

(1987) 01 DEL CK 0053

In the Delhi High Court

Case No : Civil Revision Appeal No. 377 of 1986

Vishwa Bhartiya Co-operative Industrial Society Ltd.

APPELLANT

Vs

Binny Enterprises and Another

RESPONDENT

Date of Decision : 28-01-1987

Acts Referred:

Citation : (1987) 31 DLT 337

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : R.P. Bansal, Kusum Bhalla and D.K. Sayal, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioner-Vishwa Bhartiya Co-operative Industrial Society Limited filed a suit in the court of Sub Judge, Delhi being Suit No. 146 of 1985 seeking an injunction restraining the respondents from installing a tube-well in the open courtyard marked A, B, C and D in the site plan attached to the plaint. It was alleged in the plaint that the petitioner/ plaintiff Society is a tenant in respect of a plot of land measuring 1155 square yards in plot no. 70, Industrial Area, Najafgarh Road. New Delhi at a rent of Rs. 600.00 per month on which it has constructed a building. The ground floor premises of this building are in possession of the respondents from where respondents carry on its business in which the petitioner is a sleeping partner sharing fixed profits of Rs, 850.00 per month in lieu of its contribution of the premises as its share. The open courtyard marked A, B, C and D in the site plan in front of the said shed did not form part of the agreement and, Therefore, the respondents were not entitled to install a tube-well in the said open courtyard. In this suit, the petitioner moved an application under Order 39 Rules 1 and 2 of the CPC for a temporary injunction restraining the respondents from digging the tube-well, the Sub Judge. Delhi by his order dated 6th February 1986 dismissed this application against which the petitioner filed an appeal before the Senior Sub Judge, Delhi being M.C A. no 37 of 1986. The appeal filed by the petitioner was also dismissed by the Senior Sub

Judge, Delhi on 16th April 1986. Being aggrieved by these two orders dated 6th February and 16th April 1986 the petitioner has moved the present revision petition u/s 115 of the Code of Civil Procedure.

(2) It was contended by the learned counsel for the petitioner that the open courtyard marked A, B, C and D in the site plan did not form a part of the tenancy/agreement between the petitioner and the respondents and, Therefore, the respondents have no right to dig a tube-well in that open courtyard. It was further submitted that assuming the portion, marked A. B. C and D formed part of the tenancy even then the respondents have no right to dig the tube-well and change the nature of the courtyard. It was submitted that a courtyard was meant to be used as a courtyard and even if the basic amenity of water was not available to the respondents, the responsibility to supply water was not of the petitioner and the respondents were not entitled to dig a tube-well in this courtyard. Learned counsel submitted that by allowing the respondents to dig the tube-well, irreparable loss and injury would be caused to the petitioner and the suit would itself become infructuous because the main prayer in the suit is for an injunction restraining the respondents from digging the tube-well. Learned counsel submitted that the balance of convenience was not in favor of the respondents since the respondents were using the premises for factory shed and no water was required for that purpose.

(3) On the other hand, it was contended by the learned counsel for the respondents that a prima-facie findings was given by both the courts below that the courtyard marked A, B, C and D in the site plan attached with the plaint formed part of the tenancy and after considering the balance of convenience between the parties, the courts below had refused to grant the , injunction and this Court while exercising revisional jurisdiction should not interfere with this concurrent finding of fact. It was further submitted that water is a basic amenity and necessity not only for residential purposes but also for commercial purposes. It was submitted that since this basic amenity of water was being deprived to the respondents, irreparable loss and injury had been caused to the respondent because its factory had been closed down and no work could be carried out without water. It was submitted that previously water was being supplied to the respondents from an adjoining tube-well which was in the premises of another tenant who was the father-in-law of respondent no. 2 and since the father-in-law of respondent no. 2 had vacated the adjoining tenanted premises and a new tenant has been put in by the petitioner, water supply had been stopped and, Therefore, it became necessary for the respondents to dig a tube-well. It was further submitted that even assuming ultimately the petitioner succeeds in the suit, no damage will be caused to the courtyard of the petitioner because the tube-well is only 4 inches in diameter and does not obstruct anybody's passage, and in any event it can always be closed. It was further submitted that a tube-well does not damage the" building and there are several tube-wells dug in the adjoining area.

(4) I find that R concurrent finding has been given by both the courts below that prima-facie it appears that the courtyard marked A, I B, C and D in the site plan forms part of the tenancy. This being a concur set finding of fact it does not warrant interference by this Court while exercising jurisdiction u/s 115 of the Code of Civil Procedure. But, assuming that the portion marked A, B, C and D in the site plan forms part of the tenancy, the question whether the respondents can be permitted to dig the tube-well in that open courtyard, still remains to be decided. This is also one of the main points to be decided in the suit.

(5) I find substantial force in the contention of the learned counsel for the respondents that even if a tube-well is dug, it is not likely to cause any damage to the courtyard or the building in the said property and if the petitioner ultimately succeeds it can be adequately compensated by ordering the respondents to restore the property to its original condition.

(6) It appears that at present no water whatsoever is available to the respondents for use of the tenanted premises. Though the premises are being used for a factory, water being an essential commodity even for running a factory, water is required. Therefore, in order to decide the interim application when notice was issued by this Court to the respondents, it was felt that if water could be made available to the respondents from any other source, it would at least temporarily resolve the dispute between the parties till the disposal of the suit. At some stage, it was suggested by the petitioner that the tenant in the adjoining premises namely Mr. Manchanda was willing to give water to the respondents from his tube-well. The case was adjourned and time again for Mr. Manchanda to come and make a statement whether he would be willing to supply the water to the respondents from his tube-well but Mr. Manchanda never came. Later on, an affidavit was filed by the petitioner that the tube-well in the adjoining premises belongs to it and it would be willing to give the water. This is an inconsistent stand taken by the petitioner because at one stage it was stated that the tube-well belongs to Mr. Manchanda and now it is stated that the tube-well belongs to the petitioner. Moreover, there is concurrent finding of both the courts below that the balance of convenience is in favor of the respondents and irreparable loss and injury will be caused to the respondents if the interim injunction sought for by the petitioner is granted. Thus, considering all the aspects of the matter, in my opinion, the petitioner has not made out any ground for interference with the orders of the two courts below and it is not necessary to revise the order dated 16th April 1986 made by the Senior Sub Judge, Delhi.

(7) In the result the revision petition is dismissed. There will be no order as to costs.