Supreme General Films Exchange Private Limited Vs Durgaprasad Jannath Tiwar

O. No. 8 of 1979

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Dec. 23, 1983

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 1, Order 39 Rule 2#Transfer of Property Act, 1882 â€" Section 53A

Citation: AIR 1984 Bom 131

Hon'ble Judges: Waikar, J

Bench: Single Bench

Advocate: V.R. Manohar and V.C. Daga, for the Appellant; J.C. Pande, for the Respondent

Judgement

1. This appeal is preferred by the original Plaintiff M/s . Supreme General Films Exchange PVt. Ltd., Company, against the order passed by

learned Civil Judge (Senior Division) rejecting its application for ad interim injunction under Order 39, Rules 1 and 2, C. P. Code.]

2. A few relevant facts are these: The plot in question on which the cinema-theatre runs under the name and style "Shri Talkies"" exists belongs to

the respondent (defendant). He had leased out the open plot on 28-2-1945 to one Chunnilal Desai for a period of twenty years. In the year 1962,

respondent Durgadas came to know that his tenant Chunnilal had inducted the present appellant. He, therefore, filed Special Civil Suit No. 34 of

1964 against his lessee Chunnilal for eviction and mesne profits in which he also impleaded the present appellant. The trial Court had partly

decreed the claim but the relief of ejectment, however. Was denied. Two appeals therefore, were preferred - one by owner durgaprasad and the

other by the lessee Chunnilal -which were heard together in the High Court, Both the appeals were disposed of in terms of a compromise that was

arrived at. The relevant terms of the said compromise decree were these:

That the appellant (Durgaprasad) agrees that he will permit the respondent No.2 (the present appellant) to remain in possession of the suit

premises till 28-2-1979 on payment of compensation for the use and occupation thereof at the rate of Rs. 14, 250/- per quarterly payable in

advance on 1st March , 1st June, 1st September and 1st December, every year.

That in case the respondent No. 2continues in occupation of the suit premises till he expiry of the last quarter, 28-2-1979, ot shall be bound to

remove the theatre, other structures, machinery, fixtures, fittings, etc., before the close of 28-2-1979 and give the vacant possession of the plot to

the appellant on 1-3-1979 . After the expiry of one claiming in it shall not be entitled to enter the suit premises or remove anything movable or

immovable left in the premises and appellant shall have full claim over it.

3. The respondent delivered the letter dated 27-1-79 to Shri Lohadia, the authorised agent of the appellant -company , reminding the appellant of

the terms of the said compromise and of the due date 28-2-1979 which was approaching . He stated that he would insist on due performance of

the terms of the said compromise and added that the compromise must be honestly and faithfully obeyed by all of us.

4. the appellant thereafter sent one letter dated 1-2-1979 under certificate of posting to the respondent informing the respondent that as per the

oral agreement arrived at between them in the meetings that took place on 27th , 28th and 29th of January 1979, this plot is leased out again for a

period of fifteen years. And the terms would be finalised and communicated after the resolution was passed by the company. The appellant then

sent one resolution of the Company dated 15-2-1979 incorporating therein the terms of the lease for fifteen years.

5. The appellant-Company thereafter commenced the present suit for a specific performance of this oral agreement of lease of this oral agreement

of lease of this plot for fifteen years and applied for ad interim injunction restraining the respondent from executing the decree. The application was

hotly opposed by the respondent, denying stoutly the alleged oral agreement of lease that was set up by the appellant. The learned trial Judge,

having rejected the said application, the present appeal has been filed.

6.Having heard Shri Manohar, the learned Counsel for the appellant, and Shri J.C.Pande, the learned cousel for the respondent, I find that the

order passed by the lower Court really calls for no interference . The grant of ad interim injunction as is well known , is a remedy both temporary

and discretion ary and since the discretion is required to be exercised before the entire evidence is unravelled and true facts fully established, the

task of deciding the application is at times more difficult than deciding the suit itself. The court all the time though called upon to weigh a prima facie

case as is sought to be set up as a decision on the matter in issue. A case, which is apparently barred by any provision of law, is an extreme

instance of non-existence pf a prima facie case also , which may not suffer from any such glaring defect, the Court is entitled to take into account

the nature and merit of the rival contentions for the limited purpose whether a prima facie case is made out or not.

7. Shri manohar drew my attention to the observations of lord Diplock in American Cynamid co. v. Ethicon Ltd. (1975) 1 All ER 504:

The court is not justified in embarking on anything resulting a trial of the action of conflicting affidavits in order to evaluate the strength of either

Party"s case. The court,. no doub. Must be satisfied that the claim is not frivolous or vexatious, in other words, there is a serious question to be

tried. Where other facts appear to be evenly to take such measures as are calculated to preserve the status quo"".

It was a quia timet action claiming injunction to restrain a threatened in fragment of a patent. It was found that affidavit evidence established that

there were serious questions to be tried and, hence, the factors of balance of conveinience, the extent of uncompressible disadvantage to each

party were mainly considered. But it was also further observed there:

I would reiterate that in addition to those to which I have referred, there may be other special features to be taken into consideration in the

particular circumstances of individual cases. The instant appeal affords one example of this

The grant or refusal of interim injunction, therefore, would always depend upon a variety of circumstances and in the nature of things, it is never

possible to lay down any rigid general rule by which discretion ought to be regulated. In A.A. Abdul Rasheed Vs. L.M. Basheer Ahmed Rowther

and Another, a ruling which was relied upon by the appellant, the peculiar circumstance was that the lessee hae continued to bhe in possession

after the expiry of the period of lease. That was found as a strong ground to have his possession protected till the disposal of the suit in which he

sought to get the suit properties by specific performance when the other party tried to dispossess him.

Turning to the facts of the present case. It was Chunnilal who was the lessee. He had inducted the present appellant surreptitiously and without the

consent of the respondetn. To evict Chunnilal and the present appellant who happened to be ion the land, the respondent-owner had to file a suit in

the year 1964. It was hotly contested and in the First Appeals 30 of 1969 and 55 of 1969, the parties came to terms in the High Court and a

decree was accordingly passed The present appellant was permitted to remain in possession till 28-2-1979 on payment of compensation for use

and occupation at a certain rate. Thus, the possession till 28-2-1979 on payment of compensation for use and occupation at a certain rate. Thus ,

the possession of the appellant was countenanced not as a lessee or as a licensee but merely as a trespasser. In order to ensure delivery and

surrender of possession on the due date 28-2-1979, a term of said decree provided that after 28-2-1979, the appellant was not to enter the plot

even for removal properties. The respondent was entitled to re-enter and retain whatever property was left over after 28-2-1979.

Evidently, this decree created a valuable right and interest in the respondent whose legitimate claim for eviction of his lessee-Chunnilal was resisted

and postponed under that long-drawn litigation. The existence of a legal right in the respondent is an admitted position and it is sought to be

assailed, rather superseded by setting up an oral agreement of lease by this appellant. The occupation of the plot by the appellant under the decree

was not that of a lessee. He was merely permitted to remain in possession on payment of a sum which was termed as compensation of use and

occupation. The appellant obviously cannot invoke the provisions of Section 53-A T. P. Act. The claim for eviction and possession of the

respondent against his lessee was, in fact, fully decreed but since this appellant, who was in actual occupation the execution of that decree was only

postponed till a particular date on his payment of damages or mesne profits for such occupation. A further provision , that in case the appellant did

not surrender vacant possession of the plot he was to forfeit his property remaining there, showed that the respondent wanted to ensure the

recovery of the plot back and no extension of any further time was in contemplation when the compromise decree was passed.

In this back ground , we have to judge the prima facie case as set up. On 27-1-1979, it was the respondent who addressed a letter to the

appellant reminding of the term of the decree and made it clear that he would re-enter after 28-2-1979 and the property remaining there,m if any,

would be appropriated by him. The appellant thereafter sent a letter dated 1-2-1979, presumably after the letter of the respondent was received.

In this letter, it was stated that as a result of the talks with respondent which took place on three days - 27th 28th and 29th January 1979 - it was

agreed that a lease for fifteen years would be granted to it. Surprisingly enough there is no reference in it to the letter dated 27-1-1979 which was

already received by the appellant. This was followed by dispatch of a copy of the resolution of the Company dated 15-2-19789 . Thus, the letter

dated 1-2-1979 and the copy of the resolution dated 15-2-1979 are the two documents relied upon in support of the prima facie case. They are,

in my opinion, only self-serving documents. On 27-1-1979, having dispatched the letter proclaiming his intention to re-enter on the due date, the

respondent would state a negotiating table the same day sounds highly improable. If the negotiations really took place for three full days and it was

finally agreed to grant a lease for fifteen years, the terms of which were also settled, ordinarily some writing from the respondent would have been

obtained, particularly when the appellant was in receipt of the letter of the respondent insisting on fulfilment of the terms of the decree.

Judged in the background of the antecedent events and the relations between the parties, it is difficult to say that a case sought to be made out is

prima facie a probable one. The case of an oral agreement of lease for fifteen years, in the circumstances founded solely on these two self-serving

documents, appears intrinsically weak.

On the basis of such a basically weak and improbable case, to grant and interim injunction till this litigation is finally decided (which can easily take

over more than ten years) is to deprive the respondent of his valuable and a hard-earned legal right. If the appellant ultimately succeeds, it can

seek specific performance of the alleged agreement by amending the claim. In case possession is taken by the respondent under the decree.

Balance of convenience, therefore , tips more in favour of the respondent. Even after being required to surrender possession as per terms of the

decree , if ultimately the appellant succeeds in this litigation. It can claim damages for the breach of the agreement committed hy h\the respondent.

In fact, when no prima facie case seems to exist, the consideration of balance of convenience and irreparable injury have little significance. It would

be just and proper in the instant case not to interfere but leave the parties to vindicate their legal rights by pursuing the remedies available to them

under law.

There may be cases when the merit and the demerit of the case of each party is so evenly balanced that it may be really highly difficult, even prima

facie, to say whether a prima facie case exists or not. And the matter may have to be decided mainly on the consideration of other factors, namely

balance of convenience and irreparable injury, a course which appears to have been adopted in American Cyanamid case 1975 1 All ER 504

But when the case sought to be put up appears basically improbable up on the material that is tenuous and suspicious, to say that the Court should

express no opinion, lest it should be taken to have prejudged, is never to tackle or decide the main prerequisite, i.e., existence of a prima facie

case. In the present case. Regard being had to the previous history and the relations between the parties, the proclamation of an intention of the

respondent a month before due date that he would reap the fruits of his decree and would, in no case, relent , to plug and arose his intend course

of action on the basis of such a precarious. Improbable and the suspicious case of an oral agreement would cause incalculable damage and injury,

great inconvenience and grave injustice..

I, therefore, see no reason to interfere with the discretion exercised by the lower court in dismissing the application. The appeal, therefore, is here

by dismissed with costs.

8. Appeal dismissed.