

86 CWN 834

Calcutta High Court

Case No: C.O. No. 465 of 1983

Kamalendu Chanda

APPELLANT

Vs

Dilip Kumar Biswas

RESPONDENT

Date of Decision: May 6, 1983**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115, 151, 94
- Criminal Procedure Code, 1973 (CrPC) - Section 144(2), 151
- West Bengal Premises Tenancy Act, 1956 - Section 17(2), 17(2A)

Citation: 86 CWN 834**Hon'ble Judges:** N.G. Chaudhuri, J**Bench:** Single Bench**Advocate:** S.P. Roy Chawdhury and Lalit Kumar Maiti, for the Appellant; Mihir Bhattacharyya, for the Respondent**Final Decision:** Allowed

Judgement

N.G. Chaudhuri, J.

This revisional application u/s 115 read with section 151 of the C.P. Code by the plaintiff petitioner is directed against order dated 22.1.83 passed in Title Suit No. 284 of 1978 in the 2nd Court of Munsif at Alipore, 24-Parganas. The suit aforesaid is for eviction of defendant-opposite party on the termination of his tenancy in respect of substantial portion of the ground floor of premises No. 18/42 Dover Lane, Calcutta. The relationship of landlord and tenant is one of conflicting interests and that has been overlaid in this case by layers of bitterness oozing out of litigations before various Courts. To understand the background in which the order impugned was passed the antecedent facts are required to be stated in some details. On 22.1.81 the defendant-opposite party filed an application in the Court below under Order 39 Rules 1 and 2 read with section 151 C.P. Code for a temporary injunction restraining the plaintiff his men and agents from interfering with the supply of electricity to the defendant's flat or preventing defendants

access to the electric meter and meant for defendant's flat for effecting repairs and/or restoring electricity by erecting partition or otherwise. On the said application the learned Munsif ordered issue of notice to show cause on the plaintiff and ordered maintenance of status quo in respect of the electric meter and main switch meant for the defendant's flat till disposal of the injunction petition. The copy of the petition was sent to the plaintiff by registered post which reached the plaintiff on 29.1.81. The plaintiff petitioner maintains that in connection with Civil Rule No. 3544 of 1980 arising from some order passed in the said suit the High Court had stayed all for the proceedings in the suit, still the defendant had filed the aforesaid application for temporary injunction. Be that as it may on 3.2.81 the plaintiff-petitioner moved an application in revision in this Court against the order of the learned Munsif dated 22.1.81 and in C.R. No. 256 of 1981 arising from the said petition Janah J. while issuing a rule, passed an interim order of injunction staying operation of the order of the learned Munsif impugned till the hearing of the rule on the undertaking given by the plaintiff that the supply of electricity to the flat of defendant would not be interfered with. It is alleged that on 7.2.81 plaintiff completed the erection of a new door beside the staircase leading to the first floor of the house locked it up and moved an application u/s 144(2) Cr. P.C. against the defendant to drop out from the said proceeding subsequently.

2. On 13.2.81 defendant entered appearance in C.R. No. 256 of 1981 through an advocate. It is alleged that on 13.2.81 plaintiff locked up the defendant's side door and thereafter completed erection of a plywood partition on the railing of the staircase. On 17.3.81 defendant affirmed his affidavit-in-opposition and therein referred to the aforesaid acts of the plaintiff. C.R. 256 of 1981 was heard on 27.7.81 and Mr. Justice S.M. Guha, J. discharged the impugned order holding that an appeal lay against the impugned order and as such revisional application was incompetent, on 30.7.81 plaintiff filed an appeal against the order of the learned Munsif dated 22.1.81 being Miscellaneous Appeal No. 450 of 1981 in the Court of the District Judge Alipore and the said appeal is still pending. On 19.8.81 defendant filed an application u/s 151 before the learned Munsif in the suit for a temporary mandatory injunction directing the plaintiff to restore status quo by demolishing new construction and unlocking the defendant's door to restore his access to the electric meter and main switch. After obtaining adjournments plaintiff filed his objection against the defendant's aforesaid petition on 13.5.82. On 17.5.82 plaintiff filed an application before the learned Munsif for staying hearing of the application for mandatory injunction till hearing and disposal of Misc. Appeal No. 450 of 1981 pending in the Court of the District Judge. On 31.8.82 the learned Munsif allowed the plaintiff's prayer for staying hearing of the petition for mandatory injunction. On 21.9.82 defendant moved a Revisional application against the order of the learned Munsif dated 31.8.82 and the defendant's petition was ordered to be treated as contested application (C.O. No. 2979 of 1982) and further proceedings in the suit and in the Miscellaneous Appeal were stayed. On 14.1.83 Mr. Justice Janah J. heard the contested application, set aside the order passed by the learned Munsif and directed him to hear the application for mandatory injunction within three weeks. Pursuant to the above direction the learned

Munsif passed the order impugned herein. The litigations between the parties which form the back drop against which the impugned order was passed have been indicated. Added to that there were other litigations before different forum between the parties as will be evident from paras 2 and 3 of annexure R to the affidavit-in-opposition of the defendant and opposite parties.

3. From the rough sketch map marked annexure "O" to the defendant opposite parties affidavit-in-opposition a fair idea as to the location of premises No. 18/42 Dover Lane and the property let out to the defendant can be had. It is seen that the house faces Dover Lane running along its western border. There is no dispute that the house itself is a three storied one and the first floor of the house is in occupation of another tenant while the second floor and the north western room on the ground floor are in the possession of plaintiff. The defendant undoubtedly is in possession of three room on the ground floor as shown in this rough sketch map. A corridor runs between rooms Nos. 1, 2 and 3 and dining pace, kitchen, bath, W.C. etc. in opposite party's occupation. On the north of the house itself there was common passage which leads to the staircase to enable people to reach the first and second floor of the house. This common passage runs upto Dover Lane itself. There is an opening in the corridor in the exclusive possession of the defendant connecting the space beneath the stairless. The main switch and electric meters for registering quantum of electricity consumed in different portions of the house in possession of different sets of people inhabiting therein are all located at the space beneath the stair-case. It is the plaintiff petitioner's case that the meter from which electricity is supplied to the opposite parties flat stands in the name of the plaintiff. The said meter along with the other meters are located under the stair-case leading to the plaintiff's second floor flat. In paragraph 8 of his petition he states emphatically that the defendant opposite party has no concern with the location of the meters and the main switch and the space where they are located is no part of the defendant's tenancy and they lie in absolute possession of the plaintiff. It is, however, conceded that the defendant could only require and be permitted to have access to the site if the meter requires repair or change of fuse etc. is necessitated. The plaintiff petitioner's case is that the house in premises No. 18/42, Dover Lane has two entrances, one meant for the defendant namely through doors opening on the verandah facing Dover Lane and the other through the common passage meant exclusively for the plaintiff and the other tenants. In paragraph 19 of the plaintiff-petitioner's petition it is alleged that this last mentioned entrance has to be kept open from morning till 11 P.M. at night for ingress and egress for members of the petitioner's family and also for members of the family of the tenant of the first floor. It is alleged that the place where the meters and main switches are fixed were used as hiding place by miscreants and antisocials, particularly during hours of load-shedding and for the protection of the meters and main switches and to prevent the mischievous activities of local anti-socials a door was put up under the stair-case. The defendant opposite party in his affidavit-in-opposition denies the plaintiff's claim that the space beneath the staircase is accessible through the common passage is out of defendant's possession and access. He asserts that the said space appertains to his tenancy and is interconnected with his

flat through the side door on the corridor of his flat. He asserts that the said space has common electric meter board and main switches of all the three flats of the premises are located here and it has always been open and accessible to the occupants of all the three flats. From what has been stated above it will be evident that there is a serious dispute if the defendant opposite party had access to the space where meter board and main switch used for supply of electricity to his flat are located.

4. It alleged that plaintiff-petitioner has stopped supply of water to the defendant opposite party's flat and therefore various proceedings before the Rent Controller and other Courts are pending. Similarly defendant claims a right to suspend rent because of plaintiff's failure to supply water and he has taken this plea in a petition u/s 17(2) and 17(2A) of the West Bengal Premises Tenancy Act from which C.R. No. 3544 of 1980 referred to earlier has arisen and which is still pending.

5. We have already noticed that on 22.1.81 upon defendant's application for temporary injunction the learned Munsif passed an order for maintenance of status quo. No local inspection was prayed for and it is not known what was the state of things prevailing at the disputed space at the time of order aforesaid was passed. The notice of the order reached the plaintiff on 29.1.81 and it is alleged that plaintiff started construction on 31.1.81 to suspend the work of construction for a day or two on the defendant's objection and thereafter filed C.R. No. 256 of 1981. It is the defendant's case that taking advantage of the order of interim stay passed by this Court in C.R. No. 256 of 1981 plaintiff completed construction to the detriment and disadvantages of the defendant and for removal of the defendant filed the petition for mandatory injunction on 19.8.81. The said petition was filed u/s 151 C.P.C. The main reason which weighed with the learned Munsif in granting the defendant's prayer was that the defendant was enjoying electricity from the meter located under the stair-case and if he was prevented from having access to the said meter and main switch he was sure to suffer. The learned Munsif further added that if there was any short circuit or any other defect leading to an accident the defendant would suffer beyond damage and repair because of his non-access to the meter and main switch.

6. The point to be decided is if the learned Court below was correct in granting the defendant's prayer of mandatory injunction for pulling down the construction on the space beneath the stair-case preventing defendant's access thereto. Before proceeding to consider the arguments advanced I should report that in Misc. Appeal No. 450 of 1981 against the order of ad interim order of injunction directing maintenance of status quo is still pending, have my benefits of doubt could apply for injunction aforesaid in a suit for eviction sought against him by the plaintiff. The reasons for my doubt are two fold. Firstly, subject-matter of the ejectment suit was not the disputed space which did not appertain to defendant's tenancy and its preservation was not permitted under or. 39 r. 7 C.P. Code. Secondly, express words of or. 39 r. 1 and 2 C. P. Code strongly suggest that Courts are competent to order injunction against defendant only (and not against plaintiff). But there are sections 94 and 151 C.P. Code, I restrain myself from expressing my views on the

point strongly and in details lest the appellate court is influenced by my observations in any way.

7. Mr. Roy Chowdhury, the learned Advocate for the plaintiff-petitioner contends that as the defendant came out with a case that taking advantage of the order of stay passed by this Court the plaintiff had completed construction, the defendant should have filed the petition for mandatory injunction in the High Court itself. This argument does not. deserve serious notice. Petitions for injunction are always filed in the Trial Court; and here necessity for filing a petition for mandatory injunction arose because of plaintiff's violating the order passed by the learned Munsif on 22.1.81.

8. Mr. Roy Chowdhury's next contention is that a petition u/s 151 C.P. Code did not lie as they are specific provisions in the C.P. Code for issue of injunction, namely, Order 39. This argument also does not deserve serious consideration. It has been held in *Manoharlal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* reported in AIR 1962 S.C. page 527 that a prayer for temporary injunction may be. entertained and allowed on a petition u/s 151 C.P. Cede particularly when the circumstances in which the application are made are not covered by Order 39.

9. Next, relying on the decision on *Bhudeb Mukherjee Vs. Kalachand Mullick* reported in 34 C.L.J, page 315 Mr. Roy Chowdhury contends that mandatory injunction can be granted only to enforce a legal obligation and not merely moral, social or religious obligation. He contends that there was no legal obligation to be enforced by the defendant in the instant case. This point touches the merits of the petition which I am going to consider next.

10. Relying on the decision in *Jay Narayan Vs. Brojendra Narayan* reported in AIR 1951 Patna 547. The learned lawyer for the defendant-respondent argues that plaintiff was trying to defeat the purpose of the Court's order dated 22.1.81 and for that purpose erected the offending enclosure to shut out the defendant from the disputed space and in such circumstances relying on the principle laid down in the decision cited, mandatory injunction was rightly granted. The facts of the case cited are different from the facts before us. In the case cited the Trial Court had originally issued an adinterim injunction to vacate the same at a subsequent stage after hearing both the parties. There was an appeal. The Appeal Court issued an ad-interim injunction. Eventually the appeal itself was decided in favour of the plaintiff and the Appeal Court ordered that ■he ad interim order of injunction should be made absolute till the disposal of the suit. Against the above back-ground, the hurried construction made by the defendant in that suit to prevent plaintiff's user of the privy was patently malafide and inconvenience caused to the plaintiff was extreme. Similar observations cannot be made in the present case In *Bhutoria Brothers(P) Ltd. Vs. Banwarilal Purusottam Dass & Ors.* reported in 1982(1) C.L.J. page 208 it has no doubt been held that in appropriate circumstances mandatory injunction can be issued to restore state prevailing prior to the institution of the suit. But, it will be noted that in that case the lessor had obtained bulk supply of electricity on the implied

assurance that he would supply power to the lessee, but actually refused to supply. The Court granted mandatory injunction because refusal meant irreparable loss and injury to the plaintiff. In the present case no irreparable loss or inconvenience to the defendant is apprehended. In this connection, it will be noted that defendants' right to have electricity to his premises is well protected under the provisions of the West Bengal Premises Tenancy Act, 1956 and if the plaintiff has the temerity to interrupt the supply, he may be prosecuted. The space where the meter and the main switch are located does not appertain to the defendant's tenancy. Moreover, there is no allegation that the plaintiff ever interfered with the supply of electricity in defendant's premises by manipulating the main switch or meter. We should bear in mind that the meter stands in the name of the plaintiffs and he has obvious responsibilities with regard to proper maintenance of the same. In the aforesaid circumstances, the defendant does not appear to have a strong case on merits. There is no reason to apprehend that if access is denied to him in respect of the disputed space, he would be put to suffering or an accident would occur. Further in course of his arguments, Mr. Roy Chowdhury on behalf of his client gives the assurance and undertaking that, if there is non-supply of electricity to defendant's premises, the plaintiff on demand will give him access on a reasonable notice to the main switch and meter so that the defendant can inspect the same and effect repairs thereto, if necessary. Considering all these, I hold that the learned Munsif exceeded his jurisdiction in passing the impugned order of mandatory injunction and inference u/s 115 of the C.P. Code is called for. The revisional application is allowed on contest and the impugned order is set aside. No order is made as to costs.