the order dated 8-8-84 of the writ court is not void because of any lack of jurisdiction but the same may be wrong and erroneous for which the plaintiff-landlord could have approached the proper court for remedy when the landlord came to know of such order. I am afraid that this court cannot sit upon the order dated 8-8-84 of the writ court to see whether the writ court had jurisdiction to pass such order and whether it has been proper and legal for the writ court to pass such order. The appellate court of the writ jurisdiction or the Supreme Court can consider the validity and propriety of such order. I can only comment that the tenant-defendant managed to obtain such order from the writ court without disclosing full facts before the writ court, although the prayer portion of the writ petition did not contemplate to obtain such relief.

22. Being armed with the writ court order dated 8-8-84, the tenant-defendant filed the applications dated 21-9-84 u/s 151 of CPC before the learned Additional District Judge in the disposed of Misc. appeals for clarification of the order dated 31-5-84 and for permission to effect repairs in the premises and the learned

Additional District Judge appears to have been compelled to pass the impugned order dated 7-11-84 according permission to the tenants-defendants to effect the repairs at their own costs without in any way causing mischief to the suit premises which would come within the meaning of Clauses (m), (o) and (p) of Section 108 of Transfer of Property Act by way of clarification of his order dated 31-3-84.

23. Mr. Mallick has submitted that the learned Additional District Judge had no jurisdiction to pass the impugned order dated 7-11-84 because of his earlier order dated 16-6-84 on the similar application, which merged into the order dated 9-7-84 of the High Court in exercise of its general appellate jurisdiction whereby the revision against the learned Additional District Judge's order dated 16-6-84 was rejected and that the learned Additional District Judge could have ignored the writ court order dated 8-8-84. Mr. Mukherjee on the other hand has submitted that the learned Additional District Judge being the subordinate court under the High Court had no other alternative but to obey the writ court order dated 8-8-84 which was also the order of the High Court and the learned Additional District Judge has rightly exercised his jurisdiction in passing the impugned order. Mr. Mukherjee placing reliance on the decision in the case of Indrapuri Studio (p.) Limited Vs. Sm. Shanti Debi and Others, has submitted that the learned Additional District Judge was not functus officio in giving clarification to his order dated 31-5-84 and in according permission to the petitioner tenant-defendant to effect repairs in the premises.

24. In the case reported in Indrapuri Studio (p.) Limited Vs. Sm. Shanti Debi and Others, ., filed Title Suit No. 29 of 1964 in the 1st court of Subordinate Judge, Alipore against Shanti Devi under Order 21 Rule 63 of CPC for setting aside the summary order of rejection of plaintiffs claim under Order 21 Rule 58 of CPC in Misc. Case No. 11 of 1962 "against the attachment of certain properties in Title Execution Case No. 29 of 1961 of the 4th Court of Subordinate Judge, Alipore and for permanent injunction. On a petition for temporary injunction pendente lite, the prayer was allowed. On appeal in F. M. A. No. 264 of 1965, the High Court varied the order for temporary injunction to this extent that it was made subject to certain conditions, one of them being that the petitioner-plaintiff was to deposit a sum of Rs. 12,000/- within March every year in the court below, the first of such deposits to be made within March 1966. The first deposit was duly made but for the next deposit, falling due in March 1967, the application u/s 151 of CPC was made by the plaintiff-petitioner on 21-3-67 for extension of time. The objection was raised that High Court had become functus officio after disposal of F. M. A. No. 264 of 1965. The High Court granted extension of time in making the second deposit by observing that in view of the conditional interlocutory order which was not a decree, the High Court did not lose jurisdiction to extend the time. The facts of the aforesaid case are quite different from the facts of the present case. Further the learned Additional District Judge's order dated 16-6-84 on the findings that his court was functus officio to give clarification to his order dated 31-5-84 and that he had no jurisdiction to accord permission to the tenant-

defendant to effect repairs in the Misc. appeals which had already been disposed of get itself merged into the order dated 9-7-84 of the High Court which rejected the revision against the learned Additional District Judge's order dated 16-6-84. Such being the position, the decision in Indrapuri Studio (p.) Limited Vs. Sm. Shanti Debi and Others, has got no scope of its application in the present case.

25. In the facts and circumstances as mentioned above, I find that the learned Additional District Judge has committed the act of material irregularity in exercise of his jurisdiction in passing the impugned order dated 7-11-84 whereby he has contradicted, rather in effect set aside his own order dated 16-6-84 by implication the revision against which in High Court was rejected on 9-7-84. I accept the submission of Mr. Mukherjee that in view of writ court's order dated 8-8-84, the learned Additional District Judge had no other alternative but to entertain the petitions dated 21-9-84 filed by the tenant-defendant in terms of the writ court order, but the learned Additional District Judge ought to have rejected the said petitions on merit in view of the High Court's order dated 16-6-84 on 3 similar petitions and in view of the High Court's order dated 9-7-84 rejecting the revision against the learned Additional District Judge's order dated 16-6-84. The learned Additional District Judge committed the act of material irregularity in allowing the petitions dated 21-9-84 by the impugned order. The tenant-defendant could have approached the trial court for the relief as per direction given in the learned Additional District Judge's order dated 16-6-84.

26. Mr. Mukherjee's last submission that the material irregularity, if any, in the impugned order of the learned Additional District Judge may be ignored if it is found that the impugned order has promoted justice cannot be sustained in view of the facts and circumstances how the tenant defendant has managed to obtain the impugned order. Promotion of justice at the cost of sanctity and propriety in the administration of justice cannot be encouraged and accordingly the material irregularity committed by the learned Additional District Judge in passing the impugned order cannot be ignored and the revisional power of this High Court must be exercised in a case like the present one to remove the material irregularity for the purpose of protecting the sanctity and propriety in the administration of justice.

27. In the result, the revisional applications are allowed on contest. The impugned order dated 7-11-84 passed by the learned Additional District Judge in Misc. appeals concerned is hereby set aside and the application dated 21-4-84 u/s 151 of CPC in each of the Misc. appeals is rejected. I make no order as to costs.

28. This order governs both C. O. 42 of 1985 and C.O. 43 of 1985.