(1983) 07 CAL CK 0019

Calcutta High Court

Case No: None

Gadadhar Das and Others		APPELLANT
	Vs	
Santosh Kumar Mukherjee		RESPONDENT

Date of Decision: July 15, 1983

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, 115, 36
- West Bengal Premises Tenancy Act, 1956 - Section 31, 36

Citation: 86 CWN 1043

Hon'ble Judges: N.G. Chaudhuri, J

Bench: Single Bench

Advocate: ;Tapan Datta, for the Respondent

Final Decision: Allowed

Judgement

N.G. Chaudhuri, J.

This petition u/s 115 C. P. Code filed by defendents-petitioners is directed against order dated 8. 2. 83 passed in Misc. Appeal No. 72 of 1982 by the Additional Sessions Judge, 3rd Court, Howrah, affirming the order of the learned Munsif 2nd Court Howrah dated 24 3 82 passed in Title Suit No. 315 of 1981. The learned Munsif had allowed the plaintiff opposite party''s prayer for temporary mandatory injunction. The undisputed facts are that plaintiff opposite party was in possession of the suit premises as a tenant for quite a long time; and formerly his landlord was Shri Jyotibhusan Banerjee. The defendant petitioners stepped into the shoes of Jyotibhusan by virtue of purchase by a deed dated 21. 4. 80 and became the landlords of the plaintiff opposite party. While Jyotibhusan was the landlord of the plaintiff, the plaintiff alleged that he had disrupted the supply of electricity in the premises of the plaintiff, filed a case against him under the provisions of the West Bengal Premises Tenancy Act before the Rent Controller and obtained an order for

restoration of electricity. Subsequently the defendant-petitioners came into picture and plaintiff filed the suit in the Court below for various reliefs against the defendant-petitioners, on the allegation that with a view to put pressure on the plaintiff and to compel him to vacate the suit premises the defendants were preventing restoration of electricity to the suit premises compelled the plaintiff to live in darkness and polluted the water of the ring-well from which the plaintiff got supply of water. The point to note is that the suit is a suit for declaration and permanent injunction and one of the prayers made in the suit is for restoration of supply of electricity to the suit premises. In the suit pending before the learned Munsif, the plaintiff filed a petition under order 39 Rule 1 and 2 C. P. Code praying for temporary mandatory injunction, in conformity with his prayer for permanent injunction, for restoration of supply of electricity to the suit premises. By a cryptic, ill written and unintelligible order the learned Munsif allowed the plaintiff"s petition for temporary injunction. He ordered "that the petitioner is at liberty to have electric connection on his own account. The consent of the landlord shall be deemed to have been given with the passing of this order. As regards other matters parties are required to maintain status quo till the disposal of the suit." The defendants felt aggrieved with the order of the learned Munsif and preferred Misc. Appeal No. 72 of 1980. But the order passed by the learned Munsif has been affirmed. From a perusal of the order of the learned Additional District Judge impugned herein it transpires that the reading of electric meter in the suit premises indicated that electricity was supplied upto 29. 5. 80 whereas the defendant petitioners became landlords from a prior date, namely, 21. 4. 80. The learned Additional District Judge accordingly concluded that relief by way of restoration of supply of electricity by the tenant was available against the defendant petitioners. Relying on the decision of the Division Bench of this Court in Loken Bose vs. Ashim De reported in 81 C. W. N. 948 the learned Additional Judge concluded that the relief under the West Bengal Premises Tenancy Act could be given by a Civil Court like that of the Munsif in the present Case, in a suit and the power to grant such relief was not exclusively vested in the Rent Controller.

2. The learned advocate for the defendant petitioners contends that the learned courts below exceeded their jurisdiction in passing the order of temporary mandatory injunction, in the facts and circumstances in which the temporary mandatory injunction was prayed for. The terms in which the prayer was made and the grounds on which the prayer was resisted are not stated in the order passed by the learned Munsif. The prayer for temporary injunction is normally considered from different aspects like prima facie case, urgency, balance of convenience and inconvenience, irreparable loss or injury etc. The learned Munsif does not appear to have considered the prayer from these aspects. It is doubtful if the order of the learned Munsif couched in the fashion quoted earlier is capable of execution under Order 21 Rule 32 read with Section 36 C. P. C. Be that as it may, I come now to the order of the appellate Court affirming the order of the learned Munsif. For the purpose of arriving at the conclusion that a Civil Court in exercise of its power under Cr. 39 C. P. C. by issue of temporary injunction can grant reliefs contemplated under sections 31-36 of the West Bengal Premises Tenancy Act, the learned appellate

court referred to the decision in the case of Loken Bose.

3. To similar effect observations have been made in the case of Bakul Rani v. Nanibala reported in 86 C.W.N. 943 and also in the case of Suresh Kumar vs. Mahadev Prosad reported in AIR 1982 Cal. 395. It is undisputed that a civil Court has power to grant temporary mandatory injunction for the purpose stated. But the common feature of all the three cases referred to above is that temporary injunction was granted in favour of the tenants in suits for eviction brought against them by the landlords. The relief granted by way of temporary injunction on the prayer of the defendant in the pending suits for eviction was to continue for a temporary period, namely, upto the time of disposal of the suit. In the present case we find a different picture, no suit for eviction is pending against the plaintiff-respondent. In the instant case the tenant has obtained the order of temporary injunction in a suit instituted by himself as plaintiff. There is no indication in the order of the learned Munsif affirmed by the appellate court either that any restraint has been put on any kind of action by any of the parties; or that the order will remain effective during the pendency of the suit. In the suit, it is important to note, restoration of electricity has been prayed for by way of permanent injunction. Against the back ground stated above the grant of temporary injunction amounted no doubt to prejudging the suit. The learned courts below do not appear to have considered these aspects of the case.

4. The learned advocate for the plaintiff opposite party contends that the grounds noted above touching the correctness or propriety of the order have not been taken in the revision application. He also contends that if pursuant to the impugned order the plaintiff gets electricity restored to his premises no irreparable loss or injury would be caused to the defendants; so no relief u/s 115 C. P. Code can be granted to the petitioner.

5. The two arguments noted above do not bear scrutiny. There is no indication in the C.P. Code itself that the actual grounds of attack in a revision case will have to be confined to the grounds taken in the application in writing. Further if the defendants do not suffer any irreparable loss or injury even then by the order impugned there will still be a failure of justice. The grant of a prayer of the plaintiff amounted in the present case to prejudging the suit. When no suit for eviction against the plaintiff was pending, he had no choice of forum. He could apply for restoration of electricity strictly in terms of the West Bengal Premises Tenancy Act before the Rent Controller only. Coming to a Civil Court as a plaintiff he cannot be allowed to contend that Rent Controller and Civil Courts have concurrent power. I am therefore, convinced that the order impugned was passed by the courts below in excess of their jurisdiction and with material irregularity. The order of temporary injunction passed by the learned Munsif on 11.2.83 as affirmed by the learned Additional District Judge on 8.2.83 is liable to be set aside. Hence ordered that the Revision application be allowed on contest. The order impugned is set aside and the plaintiff''s petition for temporary injunction for restoration of electricity to the suit premises is dismissed on contest. No order is made as to costs.

This will not preclude the opposite from filing any application for appropriate relief before the Rent Controller.