I.T.C. Limited, Owners of Hotel Chola Sheraton Vs New Kashmir Stores

Court: Madras High Court

Date of Decision: April 23, 1998

Citation: AIR 1998 Mad 309 : (1998) 2 LW 483 : (1998) 3 MLJ 196

Hon'ble Judges: M. Karpagavinayagam, J

Bench: Division Bench

Judgement

M. Karpagavinayagam, J.
Although C.M.P. Nos. 19061 and 19062 of 1997 were posted for orders, with the consent of the learned

Counsel for the parties, and having regard to the nature of the appeals, the appeals and cross objections were heard for final hearing itself. Since

these appeals and cross objections arise out of a common order passed in the applications filed in a single suit, these could be disposed of by-

rendering a common judgment.

2. The appellant in O.S.A. Nos. 378 and 379 of 1997 is the defendant. The cross objector is the plaintiff in the suit. For the sake of convenience,

the parties in this judgment will be referred to as they were arrayed in the suit.

3. The relevant facts required for the disposal of these appeals and cross-objections could be stated as follows:

The plaintiff M/s. New Kashmir Stores is a concern carrying on its business at a shop situate in Hotel Chola Sheraton. The defendant is the owner

of the said Hotel. In the year 1982 the defendant rented out a portion in the ground floor of the said hotel to the plaintiff being a shop with a floor

space of 177.23 sq.ft. for the purpose of exhibiting and selling Carpets, Furs, Kashmir handicrafts, leather goods, etc.

4. The plaintiff has agreed to pay a monthly rent of Rs. 7,000. It has been occupying the place for about 15 years. It is a registered holder of

TNGST Certificate. The customers of the shop of the plaintiff are not only persons who are staying in the hotel of the defendant, but also persons

who are interested and who visit the shop for purchase of articles displayed for sale.

5. On 9.1.1988 the defendant sent a lawyer''s notice addressing the plaintiff as a tenant and calling upon to pay the rental arrears and other charges

within three days from the date of receipt of the notice. Thereafter, the defendant filed distress application before the Court of Small Causes at

Madras, requesting a warrant of attachment of the movables found in the shop occupied by the plaintiff as a tenant. During the course of the

proceedings, the arrears have been paid.

6. On 19.5.1990, the defendant issued a notice to the plaintiff describing him as a licensee and asking him to deliver vacant possession of the shop

on or before 1.7.1990 by purporting to cancel the said licence. Therefore, the plaintiff filed a suit in C.S. No. 546 of 1990 before the original side

of this Court for permanent injunction restraining the defendant from interfering with its possession and enjoyment of the shop.

7. During the pendency of the said suit, the interim injunction was granted in favour of the plaintiff. The defendant filed an application in I.A. No.

6164 of 1996 to dismiss the suit on the ground that the plaintiff was not a registered partnership firm and as such, the suit was maintainable.

Accordingly, the suit was dismissed.

8. The plaintiff preferred a SLP before the Supreme Court in SLP No. 16322 of 1996 challenging the order dismissing the suit. However, the said

SLP was dismissed as withdrawn on 12.9.1997 with an observation that there is no impediment for the competent plaintiff to file a suit on the same

cause of action.

9. Prior to the above order, that is, during the pendency of the SLP before the Supreme Court, the defendant requested the plaintiff by the letter

dated 11.2.1997 to keep away from the suit premises for a period of two weeks, since the defendant proposed to do renovation work in the

lobby of the hotel ceiling directly on top of the plaintiff''s shop. Accordingly, on 13.2.1997 the plaintiff sent a reply stating that in spite of the

disputes between themselves pending before the Supreme Court, the plaintiff would, in mutual interests, agree to the request of the defendant

subject to its assurance that the civil work would be completed in two weeks so that the plaintiff could resume its business thereafter.

10. In pursuance of the agreed terms, the plaintiff closed the shop and stopped its business for two weeks. On 6.3.1997 the plaintiff went to the

shop and resumed its business. But to its shock and surprise, the plaintiff found that a brick wall was put up right in front of the plaintiff''s shop. The

said wall had virtually blocked the frontage of the shop of the plaintiff and obstructed the access to the shop from outside.

11. Taking advantage of the closure of the shop for two weeks on agreed terms, the defendant put up such a wall in order to force the plaintiff to

vacate from the shop. Therefore, the plaintiff filed a suit in O.S. No. 2403 of 1997 before the City Civil Court, Madras, in April, 1997 for removal

of the said wall.

12. Before getting the observation from the Apex Court in the order dated 12.9.1997 that the properly registered plaintiff could file a suit on the

same cause of action, the plaintiff got its name registered under the Act. Since the plaintiff apprehended that the defendant would take advantage of

the situation, after the dismissal of the SLP to throw out the plaintiff by unlawful methods at any time, the plaintiff as the registered firm instructed its

counsel to file the present suit to protect its possession and its rights as a tenant in the suit shop. Accordingly, the plaint was prepared on

14.9.1997 and 15.9.1997 on 16.9.1997 the suit was filed along with the applications claiming for interim injunction.

13. When the matter came up for hearing on lunch motion, the defendant/caveator objected to the applications for interim injunction stating that the

plaintiff was only a licensee, that the plaintiff abandoned the shop in March, 1997 itself, when he found that he could not carry on the business

effectively, that the defendant wrote a letter on 15.9.1997 to the plaintiff asking him to take back the materials from the shop, that since he did not

take back the materials despite the receipt of the notice within the stipulated time, the defendant had exercised its right of re-entry on 15.9.1997

itself and that therefore, the plaintiff, the licensee was not in actual possession of the suit premises and the possession of the said premises was with

the defendant as on date.

14. The learned single Judge of this Court, after hearing the arguments of the counsel appearing for both, appointed Advocate-Commissioner to

visit the premises on the same day evening and file the report.

15. The Advocate Commissioner on inspection found that the shop was totally empty and the incomplete masonry work had been carried out in

the shop, just prior to the visit of the Advocate Commissioner. Inside the room, it was found that the cement plastering on one wall was wet. The

Advocate Commissioner filed a report to that effect before the court.

16. Thereafter, the plaintiff filed applications in A. Nos. 550 and 551 of 1997 praying for an order of interim mandatory injunction directing the

defendant to restore possession of the suit premises to the plaintiff and ad interim injunction restraining the defendant from occupying the suit

premises for any purpose or letting the premises to any third party pending disposal of the above suit. These applications were contested by the

defendant reiterating its stand that the plaintiff was not entitled to the interim reliefs, since on 16.9.1997 the plaintiff''s wares and articles were

removed from the suit premises as he was only a licensee and that he had nothing to do with the possession of the suit premises.

17. On hearing these applications, the learned single Judge of this Court allowed them by restraining the defendant from occupying the suit shop or

letting it out to third parties and directing the defendant to restore the possession of the suit premises to the plaintiff. He further directed the plaintiff

to pay the entire arrears of rent or licence fee due to the defendant or deposit the same into the court. This common order was passed on

25.9.1997 and the same is challenged in these appeals.

18. Though the interim reliefs were granted by the learned single Judge as prayed for by the plaintiff, the learned single Judge found in the impugned

order that the plaintiff is only a licensee and not a tenant. As this finding is against the case put forward by the plaintiff, who filed the suit as a tenant,

he filed the cross objections in Nos. 5 and 6 of 1998 to expunge this finding.

19. When all these matters filed by the respective parties came up for admission, in the light of the earlier proceeding, we suggested to the

appellant/ defendant to provide alternative accommodation to the plaintiff, the respondent herein, so that he could continue his business pending

disposal of the appeals and suit.

20. The counsel for the parties took time for getting instructions from the parties. After several hearings, the counsel for the appellant on

instructions, offered to the plaintiff some other place in the lower lobby level. The plaintiff and his counsel went and visited the place and found that

the said place was a lone and remote room in the basement next to an exit door. Since the said place is not satisfactory, the counsel for the

respondent requested this Court to hear the appeals and dispose of the same. Therefore, these matters were taken up together for final disposal

and arguments were heard from the counsel for the parties.

21. Mr. G. Subramaniam, the learned senior counsel for the appellant/defendant, while attacking the order under appeals, would submit the

following contentions:

(i) The plaintiff is only a licensee as is evident from the agreement entered into between the parties in the year 1982 and as such, he is not a lessee.

(ii) On the date of the suit, viz., 16.9.1997 the plaintiff was not in physical possession of the suit premises, especially on the basis of the report of

the Advocate Commissioner.

(iii) The plaintiff is not entitled to injunction against the true owner having regard to the admitted fact that the term of licence having expired, his

possession was that of a trespasser only.

(iv) Since the plaintiff refused to heed to the request of the defendant to remove the wares and articles, the defendant had no other option than to

exercise its right of re-entry as per the terms of the licence agreement between the parties and also by virtue of its position as a licensor.

(v) The fact that specific offer has been made to the plaintiff before the Supreme Court as well as this Court for providing alternative

accommodation to the plaintiff and the attitude of the plaintiff to refuse the said offer would go to show that the defendant is always bona fide and

the plaintiff was adamant in refusing the said offer in order to put the defendant to very great prejudice.

22. In reply to the above contentions, Mr. M.B. Raghavan, the counsel appearing for the respondent/plaintiff/cross-objector, made submissions

supporting and justifying the impugned order passed by the learned single Judge. However, he submitted that the learned single Judge is wrong in

saying that the plaintiff is only a licensee, having not given any importance to the legal notice sent and Distraint Application filed by the defendant

admitting the cross objector/plaintiff to be a tenant, by relying upon only an agreement which had expired several years ago. He further submitted

that in compliance with the order of the learned single Judge, the plaintiff deposited Rs. 4,00,000 to the credit of the above suit towards the alleged

arrears of rent.

23. It is well-settled in law that the scope of miscellaneous appeals filed against the discretionary orders passed by the trial courts either granting or

refusing the interim reliefs sought for is limited; the appellate court could interfere in such discretionary orders only on showing that the discretion

exercised by the trial court in the matter of granting interim orders was either perverse or capricious or arbitrary. It is also well settled that in a

miscellaneous appeal, the appellate court could not interfere in the discretionary order even on the ground that two views are possible on the

materials placed before the trial court. The appellate court will not interfere with the exercise of discretion of the court of first instance and

substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where

the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions.

24. An appeal against exercise of discretion is said to be an appeal on principle. If the discretion has been exercised by the trial court reasonably

and in judicial manner, the fact that the appellate court would have taken a different view may not justify interference with the trial court''s exercise

of discretion. However, the court must weigh one need against another and determine where the ''balance of convenience'' lies.

25. Keeping in view the legal position as stated above, in dealing with such appeals against the discretionary orders passed by the trial court, we

now proceed to consider whether the discretion exercised by the learned single Judge in the impugned order can be sustained or not.

26. The prayer in the plaint filed in the present case is as follows:

The plaintiff prays for a judgment and decree against the defendant-

(a) for a declaration that the plaintiff is in occupation of the plaint schedule property as a tenant under the defendant;

(b) for a permanent injunction restraining the defendant from interfering with the plaintiff''s possession and enjoyment of the plaint schedule property

except by due process of law.

27. By virtue of these prayers, the learned single Judge is called upon by framing necessary issues to answer on the basis of the materials placed

before the court by both the parties as to whether the plaintiff is entitled to declaration as a tenant under the defendant/landlord. Though in the

interim applications in which the impugned order has been passed the reliefs were sought to direct the defendant to restore the possession of the

suit premises to the plaintiff and to restrain the defendant from alienating to third parties on the strength of the claim of the plaintiff that he is a

tenant, the reliefs granted in the order under appeals are on the basis that the plaintiff is a mere licensee and he became trespasser after the term of

the agreement had expired and even then he is entitled to the interlocutory injunction as he cannot be dispossessed by the landlord, unless by due

process of law.

28. The learned single Judge gave such a finding mainly placing reliance upon the licence agreement which was entered into between the parties in

the year 1982. Admittedly, the said agreement was for one year and the same had expired in 1983. Subsequently it was not renewed. Even then,

he was not asked to vacate the premises but he was allowed to continue his business till the filing of the present suit, that is, on 16.9.1997.

29. According to the plaintiff, the said agreement was not acted upon subsequent to the expiry of the said period and the plaintiff continued in

possession of the shop thereafter not as a licensee but only as a tenant. Therefore, it is stated that the plaintiff had invested huge amount inside the

shop including the stocks of large quantity and high value.

30. Even in the notice dated 9.1.1988 issued through the Lawyer by the defendant, the plaintiff was described as a tenant and was called upon to

pay the rental arrears to the defendant within three days from the date of receipt of the notice. In March, 1988 the defendant filed Distress

Application No. 32 of 1988 before the court of Small Causes at Madras, requesting the court to issue a warrant to attach the movables found in

shop occupied by the plaintiff as a tenant.

31. It is specifically mentioned in the affidavit filed in the above Distress Application as follows:

The respondent is a tenant under the petitioner in shop located in ground floor in Hotel Chola Sheraton which is a Hotel Room at No. 10,

Cathedral Road, Madras-600 086 on a monthly rent of Rs. 7,000 payable on or before 7th day of every month in respect of which it is due.

Therefore, when the plaintiff raises a dispute that he was a lessee even though there is an earlier licence agreement between the parties, in terms of

the subsequent oral agreement, then the court will find out the intention of the parties. This would certainly be a question of fact depending upon the

various factors and circumstances of the case. In other words, when there is an acute controversy whether it is licence or lease, the same needs to

be decided in the regular suit laid by the plaintiff.

32. As laid down in M.N. Clubwala v. Fida Hussain Saheb AIR 1965 S.C. 60, whether an agreement creates between the parties the relationship

of landlord and tenant or merely that of licensor and licensee the decisive consideration is the intention of the parties, and this intention has to be

ascertained on a consideration of all the relevant provisions in the agreement and the same must be inferred from the subsequent happenings, the

circumstances and conduct of the parties. Therefore, in order to find out whether the terms of the agreement between the parties have been acted

upon subsequent to the expiry of the period of agreement, the surrounding circumstances and the subsequent conduct of the parties have also to be

borne in mind for ascertaining the real relationship between the parties.

33. In the light of the principle laid down by the Apex Court, the trial court, in our view, cannot hold that the plaintiff is a licensee merely on the

basis of the agreement entered into between the parties in the year 1982 for the period of one year, after having ignored the other surrounding

circumstances and subsequent conduct of the parties, in the light of the notice dated 9.1.1988 issued by the defendant recognising the plaintiff as a

tenant and the Distress Application filed in March, 1988 requesting for the attachment of the movables towards the rental arrears by submitting to

the rent control jurisdiction. Moreover, the question whether the plaintiff is a tenant or not is to be determined only after the trial is over. Therefore,

in. order to find out whether the plaintiff is entitled to the reliefs sought for in the applications in which the impugned order has been passed, the trial

court need not have gone into the main question and found that the plaintiff is a licensee.

34. Though, in our view, the said finding is unnecessary, this Court is called upon to decide whether the reliefs granted in the interlocutory

applications to the plaintiffs are justifiable or not, bearing in mind the principles, laid down by this Court as well as the Apex Court, with reference

to the scope of the powers in the miscellaneous appeals.

35. To decide the above question, the relevant facts in this context would become necessary. Admittedly, the earlier suit in C.S. No. 546 of 1990

was filed by the plaintiff on 27.6.1990 praying for injunction against the defendant from interfering with his possession and enjoyment of the suit

premises claiming himself as a tenant on the apprehension that the defendant was planning for dispossession of the plaintiff from that shop premises.

36. Initially, interim injunction was granted. Ultimately, the suit was dismissed on a technical ground that the plaintiff firm was not registered then.

The plaintiff went upto the Supreme Court by filing SLP and got the same withdrawn with the liberty to file a suit on the same cause of action by

the competent plaintiff. This order was passed on 12.9.1997.

37. It is also to be noticed that in the meantime, the plaintiff firm got its registration under the partnership Act on 15.7.1996. After the withdrawal

of the S.L.P., according to the plaintiff, the counsel for the plaintiff prepared the plaint on 14.9.1997 and 15.9.1997. Meanwhile, it is to be noted

that the defendant filed a caveat expecting the suit to be filed by the plaintiff.

38. At this stage, on 15.9.1997 the plaintiff received" a notice at 6.19 p.m. asking the plaintiff to remove the wares and articles from the suit

premises, failing which the defendant would be compelled to exercise its right of re-entry and remove the wares and articles without further notice

to him. At 7.26 p.m. on the same day, the plaintiff received another notice from the defendant asking him to depute his authorised representative to

be present at 6.30 p.m. (same day), while taking of inventory of the articles, who could remove the articles and clear the same from the suit

premises or otherwise, the defendant would be constrained not only to exercise their right of re-entry as well as remove all the wares and articles

belonging to the plaintiff and hold them in their storage at the plaintiff"s cost and consequences.

39. Immediately on receipt of the FAX notices, the plaintiff sent reply notice intimating that the defendant has no authority or right to enter the

shop, especially when the plaintiff is holding the key to the same, more so, when the Supreme Court while disposing of the SLP observed that new

suit by the competent plaintiff could be filed and any such action in the meantime, would make it clear that the defendant is taking hurried action to

prevent the plaintiff from moving the High Court. In the said notice the plaintiff asked the defendant to desist from taking any illegal action without

obtaining appropriate court orders.

40. The above reply notice was received by the defendant on the same day. At 10.45 p.m. when the Manager of the plaintiff visited the Hotel. He

was refused entry into the hotel by the security of the hotel, who informed him that he may come and enter the shop on the next day morning. In the

meantime, the plaintiff also gave a complaint to the police reporting about the threat of dispossession by the defendant and seeking police

protection. This was received on 15.9.1997 at about 10.30 p.m. in NO. 414/CSR/E3/97.

41. On the next day, that is, on 16.9.1997 the plaintiff filed the suit after giving notice to the caveator/ defendant and moved or applications for

interim reliefs such as injunction etc. When the matter came up on lunch motion and was argued before the learned single Judge, the counsel for the

appellant represented that the defendant was in possession. Therefore, Advocate-Commissioner was appointed to visit the premises by 7.00 p.m.

on the same day. After inspection the Advocate Commissioner found that the room was totally empty and the incomplete masonry work had been

carried out, just prior to the visit of the commissioner. The plaintiff was informed that the goods had been removed and kept in the safe custody.

The Advocate Commissioner filed a report stating that the shop premises was found to be vacant and the cement plastering on the well was wet

and some masonry work had been done.

42. The submission made by the counsel for the defendant before the trial court as contained in para 9 of the counter-affidavit filed by the

defendant is they as the plaintiff was not in possession of the suit premises as on 16.9.1997, the suit has become infructuous and the applications

have become equally infructuous and are liable to be dismissed as such. In the affidavit filed before this Court the defendant/ appellant would state

that since the respondent refused to heed to the request of the appellant, the appellant had no other option than to exercise its right of re-entry by

virtue of its possession as licensor and that the appellant had exercised its right of re-entry as on 15, 9.1997. These things would reveal that even

according to the defendant, the defendant entered into the locked premises of which the key was admittedly with the plaintiff and removed the

articles that belonged to the plaintiff.

43. Mr. G. Subramaniam, the learned senior counsel for the appellant, on the strength of the observation of the Apex Court contained in para 36

of the Judgment in Sultana Begum Vs. Prem Chand Jain, , would contend that the licensee''s possession is only permissive and he can be thrown

out at any time. The relevant observation is as follows:

Tenant or lessee of a premises is a person in whose favour an interest in the specific immovable property is transferred, who, therefore, comes to

occupy the demised property exclusively in his own rights. The right to exclusive possession is the basic feature of the tenancy created by lease.

The licensee''s possession, on the contrary, is only permissive and he can be thrown out at any time. He does not also get the right to exclusive

possession.

44. In our view, the above case would not be applicable to the present appeals, in the light of the facts and circumstances of this case. In the said

case, the appellant was the landlady of the premises in dispute and the respondent was in occupation of the said premises as a tenant against whom

a suit for eviction was filed by the appellant. The suit ended in a compromise decree which provided that the respondent would vacate the

premises and hand over its possession to the appellant or her attorney by a certain date. Since the premises were not vacated by the respondent

and its possession was not handed over to the appellant in terms of the compromise decree, she filed an application for execution. The said

execution was resisted by the respondent contending that the possession of the premises in question was handed over to the attorney who allowed

the respondent to remain in possession of the premises as a licensee. Though this objection was upheld by the lower court as well as the High

Court, the Apex Court set aside the same on the ground that the executing court ought not to have refused to execute the decree for eviction of the

respondent by giving effect to the new plea raised by the respondent. In that context, the Apex Court held that the right to exclusive possession is

the basic feature of the tenancy and that the licensee''s possession is only permissive and he could be thrown out at any time. This observation was

in relation to the plea made by the respondent in that case who was originally a tenant, that he was a licensee as permitted by the attorney of the

appellant.

45. Since the very question whether the plaintiff is a lessee or licensee is yet to be decided in the suit after trial. On the basis of evidence that may

be placed before the trial court, it is not possible to agree at this stage itself that the plaintiff was a licensee and he could be thrown out of the

premises at any time. Hence, for this reason also the decision of the Apex Court aforementioned does not advance the case of the defendant.

46. On the other hand, the learned single Judge has referred to several decisions in the impugned order to state that even a licensee, who continues

to be in possession of the premises unlawfully, cannot be thrown out by force, including the decisions in Krishna Ram Mahale (Dead), by his Lrs.

Vs. Mrs. Shobha Venkat Rao, and Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, .

47. In the instant case, admittedly the plaintiff is in possession of the premises for about 15 years. As indicated earlier, whether he is a licensee or

lessee is to be decided by the trial court after the evidence let in by looking into the surrounding circumstances and the intention of the parties to

decide about the relationship of the parties. Therefore, in our view, the defendant on the strength of the stray observation with reference to the right

of the licensor made by the Apex Court, cannot take the law into its own hands by entering into the looked premises, in the name of exercise of re-

entry, while the whole question is to be decided by the trial court only at the time of conclusion of the trial.

48. It is also to be noticed that even when the SLP was pending before the Supreme Court, as requested by the defendant by the letter dated

11.2.1997. the plaintiff closed the shop in February 1997 for two weeks, in order to enable the defendant to renovate the lobby. According to the

plaintiff, this generosity shown by him has been misused by the defendant by putting up a wall in front of the shop premises to prevent the free

access to the shop from outside. Even in the reply letter sent by the plaintiff dated 13.2.1997 agreeing to the request made by the defendant, the

plaintiff made it very clear that he would resume his business two weeks later. It is also the case of the plaintiff that subsequent to 63.1997 the

electricity has. been cut. On finding it difficult to run the shop with the wall obstructing the vicinity of the frontage, the plaintiff filed a suit before the

City Civil Court for the removal of the wall, in the said suit also he prayed for declaration that he is a tenant and not a licensee. Admittedly, the suit

is still pending. In the light of these facts, the plea put forward by the defendant before the trial court that from March, 1997 onwards the plaintiff

abandoned the shop and went away may not be correct.

49. Even in the first Fax letter dated 15.9.1997 sent by the defendant to the plaintiff it is mentioned that the plaintiff ceased to do his business from

March, 1997. It is also mentioned in the said letter that all the legal proceedings initiated by the plaintiff had come to termination by the order dated

12.9.1997 passed by the Supreme Court. But the fact remains that the plaintiff filed the suit before the City Civil Court in O.S. No. 2403 of 1997

in April, 1997 praying for declaration that he is a tenant and for removal of the wall. Even in the order passed by the Apex Court dated 12.9.1997

the plaintiff was given the liberty to file the suit on the same cause of action through the competent plaintiff. Admittedly, expecting the filing of the

suit on the basis of the observation made by the Apex Court, the defendant filed the caveat.

50. So, -at this stage, the defendant thought it fit to send two message on 15.9.1997 asking the plaintiff to remove his articles kept in the shop and

clear the premises, or else the defendant would take the possession of the premises after removing the articles by exercise of its right of re-entry.

Immediately on the same day, a Fax reply notice was sent by the plaintiff stating that the defendant should not do any such illegal action so as to

deprive his right of moving before the High Court in a fresh suit on the same cause of action as permitted by the Supreme Court.

51. Thereafter, a police complaint also was given about the threat of dispossession. At 10.30 p.m. on the same day, the Manager of the plaintiff

went to the hotel and at that time he was not allowed to enter into the shop by the security of the hotel. So, these things would reveal that under the

garb of exercise of right of re-entry by virtue of the possession as licensor, the defendant had entered into the shop unlawfully, when the same was

in the possession of the plaintiff, and removed the articles from the premises, probably in order to prevent the plaintiff from getting any interim

orders as against the defendant, in pursuance of the liberty obtained from the Apex Court.

52. In the counter filed by the appellant before this Court, it is mentioned that the right of re-entry was exercised on 15.9.1997, whereas in the

counter filed before the trial court it is mentioned that the re-entry was exercised on 16.9.1997, However, the suit was filed on 16.9.1997 with a

prayer for permanent injunction without knowing the so-called exercise of re-entry, which we consider illegal, and thereby forcibly dispossessed

the plaintiff from the premises by removing the articles and wares belonging to the plaintiff. Taking advantage of this factual position, the appellant

before the trial court put forward the plea that the suit has become infructuous.

53. In such circumstances, the learned single Judge has come to the conclusion, on the strength of the decisions in Luganda v. Service Hotels Ltd.

(1996)2 All E.R. 692, Warder and Anr. v. Cooper (1970)1 All E.R. 1112, Bhupatlal v. Bhanumati AIR 1984 Guj. 10 and Indian Cable Co. Ltd.

v. Sumitra Chakraborty AIR 1985 Cal. 249, that even in the suit with the main prayer for permanent injunction, the interim order could be passed

for restoration of possession, especially when the court finds that the plaintiff was unlawfully dispossessed and as such, it cannot be contended that

the reliefs granted in the interlocutory applications, in view of the peculiar facts and circumstances of the case due to the fresh developments, would

be beyond the scope of the suit. Therefore, we have no hesitation to hold that the learned single Judge was right in granting the said reliefs,

especially in the face of the conduct of the defendant.

54. In view of the facts stated and the discussion made above, one thing is clear that the plaintiff appeared to be in continuous possession of the

premises even after the so called termination of the licence granted to him as early as in 1983, notwithstanding the nature of possession as to

whether he is a lessee or licensee which is to be decided in the suit. Prima facie, the plaintiff was found in possession of the premises by the learned

single Judge prior to the so called forceful entry into the premises by the defendant.

55. Prima facie, the plaintiff gets support from the observations made by the Supreme Court in Karnataka State Private College Stop-Gap

Lecturers Association Vs. State of Karnataka and Others, , wherein the passage from Munshi Ram v. Delhi Administration AIR 1968 S.C. 702 is

quoted, which reads:

It is true that no one including the true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land

and in such a case unless he is evicted in due course of law, he is entitled to defend his possession even against the rightful owner.... The

possession which a trespasser is entitled to defend against the rightful owner must be a settled possession extending over a sufficiently long period

and acquiesced in by the true owner.

56. Thus, we find that the plaintiff did make out a prima facie case before the learned single Judge with which we also agree.

57. It must be pointed out that after reserving the judgment in this case, the defendant/appellant came forward with a proposal for settlement by

filing a memo dated 26.3.1998 stating that the appellant with a view to put an end to the litigation, is prepared to offer a permanent alternative to

the respondent, that is, a licensed space measuring 180 sq.ft. in the New Shopping Arcade on identical terms and conditions as that of the other

licensees in the same lobby level as on date. It is also mentioned in the memo that the said proposal is subject to the consent by the respondent for

withdrawing all the legal proceedings, both civil and criminal, that it has initiated as against the appellant.

58. Though initially the counsel for the respondent on instructions did not agree to visit the new place offered by the appellant, we suggested that

the counsel could go to the premises with the plaintiff to find out whether the new place offered by the appellant would be suitable to conduct his

business. Accordingly, the counsel and his client and inspected the place shown by the appellant and submitted before this Court that the plaintiff is

not satisfied with the new place shown, as it is more disadvantageous than that of the suit premises as the said place is not suitable for the running

the business as a permanent alternative Apart from the reason advanced by the counsel for the respondent, who is not satisfied with the place

offered, we could also find that this proposal as a permanent alternative was not a justifiable one.

59. However, the defendant came forward to offer a new space, almost equal to the area of the premises in question at the lobby level itself where

other shops are in row. A sketch is also filed indicating the proposed area to be given to the plaintiff. This offer of the defendant is subject to

various conditions.

60. We heard the learned Counsel for the parties further on this aspect. The plaintiff was not inclined to accept the offer of the defendant, as

according to him the conditions put by the defendant were very much disadvantageous to him.

61. The disputed premises, which is the subject matter of the suit was ordered to be kept vacant without putting it into any use, This does not help

either the plaintiff or the defendant, pending the suit. Moreover, the disputed premises, as it is, cannot be used as a shop, unless the defendant is

directed to re-do the same to bring it to the original position.

62. It is not disputed that the shopping arcade is newly created at the lobby level itself and other shops in the defendant hotel are at the same place,

and the shop offered for the use of the plaintiff is in the middle, as can be seen from the sketch. In our opinion, pending decision in the suit, the

plaintiff can occupy the same space and carry on his business conveniently as the other shops are also adjoining. It may not be appropriate, in the

light of the subsequent developments, to direct the defendant to restore the suit premises in the same condition at this stage itself. But, at the same

time, the status quo existing in the said space should be maintained till the disposal of the suit, and no third party should be inducted in that space,

to safeguard the interest of the plaintiff in the event he succeeds in the suit.

63. Having regard to the balance of convenience also it would be appropriate that the defendant is directed to permit the plaintiff to carry on the

business in the shop premises offered by the defendant as shown in the sketch in yellow colour as an interim measure during the pendency of the

suit, and subject to the result of the same, on payment of rent at the rate of Rs. 7,000 per month which he was paying for the disputed premises,

within a period of one month from today. It is not possible for us to say that the learned single Judge was not right in exercising the discretion in

favour of the plaintiff as is done in the order under appeals.

64. Whether the plaintiff was a lessee or licensee has to be decided in the suit. The observations made by the learned single Judge in the order

under appeal, and the observations made by us in this judgment, are to be taken as confined only for the purpose of dealing with the interim orders.

In other words, the suit will be disposed of independently on the basis of the evidence that may be placed during the trial.

65. In the result, the impugned order under appeals stands modified, to the extent indicated above. The appeals and cross objections stand

disposed of accordingly. Consequently, C.M.P. Nos. 19061 and 19062 of 1997 stand dismissed.