

# CALCUTTA HIGH COURT

Sujit Pal

Vs.

Prabir Kumar Sun

F.M.A.T. No. 2279 of 1985

(M.M. Dutt and J.N. Chaudhuri, JJ.)

02.09.1985

## JUDGMENT

### **M.M. Dutt, J.**

1. This is an application for an interim stay of operation of the order No.18 dt. July 4, 1985 of the learned Judge, 9th Bench, City Civil Court, Calcutta, passed in Title Suit No. 887 of 1985. By the said order, the learned Judge has allowed the application of the plaintiff-opposite party for a temporary mandatory injunction directing the defendant-petitioner to forthwith open the padlock put on the main entrance door of the suit premises and restore the possession thereof to the plaintiff-opposite party. The Officer-in-charge of the Shyampukur Police Station has also been directed by the learned Judge to take steps for enforcing the said order and to see that no breach of peace takes place in giving effect to the order.
2. The plaintiff-opposite party has instituted the said suit, inter alia, praying for a declaration of his tenancy right in respect of a room of premises No. 2, Shibdas Bhaduri Street, Calcutta-4 and for a permanent injunction restraining the defendants from interfering with the possession of the opposite party of the said room. It is the case of the opposite party that he has been a tenant of the said room, and that the defendants had been trying to interfere with his possession of the same.
3. The opposite party made an application for a temporary injunction and the learned Judge passed an order of interim injunction restraining the defendants from interfering with the possession of the opposite party of the said room. Despite the interim injunction granted by the learned Judge, the defendants including the petitioner in violation of the said order of interim injunction forcibly dispossessed the opposite party from the suit premises.
4. The opposite party filed two applications, one under the provision of Order 39, Rule 2A and the other under Section 151 of the Civil Procedure Code praying for a temporary mandatory injunction restoring the possession of the opposite party of the said room with police help. The learned Judge, as stated already, allowed the application for temporary mandatory injunction directing restoration of possession of the opposite party of the said room in the said premises with police help.

5. Being aggrieved by the impugned order of the learned Judge, the petitioner has preferred an appeal against the same and filed the present application for an interim stay of operation of the said order. The petitioner has also filed an application under Section 115 of the Civil Procedure Code in the alternative. Elaborate submissions have been made by both the parties. The disposal of the application for interim stay will, in our opinion, virtually dispose of the appeal and the alternative application under Section 115 of the Civil Procedure Code Accordingly, we treat the appeal and the alternative application as on day's list for disposal along with the application for interim stay.

6. Mr. Sakti Nath Mukherjee, learned Advocate appearing on behalf of the petitioner has challenged the jurisdiction of learned Judge to entertain an application under Section 151 of the Civil Procedure Code for a temporary mandatory injunction for the restoration of possession to the opposite party of the said room. It is submitted by him that as the Civil Procedure Code has expressly provided in Order 39, Rule 2A for a remedy for the violation of a temporary or interim injunction, the Court has no power to grant a temporary mandatory injunction in exercise of its inherent power. It is contended on behalf of the petitioner that the provision of Order 39, Rule 2A is a provision for execution of an order for a temporary injunction, and that in case of disobedience of a temporary or an interim injunction, the only remedy of the aggrieved party is to avail himself of the provision of Order 39, Rule 2A. It is submitted in view of Order 39, Rule 2A, Section 151 of the Civil Procedure Code has no manner of application in the case of violation of a temporary injunction. Our attention has been drawn to Section 51 of the Civil Procedure Code which lays down the powers of the Court to enforce execution. It is submitted that an order for a temporary or an interim injunction can only be executed in the manner prescribed by Order 39, Rule 2A in view of Section 51 of the Civil Procedure Code and in no other manner.

7. It is now a well-settled principle of law that when there is a specific provision in the Code in respect of any matter, it is not permissible for the Court to pass any order in respect of such matter under Section 151 of the Code. Much reliance has been placed on behalf of the petitioner upon a decision of the Supreme Court in *State of Bihar v. Rani Sonabati Kumari*<sup>1</sup>. In that case, it has been held by the Supreme Court that though undoubtedly proceedings under Order 39, Rule 2(3) of the Civil Procedure Code (which is somewhat similar to the amended provision of Order 39, Rule 2A) have a punitive aspect, as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order.

8. It may be that Order 39, Rule 2A is in the nature of an execution proceeding, but the question before us is whether the Court has inherent power to grant a temporary mandatory injunction for the purpose of granting relief to a person who has been dispossessed despite an order of interim injunction. In the instant case, there is no question of execution of the order of interim injunction that was granted in favor of the opposite party restraining the defendants including the petitioner from interfering with the possession of the opposite party of the room in question. The petitioner has forcibly dispossessed the opposite party from the room and has taken possession thereof in utter violation of the interim injunction. If the opposite party is asked to pursue the remedy under Order 39, Rule 2A, it will be doing a great injustice to him inasmuch as under the said provision, the Court cannot grant immediate relief to the opposite party. So there is

<sup>1</sup> AIR 1961 SC 221

no question of execution of the order of interim injunction. The real question is the granting of

immediate relief to the opposite party by restoring his possession of the room. The analogy of Order 21, Rule 32 of the Civil Procedure Code in our opinion, has no manner of application for the purpose of granting relief to the opposite party. We do not also think that there is any relevance in considering the applicability of the provision of Section 51 of the Civil Procedure Code which relates to the powers of Court to enforce execution. The injury is grave and serious; ends of justice demands that the Court should at once take steps in granting relief to the opposite party. In this connection, we may refer to an observation from Kerr on Injunctions, 6th Edition, Page 41 :

"But where the injury is of so serious or material a character that the restoring things to their former condition is the only remedy which will meet the requirements of the case, or the defendant has been guilty of sharp practices or unfair conduct, or has shown a desire to steal a march upon the plaintiff, or to evade the jurisdiction of the Court, the injunction will issue, notwithstanding the amount of inconvenience to the other party, and though the expense thereby caused to him will be out of proportion to any advantage the plaintiff may derive from it."

9. In a case like the present one where the 'restoring things to their former condition is the only remedy' the Court, in our opinion, has to take steps for the purpose in the exercise of its inherent power. In *Bhagat Singh v. Dewan Jagbir Sawhney*,<sup>2</sup> it has been observed by Lord Williams J. that the Code is not exhaustive; there are cases which are not provided for in it, and the High Court must not fold its hands and allow injustice to be done. Further, it has been observed by his Lordship that the law cannot make express provisions against all inconveniences, and that the Court had, therefore, in many cases where the circumstances warranted it, and the necessities of the case required it, acted upon the assumption of the possession of an inherent. power to act *ex debito* justitiae and to do that real and substantial justice for the administration of which it alone exists.

10. In *Manohar Lal v. Seth Hiralal*<sup>3</sup>, it has been observed by the Supreme Court that a Court can issue an interim injunction under circumstances which are not covered by Order 39 of the Code, if the Court is of opinion that the interests of justice require issue of such interim injunction. In laying down the said proposition the Supreme Court has, amongst others, relied upon the decision in *Bhagat Singh's* case (supra). The Supreme Court has also reiterated that the provisions of the Code are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. Further, the Supreme Court observes that it is not possible to hold that the provisions of the Code control the inherent power by limiting it or otherwise affecting it.

11. Thus it is apparent from the said observation of the Supreme Court that no technicality can prevent the Court from doing justice in exercise of its inherent power. Order 39, Rule 2A lays down a punitive measure for the purpose of compelling a party to comply with the order of injunction. The process as contemplated by the said provision may or may not be ultimately effective but, in any event, the procedure laid down in

<sup>2</sup> AIR 1941 Cal 670

<sup>3</sup> AIR 1962 SC 527

Order 39, Rule 2A is incapable of granting an immediate relief to a party who has been forcibly dispossessed in violation of an order of injunction. We do not think that in such a case the Court is powerless to grant relief to the aggrieved party in exercise of its inherent power. The very object for which Order 39, Rule 2A has been enacted will be fulfilled by the grant of a temporary mandatory injunction and restoration of possession of the aggrieved party. The inherent power of the Court as recognized in Section 151 of the Code is in addition to the power conferred on the Court under the provisions of the Code. All that the Court is concerned is to prevent abuse of the process of Court and to do justice by immediately intervening under circumstances which require such intervention by the Court.

12. The view which we take finds support from a decision of the Rajasthan High Court in *Magna v. Rustam*<sup>4</sup>. In that case, it has been observed that though Order 39, Rule 2(3) of the Code is exhaustive on the subject of imposing of penalty on the party guilty of disobedience, it does not provide any relief to the party in whose favour the order of temporary injunction is passed. Further, it has been observed that the object of such an order is to safeguard the rights of a party against a threatened invasion by the other party, and that if in disobedience of the order of injunction such rights are invaded during the pendency of the suit, relief can only be granted to the aggrieved party by invoking the inherent power of the Court under Section 151 of the Civil Procedure Code.

13. In *Hari Nandan v. S. N. Pandita*<sup>5</sup>, the Allahabad High Court has taken the same view as we have, namely, that when a party has been dispossessed in disobedience of the order of injunction, the Court can in exercise of its inherent power pass such order for ends of justice as would undo the wrong done to the aggrieved party.

14. In our opinion, therefore, the learned Judge was perfectly justified in passing the impugned order of mandatory injunction under Section 151 of the Civil P. C. by directing the police to restore possession to the opposite party of the room in question.

15. For the reasons aforesaid, the impugned order of the learned Judge is affirmed and the appeal, the alternative application under Section 115 of the Code and the application for interim stay are all dismissed.

16. There will, however, be no order as to costs.

17. The prayer for stay of operation of this order is disallowed.

**J. N. Chaudhuri, J.**

18. I agree.

Appeal and application dismissed.

<sup>4</sup> AIR 1963 Raj3

<sup>5</sup> AIR 1975 All48