

Dinesh Mathur

Vs

O. P. Arora and Others

Civil Appeal No. 3004 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

11.04.1997

ORDER

1. Leave granted. We have heard counsel on both sides. This appeal, by special leave, arises from the judgment of the High Court of Delhi, dated 7-12-1995 made in CR No. 974 of 1990.
2. It is not necessary to narrate all the details for the purpose of disposal of this appeal. Suffice it to state that the respondent had a perpetual lease in 1937 and ever since he has been using the premises for running a hotel. The respondent filed a suit in 1991 for the first time alleging that the appellant had violated clause 7(2) of the conditions of lease as he had obtained the prior permission of the Commissioner. Ad interim injunction was granted. When he sought for vacation, it was not ordered. On appeal, it was confirmed and revision was dismissed. Thus this appeal by special leave.
3. It is an indisputable fact that ever since 1937 the appellant has been using the premises for commercial purpose, viz., running a hotel business. It is not a case where the balance of convenience would lie if prohibition on running the hotel on the basis of the lease is granted to him. Whether the appellant has violated the conditions of the lease is a matter to be gone into in the suit itself. We decline to go into the merits though Shri Gopal Subramaniam, learned Senior Counsel, sought to impress upon us the non-compliance of the covenants of the lease. He also brought to our notice the conduct on the part of the appellant in not obeying the ex parte order of injunction granted on 2-12-1991 till 24-9-1994. It may be that he did not obey the injunction but remedy is different. On that ground, it cannot be said that balance of convenience lies in grant of injunction in favour of the respondent. Granting injunction is a matter of discretion. Balance of convenience and irreparable injury are triable issues and are required to be examined and found positively. All are apparently lacking. Since the appellant has been running the business right from 1937, balance of convenience does not lie in issuing the ad interim injunction and he cannot be adequately compensated if ultimately he succeeds in the respondent's suit for prohibiting the running of the business in which the appellant acquired a goodwill having used the premises for long 60 years. Under the circumstances, the courts below have committed gross error of law in granting injunction.
4. The appeal is accordingly allowed. Ad interim injunction stands dissolved. The trial court is directed to dispose of the suit as expeditiously as possible. No costs.