

=====

Regular Civil Suit No. 03 of 2020

ORDER BELOW EXH. 05

=====

- [1] The present application vide Exh-05 is preferred by plaintiff seeking temporary injunction against the defendants under Order 39, Rule 1 and 2 and section 151 of the Civil Procedure Code.
- [2] The plaintiff has/have filed present suit against the owner (trust and trustee) of the suit property on the basis of breach committed by the owner in respect of agreement executed between the plaintiff and manager of the temple trust. As per say of the plaintiff, an agreement to run a Bhojnalaya for giving prasad and meal to the devotee pilgrims was executed duly on 01/02/2018, and as per contract the plaintiff has successfully performed his duties in running the bhojanalaya and has provided meal to devotees free of cost but the defendant has neither paid or reimbursed the cost to the plaintiff as per contract nor renewed the contract after lapse of its tenure. Now the defendant is trying to dispossess the plaintiff illegally from the suit property without paying the dues of plaintiff pending against the defendant. Therefore, present suit is filed by the plaintiff to seek a declaration to the effect that the defendants have no right to execute the contract by breaching its terms and conditions, and also to get a permanent injunction order in his favour and against the defendant, for being not dispossessed by the defendants from the suit property.

In this case the plaintiff has prayed by way of this present application to restrain the defendants and his/their agents, servants etc. from taking possession of the suit property from the plaintiff and also from interrupting the plaintiff in peaceful possession of the suit property till final disposal of the present suit. **With the plaint**, the plaintiff, has/have also submitted documents through documentary list vide- Exh-03 i.e. mark 03/01 to 03/04, and Exh-26 i.e. mark 26/01 to 26/02, so as to support his/her/their case and against the defendant.

- [3] In this matter summon and notice was issued to defendants and out of them the summon and notice of defendant no- 4 to 6 are returned duly served upon the defendant no-4 to 6 and also appeared along with his/her/their learned advocate, but defendant no 1 to 3 have not personally appeared before this court, as appears from the record of the case, thereafter defendant no 4 has filed written statement vide Exh.09, against present application and Plaintiff; whereas defendant no 1,2,3,5 and 6 have filed written statement against present application and plaint vide Exh.16. The defendant no 04 in his/her reply has denied the fact as any breach of contract is committed by the defendant. **With written reply against the plaint**, the defendant no 04 has not submitted any documentary evidence.

Thereafter the other defendants in their reply vide Exh-16 have denied all facts, except expressly admitted, mentioned in the plaint and in present application, and have contended that the present suit is barred by the non-joinder of necessary party and is without cause of action as the time period mentioned in the contract dated 01/02/2018 has lapsed

before the filling of the suit thereafter the plaintiff has no right to seek specific performance of the contract, and the defendants have not committed any breach to the contract. Moreover, the plaintiff is now trespasser in the suit property, he has no authority to retain the suit property. As per condition no-8 of the contract, the contract can be only renewed with consent of both the parties of the contract and as per condition no-10 of the contract, the first party i.e. Dakor temple Committee only is empowered to cancel the contract at any stage and time of the contract without taking consent of the second party i.e. present plaintiff. It is also mentioned by the defendants that there is no pending due to the plaintiff as per contract. There was a condition that the plaintiff will have to claim the reimbursement as per procedure provided in the contract and only on monthly basis. Therefore the plaintiff has filed the present suit only to grab the suit property illegally from the temple trust, which is not permissible by the law so the defendants have prayed for to reject the present plaint and application filed by the plaintiff. The defendants have also submitted document through documentary list vide- Exh- 23 i.e. marks 23/1 which is copy of proceedings before the Hon'ble High Court, so as to support his reply and also as against the case of plaintiff.

- [4] After filling of Reply by the defendant, the plaintiff has submitted his written reply cum counter affidavit against the written reply of the defendants vide Exh- 20, wherein he has denied the written reply of the defendants and has claimed that

the there is prima-facie case and balance of convenience in favour of present plaintiff.

- [5] Thereafter, no one party has filed a written arguments for the disposal of present application. Then after the Ld. Adv. for the plaintiff has orally argued that the plaintiff has not breached any condition of the contract and defendant has not produced Annexure C and D before this court which was submitted by the plaintiff to the defendant, which shows that defendant is hiding material evidence on record. Moreover, the suit property is in possession of the plaintiff and there is not dispute on record regarding this factual position, and there is pending due of the plaintiff of rupees about 54 Lakhs against the defendants therefore the defendant have no right to take the possession of the suit property without paying and clearing the pending dues of the plaintiff.

Further more the Ld. Advocate Mr. R.P. Bhatt for the plaintiff has argued that the Law respects possession even if there is no title to support it, it is not be permitted by any law to any person to take the law in his own hands and to dispossess a person who is in actual possession of the property, without having recourse to a court, and no person can be allowed to become a judge in his own casue.

Further he argued that undoubtedly, the true owner is entitled to retain the possession but even though he had obtained it by force or by other unlawful means but that would not be ground to permit the owner to take the law into his own hands and eject the person without any recourse to law. Therefore, in the present case also the defendants have no right

to take possession of the suit property from the plaintiff without adopting any recourse to law.

Further he argued that the possession of a tenant who had ceased to be a tenant, after expiry or termination of the lease, is protected by law until he is duly ejected. Although he may not have a legal right to continue in possession after the termination of the tenancy or after expiry of the tenancy, his possession is recognized to be a juridical and for that reason that possession is also protected by the common law. Therefore, in the present case also the possession of the plaintiff is juridical and is protected by the law and for that reason it must be protected by the court and the defendants must not be allowed to dispossess the plaintiff without taking any recourse of law. Therefore, when the suit property is in possession of the plaintiff and possession of the plaintiff is a juridical possession so there is prima-facie case in favour of plaintiff and then if plaintiff is dispossessed without taking any recourse to law that would cause irreparable loss to the plaintiff so balance of convenience is also in favour of plaintiff and for that reason the present application of the plaintiff must be allowed. Ld. Advocate Mr. Bhatt has also supported his oral arguments with ratio of judgments produced vide Exh- 27 i.e. mark 27/01 to 27/02, which are reported in 1968 AIR 620 and 127(2006) DLT 431.

- [6] Thenafter, Ld. Advocate Mr. R.P.Vyas for the defendant no 5 and 6 has orally argued that as per contract the term of the contract is expired before filing of the present suit, there is no one condition in the contract to renew the contract unilaterally

or impliedly and contract is not renewed again by the defendants after expiry of term, and most importantly the plaintiff has not claimed any reimbursement till today as per contract if any due is pending. The plaintiff has wrongly calculated the pass numbers for calculating the pending dues so as per contract there is no pending due of plaintiff against the defendants. Then after most particularly the Ld. Advocate Mr. Vyas has argued that the plaintiff has misinterpreted the ratio of judgments produced by the plaintiff himself. The ratio of judgment itself is not supporting the case of the plaintiff therefore there is no prima-facie case of the plaintiff and if plaintiff's present application is allowed then that will cause the interruption in tender procedure motioned by the Dakor temple committee which is not a party in this case therefore present case is lacking a necessary party and a party who is not joined in the present case can't be restrained by a court from performing his duties. Moreover, the plaintiff has fraudulently prepared the list of passes issued by the temple committee, the document vide mark 3/2 as produced by the plaintiff is not approved by the defendants or temple committee and also the number of every day passes is also not mentioned in the agreement between the parties so the plaintiff has not come before the court with clean hands. So in the present case there is no prima- facie case and balance of convenience in favour of plaintiff therefore the present application is required to be rejected.

- [7] Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction

are required to be taken into consideration. The Honorable Supreme Court as well as Hon'ble High Court by catena of decisions have laid down that the relief of temporary injunction may be granted after testing the facts, circumstances and evidences produced by the plaintiff upon the scale of following principles; (1) Applicant establishing a prima facie case; (2) Applicant showing irreparable injury to him on refusal to grant temporary injunction; (3) Applicant showing balance of convenience in his favour and that greater inconvenience will be caused to him if temporary injunction is refused; and (4) any other factors favouring the Applicant. Granting an injunction is a matter of discretion and while exercising that discretion, the Court has to satisfy itself that whether the applicant actually has a 'triable case'. Before invoking the jurisdiction of the court to seek temporary injunction the applicant is bound to show that he has a legal right and the opposite party is trying to invade that right. Further, it is the settled position of law that the applicant has to stand on his own legs and the applicant cannot gain any benefit of the weakness of the opposite party. Therefore after considering the Pleadings and documentary evidences produced and arguments advanced by the parties and guidelines of Hon'ble Apex Court, for the disposal of the present application following issues appears before this court-

- 1- Whether the plaintiff proves his Prima Facie Case?
- 2- Whether the plaintiff proves that the balance of convenience is in his favour?
- 3- Whether the plaintiff proves that he will suffer irreparable loss if interim injunction is not granted?

4- What order?

Replies of above issues are as below-

1- Negative

2- Negative

3- Negative

4- As per final order

[8] I have perused entire record and considered the arguments of the **both parties**. Therefore, at this juncture the provision of Order 39 Rule-01 become important which is as below -

Rule 1 Order XXXIX of Code of Civil Procedure 1908 "Cases in which temporary injunction may be granted"

Where in any suit it is proved by affidavit or otherwise

- (a) **that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or**
- (b) **that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,**
- (c) **that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,**

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until disposal of the suit or until further orders.

[Emphasis supplied]

After considering the above provision the ratio laid down by the Hon'ble Courts in following cases and principles of law become important which are as below:-

- 1- Himachal Pradesh High Court in the matter of *The Himachal Pradesh State Electricity Board Limited vs. Valecha Engineering Limited and Ors.*, OMP No. 169 of 2020 in COMS No. 22 of 2019 decided on 12.10.2020 while relying

upon the judgment in **Shakunthamma v. Kanthamma, AIR 2015 Karnataka 13** held that:-

The court has inherent jurisdiction to grant the relief of temporary injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of the court and nothing in this Code shall limit or otherwise affect such inherent power of the court.

- 2- In case **Straight Vs Bura L.R.5 Ch.AP.165** and **Alilandammal Vs.Venkatachala Mudali, 6 M.H.C.R.112** it has been held that an injunction can be granted where there is a material injury infringing a clear legal right.
- 3- In case **Union of India vs. Amrik Singh, AIR 1963 Punj. 104** it has been held that Courts generally issue injunctions where the right sought to be protected is clear and not where it is doubtful.
- 4- In case **Mathew vs. Koshy, AIR 1966 Mys. 24** it has been held that the party seeking the aid of the Court for an injunction must establish that the act complained of is in violation of his right or is at-least an act which if carried into effect will necessarily result in a violation of the right. **In this case it has also been explained that the Prima facie case means that it needs serious consideration, investigation or determination. It does not mean proof at this stage. It means bonafide dispute requiring determination without pre-judging the case. In order to find out whether there exists any prima facie case in favour of a party or not, it would be enough if it could**

be established that there was a seriously arguable question and it is not necessary that the point be proved to the hilt at that stage. Showing a reasonable chance of success is enough. The apparent strength of the applicant's case is the guiding factor. Then Court has to consider the balance of convenience and irreparable loss aspects. When the Court is called upon to examine whether applicant has a prima-facie case for the purpose of granting temporary injunction, the Court must perforce examine the merits of the case. But the findings on various questions like right, title or interest in the suit land would be merely incidental or ancillary for the purpose of assessing the prayer for temporary injunction, and not for anything else and the said findings shall not be of any avail or effect for any other purpose.

- 5- In case **Aukkha Singh vs. Mahal Singh, AIR 2003 Raj. 21** it has been held that Prima-facie case not to be confused with prima-facie title.
- 6- Balance of convenience:- Balance of convenience may mean the convenience and inconvenience of the parties contesting an application for temporary injunction and the same may be equated with what had been left out after weighing the prima-facie case of both sides.
- 7- Since the concept of injunction is governed by the principles of Equity therefore the person who seeks equity must also do equity or "He who comes into equity must come with clean hands." and "Equity follows the law." Equity does not replace or violate the law, but it backs it

up and supplements it. Equity follows appropriate RULES OF LAW, and pretrial discovery.

[9] After considering the above provision and ratio of the judgments, principles and also the facts and averments of the case produced by both the sides, following factual position is emerging:-

[9.1] **Firstly, if we look into the facts of the agreement vide mark 3/1 produced by the plaintiff it appears that the agreement was in force upto midnight 11.45 o'clock of 31/01/2020, and the present suit is instituted by the plaintiff on 31/01/2020. Then after it also appears that the temple committee is the first party of the agreement, and which was under obligation to pay the price of passes issued by the first party i.e. temple committee to the second party i.e. present plaintiff on monthly basis. Therefore, if the committee had not paid timely or had any bad or malafide intention then the plaintiff could have approached the temple committee by a valid demand notice, and if it was done by the plaintiff, is not appearing from the documents produced by him. Moreover, as appears from the record an agreement between the parties was executed on 04/02/2018 but the list of dues vide mark 3/3 has also contained the dues for the month January 2018, which shows the list is not as per the agreement between the parties. Therefore at this stage it can not be presumed, without taking evidence that, the defendant has committed any breach of condition mentioned in the agreement.**

[9.2] Further more, if we look into the agreement it appears that the agreement was executed between the manager Dakor temple

committee and the present plaintiff, and even though the plaintiff has claimed reliefs against the trustee of the Dakor temple committee but directly or indirectly the order of the court, if any, will be executed against the Dakor temple committee because the ownership over the disputed sight is of Dakor temple committee as appearing from the agreement, but the Dakor Temple Committe is also made a party of this suit is not appearing from the record. Therefore, prima-facie it appears that the present suit is lacking a necessary party.

[9.3] Further more, if we look into the document vide mark 26/2 as produced by the plaintiff himself it appears that this document is a notice given by the Dakor Temple Committee to the present plaintiff, thereof the following important facts are in the notice of the plaintiff:-

- A- The Dakor temple Committee has started a new bidding procedure for the contract and in which the plaintiff has also applied.
- B- by remaining in illegal possession over the suit property the plaintiff is committing an offence punishable under section 441,406 and 420 of Indian Penal Code,
- C- plaintiff is causing simultaneous running loss to Dakor Temple Committee.

Therefore the plaintiff is in settled possession over the suit property, it can not be prima-faciely presumed at this interim stage of the case without taking relevant necessary evidence.

[9.4] After considering the facts and averments of the case it can be said that the reliefs claimed by the plaintiff in his plaint and in present interim application are of the same nature.

[9.5] Further more, if we look into the arguments of plaintiff firstly as argued that Law respects possession even if there is no title to support it, it is not be permitted by any law to any person to take the law in his own hands and to dispossess a person who is in actual possession of the property, without having recourse to a court, and no person can be allowed to become a judge in his own casue, which is supported with the judgment of Lallu Yeshwant singh Vs Rao Jagdish Singh & others reported in 1968 AIR 620, and secondly argued as the possession of a tenant who had ceased to be a tenant, after expiry or termination of the lease, is protected by law until he is duly ejected. Although he may not have a legal right to continue in possession after the termination of the tenancy or after expiry of the tenancy, his possession is recognized to be a juridical and for that reason that possession is also protected by the common law, which is supported with the judgment of Thomas Cook India Ltd. Vs Hotel Imperial & others reported in 127 (2006) DLT 431,

On these points if we carefully read the judgment then it appears that in these judgments as produced by the plaintiff Honorable Court has also held that when an unlawful occupant in apprehension of dispossession by the true owner rushes to court for an injunction restraining the rightful owner from taking any steps towards physical eviction can not be granted because Injunction itself being an equitable remedy, and it is settled principle that a person who seeks equity must come to the court with clean hands and must himself do equity.

Further it also appears from these judgments that the person in settled possession of property can not be dispossessed

by the owner itself without taking any recourse to law. But simultaneously in second judgment it has been held by the Honorable court that adopting of due process of law or due course of law or taking recourse to law does not mean that every person should file a separate suit or proceeding, these conditional words are satisfied at the moment when the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to the court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could also be a person who is sought to be ejected, in an action preventing the owner from ejecting him. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the bare minimum requirement of due process of law or due course of law or taking recourse to law would stand satisfied as recourse to law would have been taken.

Now by applying these principles as said by the Honorable court in judgments as produced by the plaintiff, it appears that in the present case the plaintiff is prima-faciely trespasser and asking relief against the owner and its trustees but only trustees are being impleaded, therefore, both the parties with lack of one necessary party are on record. Therefore, both the parties are under preview of due process of law or due course of law or taking recourse to law which would have been taken by the parties in question. Now therefore, it can be safely said that the arguments and judgments supported with by the plaintiff are not in favour of

plaintiff, therefore, the arguments of the plaintiff can not be accepted in the favour of plaintiff at this stage.

[9.6] Since the plaintiff by this suit has not claimed any relief for recovery of any pending due against the defendants therefore, for that reason also it can not be presumed that there is prima-facie case of the plaintiff in the present case at this stage.

[9.7] Further more, The plaintiff has not explained any illegal act which has been acted or will be acted by the defendants in furtherance of their dishonest intention. Therefore, in that situation it can not be said that the defendant has acted in any manner form which it may be prima-facie presumed that the infringement of any legal right of the plaintiff is involved in the matter.

[10] Therefore, due to reasons discussed above, it can not be said that the plaintiff has proved his prima-facie case. Therefore in the absence of any evidence on record relating to infringement of legal right of the plaintiff by the defendant over suit property, it can not be presumed that the balance of convenience of the case is in favour of the plaintiff. Hence at this situation, this court humbly opined that the documents/arguments supported by the plaintiff is not supporting to his case and therefore for the reasons discussed above it can not be said that the plaintiff has proved his prima facie case and balance of convenience of the case is in his favour. Therefore in this situation at present, it can be safely said that the plaintiff has failed in showing all three factors for granting interim injunction in his favour at this final stage of this application. Hence, I pass the following order:-

:: O R D E R ::

- ◆ The interim injunction Application of the plaintiff vide-
Exh-05 is hereby rejected.
- ◆ Cost will follow the final decision of the suit.

Pronounced and signed in the open court today.

Date : 07.10.2022

Place : DAKOR

[Tej Pratap Singh]
Principal Civil Judge, Dakor
GJ01047