

(1984) 01 GAU CK 0009

Gauhati High Court

Case No: M.A. (F) No. 1 of 1984

The State Bank of India and
Others

APPELLANT

Vs

Shri Rajendra Singh Kothari and
Another

RESPONDENT

Date of Decision: Jan. 10, 1984

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2

Citation: (1984) 1 GLR 188

Hon'ble Judges: T.S. Misra, C.J; K.N. Saikia, J

Bench: Division Bench

Advocate: J.N. Sarma, A.C. Deka and L. Talukdar, for the Appellant; T.C. Khetri, for the Respondent

Final Decision: Allowed

Judgement

T.S. Misra, C.J.

This appeal from an ex parte injunction order arises in the following circumstances:

The Plaintiffs (Respondents) having come to know that the State Bank of India desired to open its Evening Branch at Tezpur Bazar and were on the look out of a suitable premises for the purpose approached the Chief Regional Manager of the State Bank, Gauhati proposing to let out their premises in question to the Bank and in this connection also wrote a letter dated 23rd May, 1983. In reply to that letter the State Bank of India (for short "the Bank") sent its letter No. 11/83 dated 11th June, 1983 to the Plaintiffs stating that their offer was acceptable to it on the terms and conditions mentioned therein and asking the Plaintiffs to return the duplicate of that letter duly signed by them in token of having accepted the Bank's offer. The Bank had also asked the Plaintiff to vacate their existing building and handover its possession to the Branch Manager, Tezpur Branch in good (sic) of cleanliness for

immediate opening of the Branch. The Plaintiffs accepted the terms and conditions mentioned in the said letter of 11th June, 1983 and returned its duplicate duly signed by them to the Bank. They also delivered possession of their existing building to the Bank on 16th June 1983. It has not been disputed before us that the Bank is still in possession of the said premises. The Plaintiffs requested the Bank to furnish specifications and plan of the proposed permanent branch building to enable them to take necessary steps for the construction of the building. The Bank did not comply with the request and asked the representative of the Plaintiffs to meet its officers to discuss the matter in the first week of October, 1983. Accordingly the attorney of the Plaintiffs called on the Chief Regional Manager of the Bank on 10th October, 1983 and discussed the matter with him. The Bank then sent a letter dated 22nd October, 1983 to the Plaintiff stating as follows:

Considering, however, all aspects, we now advise you that your building will not be suitable for our purpose.

2. The Plaintiffs feeling aggrieved by this letter of the Bank have filed a suit against the State Bank of India in the Court of the Assistant District Judge, Tezpur claiming decree:

(i) for specific performance of contract of lease of premises for the proposed permanent building of Tezpur Bazar (Evening) Branch of the Defendant No. 1 as per letter dated 11.6.83 of the Defendant No. 2 as accepted and acted upon by the Plaintiffs;

(ii) for mandatory injunction directing the Defendants to furnish and submit their drawings and specifications for the purpose of construction of proposed permanent building for housing the Tezpur (Evening) Bazar Branch of the Defendant No. 1 with a further direction to disburse 50% of the cost of construction as construction loan to the Plaintiffs as agreed upon;

(iii) for prohibitory injunction restraining the Defendant, their agents, servants and/or employees etc. from shifting the venue of Tezpur Bazar (Evening) Branch of the Defendant No. 1 in preference to the site of Bargola Building belonging to the Plaintiffs more particularly described in the in schedule below;

(iv) for costs of the suit and any other reliefs as it may seem fit in the facts and circumstances of the case.

3. The Plaintiffs also filed an application for grant of temporary injunction under Order 39, Rule 2 of CPC praying that the Defendants be restrained from shifting the venue of the proposed Tezpur Bazar (Evening) Branch of the State Bank of India at any place/places in preference to the site of Bargola building, Main Road, Tezpur, belonging to the Plaintiffs detailed and described in the plaint as also in the injunction application. The Court below passed en ex parte interim order in the following terms:

Issue temporary injunction against the Defendants restraining them, their agents, servants and/or employees etc. from shifting the venue of the proposed Tezpur Bazar (Evening) Branch of the Bank at any other place than the building belonging to the Plaintiff until further order.

Notice was also directed to be issued to the Defendants to show cause why the temporary injunction order be not made absolute pending disposal of the suit. The Court below fixed 10th January, 1984 for showing cause. The Defendants instead of showing cause before the Court below have come up to this Court on appeal against the ex parte temporary injunction order impleading the Plaintiffs as Respondents. The Plaintiff's Respondents have put in appearance through their counsel and prayed that the instant appeal may immediately be heard finally on merits on the basis of the documents already filed by the Appellants in this appeal as also along with the miscellaneous application. The learned Counsel for the Appellants also submitted likewise and prayed that the appeal may be finally heard on merits today and disposed of on the basis of the said documents. We have accordingly heard the learned Counsel for the parties at great length on the merits of the appeal.

4. The Court below has passed the ex parte interim injunction order restraining the Defendants from shifting the venue of the proposed Tezpur Bazar (Evening) Branch of the State Bank of India at any place other than the building belonging to the Plaintiffs until further orders. The correctness and validity of this order is impugned in this appeal but before we proceed to examine the same we would like to point out that as the suit is pending awaiting decision on merits we shall make every attempt to refrain from expressing opinion on the merits of the suit. The facts which we have set out herein-above have been stated only for the purpose of properly appreciating the submissions of the parties.

5. The rules governing the grant of interim injunction are well-known. The Court must be satisfied before granting an interim injunction that the claim of the Plaintiffs is not frivolous or vexatious but is well founded that there is a serious question to be tried and there are fair chances of the suit being decreed as prayed. In other words, the Plaintiff has to make out a prima facie case for the grant of the relief. The object of granting interim relief seems to be to protect the Plaintiff against injury by violation of his right for which he cannot be adequately compensated in damages. But, the Plaintiff's need for protection must be weighed against the corresponding need of the Defendant to be protected against injury resulting from his being prevented from exercising, his own legal right for which he may also not be adequately compensated. The Court has therefore to weigh one need against another and determine where the balance of convenience lies. The Court has to see whether the Plaintiff will be put to irreparable injury if the interim injunction prayed for is not granted.

6. Let us now see whether the Plaintiffs (Respondents) have made out a prima facie case for the grant of the interim relief prayed for by them and which has been

allowed to them. The submission on behalf of the Plaintiffs is that as the Bank has entered into an agreement with the Plaintiffs to take the Plaintiffs premises in question on lease and the Plaintiffs accordingly have vacated their building and have closed their business which was being run by them in that premises and have delivered that premises to the Bank, the latter cannot now resile from their agreement and decline to open their Evening Branch in that premises. The learned Counsel for the Bank submitted that the Bank cannot be restrained from carrying on its business at any other place or in any other building and it cannot be compelled to have its Branch in the premises of the Plaintiffs when it finds that the said premises of the Plaintiffs is not suitable for the purpose of the business of the Bank.

7. Now, the short question which arises for determination is whether the Bank has entered into an agreement with the Plaintiffs (Respondents) that it shall carry on Banking business in the premises of the Plaintiffs and shall not open any other Evening Branch at any other place without first opening the Evening Branch in the Plaintiffs premises in question? The terms of the agreement on which the Plaintiffs rely are contained in the letter of the Bank dated 11th June, 1983 and have been set out in paragraph 3 of the plaint as follows:

(a) For immediate opening of the proposed branch, your present office building consisting one hall room measuring 40" x 14", two rooms measuring 13"x 15" will be taken by us, on the condition that you will construct a permanent branch building as per bank's drawings and specifications in the open space adjacent to your office premises and as shown by your during our visit on the 7th June, 1983.

(b) The rent of the temporary building will be paid @ Rs. 1.50 p. per sq. ft. of floor area inclusive of rent, taxes etc. from the date of actual occupation.

(c) You will arrange potable water for our staff.

(d) You will provide latrine and urinal for our staff.

(e) You will carry out white washing/painting, if necessary in the building immediately. You will provide ventilation in the building as discussed.

(f) You will provide extra electric points, if necessary. The lights and fans will be provided by the Bank. The charges for electricity consumed will be borne by the Bank.

(g) You will leave the fans, tube lights and bulbs already fitted in your office for bank's use which will be returned to you at any point of time of your need.

(h) You will construct the permanent branch building within 6 months from the date of disbursement of construction loan.

(i) The rent for the permanent building will be as under.❖

(i) floor area other than strong room @ Rs. 1.75 per sq. ft.

(ii) Strong room/locker room Rs. 2.00 per sq. ft.

(iii) rate for varendra/cycle shed @ half of (i) as above.

(j) You will execute the Bank's standard lease agreement for a period of 5 years with renewal option for further period of two years, on the same terms and conditions, for the proposed building.

(k) You will be granted 50% of the estimated cost of the building as advance which will be recovered inclusive of interest from the rent payable by us for the proposed permanent building.

8. It seems that the Bank wanted to open its Evening Branch at Tezpur Bazar. The Plaintiffs came to know of it and approached the Bank authorities that it may take its premises on lease. Negotiations started and ultimately the Bank wrote the above mentioned letter dated 11th June, 1983 to the Plaintiffs. The Plaintiffs accepted the terms of that letter and delivered possession of the existing building to the Bank and asked for a plan of the proposed building to be constructed. The Regional Manager of the Bank informed the Plaintiffs by his letter dated 22nd October, 1983 that "considering however all aspects we now advise you that your building will not be suitable for our purpose".

The Plaintiffs contended that the Bank cannot now open its evening Branch elsewhere without first opening it in their premises. The contention of the Bank on the other hand is that it cannot be compelled to run its banking business in the Plaintiffs' premises, if it has ultimately been found that the said premises is unsuitable for that purpose.

9. Now, it would be seen that the State Bank carries on banking business. It wants to start that business in the evening also at Tezpur. It has to select its place. Whether a particular place is suitable depends upon various factors, namely, whether it is near the business place of its customers and whether the premises is easily accessible and is on the road and whether the premises is safe where money of the customers may be kept safely and securely and where the transactions in money can be carried on safely and so on. In fact so many factors may have to be taken into consideration by the Bank while selecting a particular place and the building for running the banking business. The Bank has to exercise its discretion in the matter. The Bank in the instant case firstly agreed to take the premises of the Plaintiffs on lease. Now it has informed the Plaintiffs that their premises in question is not suitable to them. The submission on behalf of the Bank is that whether the Bank can be compelled by a decree of the Court to take the premises in question on lease is a question which will be decided by the Court on merits after affording the parties to lead evidence and giving full hearing but there is no agreement between the parties that the Bank cannot open its evening branch elsewhere in Tezpur without first opening it in Plaintiffs' premises and even if such an agreement is implied its specific performance cannot be directed because almost the remedy would lie in damages,

if any.

10. We refrain from deciding the question whether the Bank can be compelled by a decree of Court to take the Plaintiff's premises on lease because it is a matter which is to be decided by the trial Court on merits after taking evidence. Assuming but without deciding that the Bank can be asked to take the building in question on rent can the Bank be compelled to run its banking business also? Apparently there seems to be no such agreement between the parties and even if such an agreement is implied, no one, more particularly a Bank, can be compelled to run a banking business and deal with moneys when the party concerned says that the premises is unsuitable for the purpose. The Bank may be required to pay rent but it cannot be asked to run its business also there at. The Court cannot ask a person to do a business at a particular place even if that place is unsuitable for it. Suppose, the Bank had opened its branch and then after sometime it had closed it and opened another branch elsewhere, could the Plaintiffs compel the Bank to continue its evening branch in their premises or could they merely ask for payment of rent? The Plaintiffs could not substantiate before us that they have on the facts of the case and under law a right to restrain the Bank from opening its evening branch elsewhere in Tezpur without first opening it in their premises in question. Plaintiffs have not made out a prima facie case for interim relief to that effect. In the absence of an agreement in restraint of trade elsewhere the Court by its temporary injunction cannot impose the restriction nor can it create a covenant in that respect. Further, the Court will not interfere in cases by injunction where money payment would afford adequate remedy. No irreparable injury will accrue to the Plaintiffs if the injunction prayed for was refused for they can be adequately compensated in terms of money. On the ground of balance of convenience also the interim injunction could not be granted to them. The question of specific performance of the agreement of lease is still at large before the trial Court. If the suit is ultimately decreed the Defendants would be asked to abide by the terms of the agreement.

11. The Court below has granted an ex parte temporary injunction restraining the Defendants "from shifting the venue of the proposed Tezpur Bazar (Evening) Branch at any other building than the building belonging to the Plaintiff-Respondents until further order". The effect of this order as pointed out hereinabove, is that the Bank cannot open its Evening Branch at any other place at Tezpur unless they first open the Branch in the premises in question. This order has been passed by the Court in a suit for specific performance of the agreement to take on lease the premises of the Respondents. There however appears to be no agreement between the parties that the banking business must have to be started at the said premises under all circumstances whatsoever even if the premises ultimately is found to be unsuitable and insecure or even if the present Appellants find the banking business to be totally unprofitable at that particular place. The discretion therefore exercised by the Court below was unwarranted by the facts and circumstances of the case. The interim injunction order cannot hence be maintained and is liable to be set aside.

12. In the result, the appeal is allowed with costs and the impugned order dated 22nd December, 1983 passed by the Assistant District Judge, Sonitpur, Tezpur is set aside.