(2002) 11 DEL CK 0046

In the Delhi High Court

Case No : I.A. No''s. 1957 and 2609/02 in Suit No. 214 of 2002

Vijay Pandit and Another APPELLANT

Vs

G.R. Investments India Pvt. Ltd. RESPONDENT

Date of Decision : 08-11-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2002) 101 DLT 454 : (2003) 66 DRJ 692

Hon'ble Judges : Shamik Mukherjee, J

Bench : Single Bench

Advocate : Arun Khosla, for the Appellant; Sandeep Sethi, for the Respondent

Judgement

S. Mukherjee, J.—By injunction application is 1957/02 the plaintiff has sought interim order restraining the defendant from evicting the plaintiffs and its Directors, and from obstructing plaintiffs'' ingress and egress, from and into the property bearing No. D-178, defense Colony, New Delhi, otherwise than by due process of law. Defendant through is 2609/02 has applied for vacation of the ex-parte stay.

2. Parties have been heard at some length. Yet so as not to make any observation, at this interlocutory stage, except to the minimum extent required for grant of the relief, I propose to proceed upon only one aspect of the matter.

3. It is not denied that Shri Vijay Pandit (plaintiff No. 1), has been in the settled possession (Along with the defendants) of the entire ground floor and second floor, for quite a number of years till date.

4. In recent period, plaintiff No. 1 and his wife Smt. Nutan Pandit (who has the controlling shareholding in the defendant Company), are now estranged and divorce proceedings are stated to have been filed by the said Mrs. Nutan Pandit against plaintiff No. 1. The case of the defendant is that plaintiff has no right to occupy or retain the premises in his occupation, as he (plaintiff) has ceased to be a Director of the defendant Company, and also since, according to defendants''

case, the plaintiff No. 1 had himself promised to vacate the premises by 1.4.2001.

5. It is the further contention of the learned counsel for the defendant, that Smt. Nutan Pandit, on the strength of moneys given to her, by her parents and her brother, had bought over the defendant Company - M/s G.R. Investment India (P) Ltd, wherein till some-time back, the plaintiff No. 1 had been a Director, but ceased to be so w.e.f. from 27.1.2001.

6. It is also the case of the defendant that originally the finance came from a company called M/s Lakhanpal Ltd, and into the coffers of M/s G.R. Investment Pvt. Ltd. just in order to secure a residence for Smt. Nutan Pandit.

7. It is the further case of the defendant in Para 5 of the written statement, that since January 2002 the plaintiff No. 1 and son Shri Pranav Pandit have been staying only on the second floor. From the said stand taken, it follows that prior to January 2002, even as per defendant, the occupation of the plaintiff No. 1 was not restricted to the second floor only.

8. It is admitted that plaintiff No. 1 was a Director of M/s Lakhanpal, and also was a Director of M/s G.R. Investment Pvt. Ltd. The plaintiff submits that having been a promoter Director of G.R. Investment Pvt. Ltd. which company is the recorded owner, he cannot Therefore be deprived/divested from his right of occupancy of the suit premises, except by due process of law.

9. Another, and alternative, limb of the plaintiff''s submission, is that he is the Director of VAPN, another Company the name of which is drawn from the first initials of the parents and the two sons, (Vijay, Akshay, Pranav and Nutan) and as reflected from letter dated 7.3.1994 issued by defendant to plaintiff No. 2, VAPN is a tenant on payment of Rs. 500/- per month.

10. The plaintiff No. 2 (M/s VAPN) and through this company the plaintiff No. 1, in his capacity of a Director of VAPN, claims a right to occupy the suit premises, being the ground and second floor of the property, on perpetual basis.

11. The learned counsel for the plaintiff has explained the relationship between M/s VAPN and GRI Pvt. Ltd, as both being companies of the same family, and that as per the balance sheet of defendant Company, some very substantial amounts of VAPN (plaintiff No. 2) funds, are being held by the defendant as "unsecured advance".

12. During the arguments I put it to learned counsel for the defendant, that where a person such as plaintiff No. 1, is enjoying the status of settled possession, for years together, and is claiming under a document both in the capacity of promoter director of the Companies named above, as also on the alternative plea of being even on date a Director of a Company (plaintiff No. 2) which is having a lease in it''s favor vide letter dated 7.3.1994, then would it not be a fit case for grant of injunction against dispossession, except in accordance with due process of law.

13. Shri Sandeep Sethi, learned counsel for the defendant thereupon drew my attention to the Division Bench pronouncement of this Court reported in D.T.T.D.C. Vs. D.R. Mehra and Sons, wherein, according to him, it has been held that a plaintiff with expired right cannot be granted an injunction under Order 39 Rules 1 & 2 CPC, on the principle that injunction is an equitable relief and the Court must see whether a person who is a trespasser, can seek the helping hand of the Court for protecting his unlawful possession as against the owner.

14. The other contention which according to the learned counsel for the defendant, goes to the root of the matter and disentitles the grant of any injunction, is the fact that the letter dated 7.3.1994 relied upon for creating the right, is of no avail for the following reasons:-

(i) The document is inherently suspicious and basically unbelievable, as it is signed by the plaintiff himself as Director of Defendant Company, and the stipulated rental of Rs. 500/- per month for a second floor of defense Colony property, even as far back as in 1994, was a ridiculously low amount. Moreover according to learned counsel for the defendant, the right granted in perpetuity, is also improbable;

(ii) Furthermore according to him, no lease can be created except by a registered document, and in the absence thereof, this document is not enforceable as creating any lease at all;

(iii) There was no mention of this document in the proceedings of 1996 before the Income Tax Authorities, where the plaintiff himself was representing the defendant Company and a different stand was taken then viz that plaintiff is occupying as a Director, without payment of any rent at all.

15. To my mind, the Division Bench judgment regarding non-grant of injunction to a trespasser, against the recorded owner, cannot have any application to a case where the plaintiff is established to be in settled possession for years together, and it is admitted that at inception and for a number of years since then, the possession of plaintiff was treated as lawful. I am conscious that the Division Bench in DTDC case disapproved of the view taken in a number of decisions referred to in para 14 of the said judgment, by holding them to be contrary to the judgment of Hon''ble Supreme Court in Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, . However to my mind there is a subtle distinction between the cases where the plaintiff/petitioner approaching the Court, is governed by a document covering his entry, which itself prescribes the date of his exit such as an expired licensee, and other cases, such as the present case, where the plaintiff is not a rank trespasser, and whose entry into the premises was lawful and remained lawful for a sufficient period of time, and who is also admittedly in settled possession, and where it cannot be said, except after adjudication of the contentions and counter contentions, (which stage is yet to come), that the said individual, has become a trespasser or is a person in unlawful possession.

16. Unless there are any valid proceedings/adjudication, in the course of which, it is held that plaintiff has lost the right to continue to occupy the premises, or that the documents relied upon by the plaintiff are false or forged or unenforceable in law, the plaintiff cannot be described as a trespasser.

17. To my mind, the absence of registration of the document dated 7.3.1994, also would not have the effect of converting the status of the plaintiff, to that of a trespasser.

18. At this interlocutory stage, I am not convinced that the document dated 7.3.1994 is so inherently unbelievable and/or so far-fetched, that just on the ground of the same being under the hand of plaintiff No. 1, or even the relatively token amount of Rs. 500/- per month being mentioned therein, it needs to be ignored more so since there is a reference in the balance sheet of the defendant company, to lakhs of rupees of VAPN and of plaintiff No. 1 lying with the defendant Company as "unsecured advance".

19. In view of the above, I find that the requirements of prima facie case, balance of convenience and irreparable hardship are duly established in favor of the plaintiff and against the defendant.

20. Above all, in my view, to advance the rule of law and the faith of citizen therein, it would be appropriate to adopt an interpretation which encourages parties to agitate their disputes before a Court instead of leaving it in the domain of private power tussle or to the local clout/influence of the two parties which also sometimes operates as an effective "injunction", though outside the legal system.

21. It is unacceptable that where, as in the case of persons having influence and means, they cannot be ousted except by going to Court and getting a decree and enforcing the same in accordance with law; but in the case of a citizen who comes to seek injunction, this law abiding variety, should be turned away except however where the case set up in lacking on the three yardsticks, or as in DTDC case, the document of induction, is itself determinative of cessation on expiry of stipulated period.

22. It would be advisable however in such cases to invariably make the grant of injunction conditional, more so where the same is granted after hearing both the parties.

23. To secure the ends of justice, a condition is put on the injunction restricting the access area and further to the effect that, in case on further or final hearing of the injunction application, or on the disposal of the suit, the same is held against the plaintiff, them for that eventuality, they (plaintiffs) must tender an undertaking at this stage itself, undertaking to this Court, that they will comply with the verdict, without dispute or demur by forthwith refraining from all or any of the activities covered by the prayers made in the interim application viz possession, ingress and egress unless and/or till otherwise decided/directed in

appeal and also undertaking to pay any damages as ordered by this Court in the present proceedings itself, without raising any technical objections about separate proceedings having to be instituted in that behalf.

24. Furthermore I feel that in appropriate cases, where parties are placed in different financial circumstances, there could also be a direction to make payment of some amount, month by month, into Court so as to protect the interests of the other party, and to ensure that the further proceedings are not unduly prolonged, but there is no such material available in the present case.

25. In view of the above, I grant ad-interim injunction in favor of the plaintiffs, restraining the defendant from dispossessing the plaintiffs and/or from obstructing the ingress or egress of the plaintiffs and its bonafide Directors, staff and visitors from and into the suit premises, subject to the following:

(a) The plaintiffs shall confine their activities only to the second floor of the premises and will not create any third party rights;

(b) The plaintiffs will not disturb the use, or occupation, or enjoyment by the defendant Company or its Directors including Mrs. Nutan Pandit, in relation to the ground floor of the premises;

(c) Neither party will place any restriction/impediment in the ingress/egress or entry or exit of the other, or of any guest/visitor of the other;

26. An undertaking will have to be filed by the plaintiff to the effect that in case it be so ordered after further hearing on this aspect, the plaintiffs will vacate and handover the possession to the defendant subject to their further legal rights and redressal, without any dispute or demur, and without claiming any hardship for having to vacate the premises, pending further/final adjudication of the matter. The undertaking will also cover the eventuality of plaintiffs having to pay interim or final damages as determined by the Court, in these proceedings itself, since the plaintiffs will remain under protection of the Court injunction, and Therefore have to pay the damages if so held, without raising any technical objection regarding defendant having not filed separate proceedings for recovering the same. plaintiff to file undertaking within two weeks. In the event of non-compliance, with any of the above conditions, the injunction shall be liable to be vacated. Liberty is granted to the defendants to mention for directions in such eventuality.

SUIT No. 214/2002

1. Parties shall file their documents in original within a period of four weeks. List before Joint Registrar for admission/denial on 18.12.2002. After completion of admission/denial, matter is to be listed before Court for further consideration whether the interim injunction is to continue till disposal of the suit and for framing of issues.

