

SUPREME COURT OF INDIA

Mohd.Mehtab Khan

Vs.

Khushnuma Ibrahim

C.A.No.678 of 2013

(P. Sathasivam and Ranjan Gogoi JJ.)

24.01.2013

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted.

2. Aggrieved by the grant of interim relief by an Appellate Bench of the Bombay High Court in a suit under Section 6 of the Specific Relief Act, 1963 (hereinafter for short the “SR Act”), the present appeal has been filed by the defendants 5, 10 and 11 in the suit. More specifically, by the impugned order dated 09.10.2012 the Receiver of the suit properties appointed by the learned Single Judge has been directed to remain in possession and hand over the same to the respondent Nos.1 and 2 (plaintiffs) who are to be in possession as agents of the Receiver.

3. Before embarking upon the necessary discussion of the factual matrix of the case, an identification of the contesting parties in the manner indicated below would be necessary.

Name	Relationship	Status in the Trial		Court		Khunshnuma Ibrahim			
Wife of Deceased	Plaintiff No.1		Khan	Ibrahim Khan		Raghib Ibrahim			
Khan	Son of Deceased	Plaintiff No.2		Ibrahim Khan		Shri Asadullah			
Khan @	Younger Brother of	Defendant No. 1		Sameer Khan	Deceased	Ibrahim Khan			
	Shri Najmuzzaman Khan	Elder Brother of	Defendant	No.2		Deceased Ibrahim Khan			
	Smt. Tara Begum	Wife of Defendant	No.2	Defendant No.3		Shri Sheheryaar Khan			
	Son-in-law of	Defendant	No.4		Defendant Nos. 2 3		Mohd.Mehtab Khan		
	Son from 1st wife of								

|Defendant No.5 | | |deceased | | |Mohd. Ilyas Khan |Brother of Defendant
|Defendant No.6 | | |No.3 | | |Mohd. Dayan Khan |Unrelated |Defendant No.7 |
|Smt. Shehzadi |Wife of Defendant |Defendant No.8 | | |No.12 | | |Miss Rani
|Unrelated |Defendant No.9 | |Tabish Ebrahim Khan |Son from 2nd wife of
|Defendant No.10 | | |Deceased | | |Kamran Khan |Son from 1st wife of
|Defendant No.11 | | |Deceased | | |Zakarullah Khan |Son from 1st wife of
|Defendant No.12 | | |Deceased | |

4. The plaintiff No. 1 claims to be the 3rd wife of one Ibrahim Khan whereas the plaintiff No. 2 is the son of the first plaintiff and Ibrahim Khan. According to the plaintiffs, Ibrahim Khan and the first plaintiff were married in the year 1993 and out of the said wedlock the plaintiff No. 2 was born some time in the year 1996. The plaintiffs claim that they alongwith Ibrahim Khan were residing in flat No. A-505, Noor-e-Jahan Complex, Pipe Road, Kurla (West), Mumbai and that they were also in occupation of an office being 201/202, 2nd floor in the Big 3 Building, 88, Anandilal Poddar Marg, Marine Lines, Mumbai from where the first plaintiff was carrying on her profession of advocate and solicitors in the name of M/s. K.K. Associates. It is the case of the plaintiffs that both the aforesaid properties were the self-acquired properties of Ibrahim Khan and that the suit flat was gifted in favour of the first plaintiff whereas a general power of attorney was executed in favour of the first plaintiff insofar as the suit office is concerned.

5. The further case of the plaintiffs is that Ibrahim Khan had gone to Delhi on 28.11.2011 to attend a wedding. On 1.12.2011 the first plaintiff could come to know that Ibrahim Khan had suffered a brain hemorrhage and was admitted in the hospital. According to the plaintiffs, they took an early morning flight to Delhi on the very next day. However, at about 9.30/10.00 O'Clock in the morning, Ibrahim Khan died. Thereafter, at the insistence of the first defendant (brother of the deceased) the body of the deceased was taken to Bhagalpur, Bihar which was the native place of Ibrahim Khan. The plaintiffs accompanied the body of the deceased to Bhagalpur and the last rites were performed at the said place in the afternoon of 4.12.2011. On 5.12.2011 the plaintiff No. 1 received a call from her next door neighbour, one Nadeem, that the lock of the suit flat was broken and a new lock had been placed by some unknown persons. According to the plaintiffs, the first plaintiff called her house help Niranjan who informed her that the defendants 2, 3 and 4 had forcibly taken possession of the suit flat. It is also the case of the plaintiffs that when she had contacted her office she was informed that the defendant No. 4 had gone to the suit office and had snatched the keys from the office staff and had locked up the premises.

6. According to the plaintiffs, they reached Mumbai on 6.12.2011 and on going to the suit flat they found that new locks had been put thereon. They, thereafter, lodged a complaint to the police on 6.12.2011 and thereafter on 12.12.2011 instituted Suit No. 27 of 2012 under Section 6 of the SR Act. On 14.12.2011, when the matter was taken up by the Court, the defendant Nos. 1 to 4 informed the Court that they are not in possession of the suit flat but it is the defendants 5, 11 and 12 who are in possession. The Court by order dated 14.12.2011 appointed a Receiver and directed him to make an inspection of the suit flat and suit office and report back to the Court. Such inspection was made by the Court appointed Receiver on 16.12.2011. The report of inspection was submitted to the Court to the effect that the defendant Nos. 5 to 9 were found to be in possession of the suit flat. Formal possession thereof was taken over by the Court Receiver in terms of the order dated 14.12.2011. In the report of the Court Receiver, it was further mentioned that the defendant No. 10 had produced the keys of the suit office. However, the Court Receiver did not succeed in opening the doors of the office premises as there were further locks fixed thereon and inquiries did not indicate as to who was in possession of the keys. Accordingly, the Court Receiver informed the Court that formal possession of the suit office could not be taken. In the aforesaid circumstances, at the instance of the plaintiffs, defendants 5 to 12 were impleaded in the suit.

7. At this stage the specific case of the defendants as advanced before the learned Trial Judge, may be taken note of. The fact that the first plaintiff was the 3rd wife of Ibrahim Khan and the second plaintiff was the son born out of the said marriage is not disputed by the defendants. The death of Ibrahim Khan in the circumstances stated in the plaint is also not in dispute. According to the defendants, the appellants were residing in the suit premises with the deceased Ibrahim Khan till the middle of the year 2009 when the first plaintiff separated from the deceased. Thereafter, according to the defendants, the plaintiffs were not in possession of the suit flat and, instead, were staying in the house of the father of the first plaintiff at Mira Road. The second plaintiff was studying in a school located on Mira Road. It is the specific case of the defendants that the deceased, at the relevant time, was residing in the suit flat alongwith his son from the first wife (defendant No. 5) and that the defendants had inherited the suit flat on the death of Ibrahim Khan. Insofar as the suit office is concerned, it is the specific case of the defendants that the plaintiff No. 1 was not in possession of the said premises and that the said plaintiff No. 1 had been functioning from an office located at another place, i.e., shop No. 32/33 Ashoka Centre, 2nd floor, L.T. Marg, Mumbai.

8. Alongwith the respective pleadings of the parties elaborate documents had been laid before the learned Trial Judge on the basis of which contentions were advanced by the respective parties each claiming to be in possession of the suit flat and suit office on the relevant date in order to justify the reliefs that the respective parties were seeking from the Court. As would be evident from the order of the Appellate Bench of the High Court, insofar as the suit flat is concerned, the plaintiffs had produced as many as 50 documents details of which has been catalogued in a chronological order in the order dated 9.10.2012. Insofar as suit office is concerned, similarly, the plaintiffs had relied on as many as 31 documents to show their claim of possession. Likewise, the defendants had also relied on an equally long and elaborate list of documents to show that the plaintiffs were not in possession of the suit flat and suit office at the relevant point of time, as claimed. As the details of the said documents have been minutely taken note of by both the Benches of the High Court it is not necessary for this Court to traverse the said aspect of the case once again. Instead, we may briefly notice the reasons which had weighed with the learned Trial Judge to refuse interim relief to the plaintiffs and those that had prevailed upon the Appellate Bench to reverse the said order of the learned Trial Judge.

9. Both the learned Trial Judge as well as the Appellate Court considered the very same documents brought on record by the contesting parties to arrive at their respective conclusions with regard to the entitlement of the plaintiffs. Specifically, the learned Trial Judge had discussed the narration of the events of dispossession pleaded by the plaintiffs and held the same to be somewhat unreliable and inconsistent in view of the fact that the defendant No. 1 (son of the deceased Ibrahim Khan) who is alleged to have been instrumental in dispossessing the plaintiffs was at the relevant point of time in Bhagalpur in connection with the cremation of the deceased, Ibrahim Khan. In this regard the claim of defendants 2 to 4 that they were also in Bhagalpur at the relevant time was considered by the learned Trial Judge. The versions of the occurrence allegedly narrated to the plaintiff No. 1 by her neighbours and her domestic aid were also found to be somewhat contradictory. The learned Trial Judge took into account the fact that the plaintiffs' version with regard to prosecution of studies by the second plaintiff in the school at Mira Road and his residing with the parents of the plaintiff No. 1 at Mira Road was brought on record in the rejoinder and did not constitute the part of the plaint case. In coming to his conclusions in the matter the learned Trial Judge also took into account the fact that the visiting card of the plaintiff No. 1 showed an address other than of the suit office and also the fact that the communication conveying the temporary membership of the plaintiff No. 1 in the Bombay Bar Association sent to the suit flat address was returned with the remarks "shifted".

The fact that the visiting card of the plaintiff showing the office address at Ashoka Centre contained the same telephone numbers of the plaintiff that were mentioned in certain communications of the bank were duly taken note of by the learned Trial Judge. In the above context the claim of the plaintiff No.1 that the said visiting card is a forged and fabricated document was held to be an issue fit for decision in the trial of the suit. The learned Trial Judge took into account the passports of both the plaintiffs issued in the year 2009 showing the address of the suit premises as well as the vouchers/memos showing payment by the plaintiff No.1 for the household and electronic goods which were found in the suit flat. On an overall consideration of the aforesaid facts and the documents laid in support thereof, the learned Trial Judge was of the view that there were inconsistencies and improbabilities in the case of the plaintiffs which needed to be established in the trial of the suit. Accordingly, the interim relief of direction to be put back in possession, as claimed by the plaintiffs, was declined.

10. The Appellate Court understood the very same documents considered by the learned Trial Judge in a wholly different manner. Specifically, it was held that the various household and electronic goods found in the suit flat during the inspection carried out by the Receiver on 16.12.2011 were proved to have been purchased by the plaintiffs on the basis of a invoice/voucher dated 22.8.2008 and the said fact pointed to the possession of the suit flat by the plaintiffs and, in fact, demolished the case of the defendants that the first plaintiff and the deceased had separated some time in the middle of the calendar year 2009. The passports issued to the plaintiffs in 2009 recording the address of the suit flat; the HDFC bank statement of plaintiff No. 1; the ICICI bank Credit Card Statement of plaintiff No. 1 during the relevant time, all indicating the address of the suit flat were duly relied upon by the Appellate Court in coming to its conclusion. The Appellate Court also relied on an application form submitted (before the Appellate Court) by the second plaintiff on 11.8.2011 for admission in the 11th standard in H.R. College of Commerce and Economics at Dinshaw Vachcha Road, Church Gate, Mumbai which was signed by the deceased Ibrahim Khan himself giving the address of the suit office and the suit flat. The version of the plaintiffs that the visiting card showing her office at Ashoka Centre was a forged document and also the claim that the plaintiff had used the said premises temporarily as the suit office was under renovation was accepted by the learned Appellate Court as sufficient explanation to counter the stand taken by the defendants. On the aforesaid basis the order of the learned Trial Judge was found fit for reversal and refusal of interim relief to the plaintiffs was held to be unjustified. Accordingly, interim relief(s) was granted in the appeal.

11. We have heard Mr. V. Krishnamurthy, Senior Advocate for the appellants and Mr. Shyam Divan, Senior Advocate for respondents No. 1 and 2.

12. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.

13. While the bar under Section 6(3) of the SR Act may not apply to the instant case in view of the initial forum in which the suit was filed and the appeal arising from the interim order being under the Letters Patent issued to the Bombay High Court, as held by a Constitution Bench of this Court *P.S. Sathappan (Dead) by Lrs. v. Andhra Bank Ltd.* Ors.[1], what is ironical is that the correctness of the order passed in respect of the interim entitlement of the parties has reached this Court under Article 136 of the Constitution. Ordinarily and in the normal course, by this time, the suit itself should have been disposed of. Tragically, the logical conclusion to the suit is no where in sight and it is on account of the proverbial delays that have plagued the system that interim matters are being contested to the last court with the greatest of vehemence and fervour. Given the ground realities of the situation it is neither feasible nor practical to take the view that interim matters, even though they may be inextricably connected with the merits of the main suit, should always be answered by maintaining a strict neutrality, namely, by a refusal to adjudicate. Such a stance by the courts is neither feasible nor practicable. Courts, therefore, will have to venture to decide interim matters on consideration of issues that are best left for adjudication in the full trial of the suit. In view of the inherent risk in performing such an exercise which is bound to become delicate in most cases the principles that the courts must follow in this regard are required to be stated in some detail though it must be made clear that such principles cannot be entrapped within any straitjacket formula or any precise laid down norms. Courts must endeavour to find out if interim relief can be granted on consideration of issues other than those involved in the main suit and also whether partial interim relief would satisfy the ends of justice till final disposal of the matter. The consequences of grant of injunction on the defendant if the plaintiff is to lose the

suit alongwith the consequences on the plaintiff where injunction is refused but eventually the suit is decreed has to be carefully weighed and balanced by the Court in every given case. Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. Though experience has shown that observations and clarifications to the effect that the findings recorded are prima facie and tentative, meant or intended only for deciding the interim entitlement of the parties have not worked well and interim findings on issues concerning the main suit has had a telling effect in the process of final adjudication it is here that strict exercise of judicial discipline will be of considerable help and assistance. The power of self-correction and comprehension of the orders of superior forums in the proper perspective will go a long way in resolving the dangers inherent in deciding an interim matter on issues that may have a close connection with those arising in the main suit.

14. There is yet another dimension to the issues arising in the present appeal. The interim relief granted to the plaintiffs by the Appellate Bench of the High Court in the present case is a mandatory direction to handover possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the Court; much higher than a case involving grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same which had been evolved by this Court in *Dorab Cawasji Warden vs. Coomi Sorab Warden and Others*[2] has come to be firmly embedded in our jurisprudence. Paras 16 and 17 of the judgment in *Dorab Cawasji Warden (supra)*, extracted below, may be usefully remembered in this regard:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

15. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. v. Antox India (P) Ltd.*[3] Para 14 of the aforesaid judgment which is extracted below would amply sum up the situation:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, 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. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a 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. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph*: (SCR 721)

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton Co. v. Jhanaton* ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

16. Though the above discussions would lead us to the conclusion that the learned Appellate Bench of the High Court was not correct in interfering with the order passed by the learned Trial Judge we wish to make it clear that our aforesaid conclusion is not an expression of our opinion on the merits of the controversy between the parties. Our disagreement with the view of the Division Bench is purely on the ground that the manner of exercise of the appellate power is not consistent with the law laid down by this Court in the case of *Wander Ltd.* (supra). Accordingly, we set aside the order dated 09.10.2012 passed by the Appellate Bench of the Bombay High Court and while restoring the order dated 13.04.2012 of the learned Trial Judge we request the learned Trial Judge, or such other court to which the case may, in the mean time, have been transferred to dispose of the main suit as expeditiously as its calendar would permit with the expectation that the same will be possible within a period of six months from the date of receipt of this order. The appeal shall stand disposed of in terms of the above.

[1] (2004) 11 SCC 672

[2] (1990) 2 SCC 117

[3] 1990 (Supp) SCC 727