

T.S. - 1659/19 CNR – WBCC01006013-2019

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 24

10.1.24

Today is fixed for hearing of the injunction application as well as for acceptance of WS.

Both the parties file haziras. Heard the Ld. Advocates for both the sides at length. Perused the application for temporary injunction.

In short, the case of the plaintiff firm is that Subhasis Mondal, Debasis Mondal and Subhas Neogi as partners of the firm M/s D.S. stationery are carrying on business in the suit shop room as tenants under the landlord and one of the partners namely Subhasis Mondal is representing the partnership firm as the authorised representative thereof. It is also the case of the plaintiff firm that the defendant, who happens to be the younger brother the said Subhas Neogi, is a stranger to the suit shop room but since few days past he is trying to take forcible possession of the suit shop room by applying criminal force and creating violation. The further case of the plaintiff firm is that on being harassed on several occasion by the defendant, the plaintiff firm moved application u/s 144(2) CrPC apart from lodging written complaint with the local PS but without any fruitful result and hence the instant suit with the instant application.

The defendant has contested the injunction application by filing a written objection denying all the material allegations contained therein. The positive case of the defendant is that his father Jitendra Nath Neogi, since deceased, was the original monthly tenant in respect of the suit shop room by paying monthly rent of Rs. 50/- payable according to English Calendar under his landlady namely Shovana Devi and thereafter under the landlord namely Shantimoy Bhattacharya against rent receipts. It is also his case that after the death of his father in the year 1964 the elder brother of the defendant transferred the tenancy in his name though he along with his another brother as the other heirs and legal representatives of their deceased father became tenants in common in respect of the suit shop room. The further case of the defendant that subsequently the said Subhas Neogi did not carry on any business nor used the suit shop room in any manner and the said suit shop room was being used by him along with his other brother Dilip Neogi for keeping their business articles. Subsequently the said Dilip Neogi died and accordingly the defendant joined his elder brother to run the business. It is contended by the defendant that suddenly in the 1<sup>st</sup> week of November 2019 the plaintiff firm along with some hooligans and outsiders trespassed into the suit shop room claiming themselves to be the co-partners of Subhas Neogi and attempted to carry on their business therefrom. It is further contended by the defendant that the plaintiff firm along with its partners managed to procure some fake / manufactured documents in the name of Subhas Neogi in order to grab the suit shop room and for which the said Subhas Neogi has not been made a party to this suit. It is further contended by the defendant that still now several articles of his business are lying in the suit shop room though he has been dispossessed therefrom. For all these reasons the defendant has prayed for rejecting the injunction application.

The plaintiff firm has furnished affidavit in reply to the written objection filed by the defendant denying all the material allegations contained therein and has claimed that the defendant has tried to make out a false and concocted story through his written objection which should not be relied upon in any manner.

From the respective contentions of the parties as made out in the injunction application, WO thereto and affidavit in reply though at this stage before conclusion of trial it is not possible to ascertain regarding the status of the parties in respect of the suit shop room but at least it is the admitted position that the plaintiff firm is in possession of the suit shop room in whatever capacity it may be.

In the above perspective though it may appear for a moment that the plaintiff firm has made out a believable case in support of its possession of the suit shop room but at the same time I find that since filing of this suit on 22.11.19 no necessity was felt by the plaintiff firm to have any adi-interim order of temporary injunction or any order of temporary injunction. Since the very date of filing of this suit till this day the plaintiff firm is in possession of the suit shop room without any hindrance or difficulty. In that perspective I do not feel that there is involvement of exigency in the matter and as such I am of the view that no useful purpose will be served in passing any order of temporary injunction as sought for.

Considered as above, I am not inclined to allow the application for temporary injunction.

Hence it is

Ordered

that the application for temporary injunction filed by the plaintiff u/o 39 Rule 1 and 2 read with section 151 CPC dtd 25.11.19 is hereby rejected on contest.

Fix 23.2.24 for hearing in respect of acceptance of WS.

D/C by me

Judge 2<sup>nd</sup> Bench

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