

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

OP(C).No. 648 of 2015 (O)

C.M.A.NO.25/2014 OF DISTRICT COURT, PATHANAMTHITTA

PETITIONER(S)/APPELLANTS/DEFENDANTS :

- 1. SNDP YOGAM RANNI UNION,
REPRESENTED BY ITS SECRETARY,
SNDP YOGAM RANNI UNION BUILDINGS, RANNI VILLAE,
RANNI TALUK, PATHANAMTHITTA.**
- 2. K.VASANTHA KUMAR, AGED 43 YEARS,
PRESIDENT, SNDP YOGAM RANNI UNION, SNDP UNION OFFICE,
SNDP YOGAM RANNI UNION BUILDINGS, RANNI VILLAGE,
RANNI TALUK, PATHANAMTHITTA.**
- 3. P.N.SANTHOSH KUMAR, AGED 41 YEARS,
SNDP UNION OFFICE, SNDP YOGAM RANNI UNION BUILDINGS,
RANNI VILLAGE, RANNI TALUK, PATHANAMTHITTA.**

**BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.S.SREEDEV**

RESPONDENT(S)/RESPONDENTS/PLAINTIFF :

**P.R.AJAYAKUMAR, AGED 55 YEARS,
S/O.T.K.RAGHAVAN, OLICKAL HOUSE, VALIYAKULAM,
CHERUKULANJI MURI, VADASSERIKKARA VILLAGE, RANNI TALUK,
PATHANAMTHITTA - 695 012.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27-03-2015,
ALONG WITH OP(C).No.649 OF 2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE PLAINT IN O.S.NO.169/2014 ON THE FILES OF THE MUNSIFF'S COURT, RANNI.**
- P2: TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF THE APPLICATION FOR MANDATORY INJUNCTION IN I.A.NO.682/2014 IN O.S.NO.169/14 ON THE FILES OF THE MUNSIFF'S COURT, RANNI.**
- P3: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE DEFENDANTS IN I.A.NO.681/2014 IN O.S.NO.169/2014 ON THE FILES OF THE MUNSIFF'S COURT, RANNI.**
- P4: TRUE COPY OF THE ADVOCATE COMMISSIONER'S REPORT DATED 09.06.2014 IN I.A.NO.727/14 IN O.S.NO.169/2014 ON THE FILES OF THE MUNSIFF'S COURT, RANNI.**
- P5: TRUE COPY OF THE ORDER DATED 31.07.14 IN I.A.NO.682/2014 IN O.S.NO.169/2014 ON THE FILES OF THE MUNSIFF'S COURT, RANNI.**
- P6: TRUE COPY OF THE ORDER DATED 28.11.2014 IN C.M.A.NO.25/2014 ON THE FILES OF THE DISTRICT COURT, PATHANAMTHITTA.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P. BHAVADASAN, J.

O.P.(C). Nos. 648 & 649 of 2015

Dated this the 27th day of March, 2015.

JUDGMENT

O.P.(C) No.648 of 2015 is directed against the order in C.M.A. No. 25 of 2014 and O.P.(C) No. 649 of 2015 is directed against the order in C.M.A. 24 of 2014.

2. O.S. 169 of 2014 before the Munsiff's Court, Ranni was laid by the respondent herein for the following reliefs:

"A) Restraining the defendants and all persons acting under them by way of perpetual prohibitory injunction, from causing any inconvenience to the plaintiff and his employees in their peaceful possession and enjoyment over the plaint schedule premises or keeping the plaint schedule premises under lock and key and they may also be restrained from forcibly evicting the plaintiff from the plaint schedule premises, till he is evicted through due process of law."

3. It is an admitted fact that the respondent in these proceedings was the tenant under the petitioners from

2007 onwards. The controversy centers round the question as to whether there was a surrender as alleged by the petitioners before this Court in January, 2014 or whether the tenant was forcibly kept away from the premises as contended by the respondent. According to the petitioners before this Court, refusing to accept the enhancement of rent, while leaving for U.K., the respondent before this Court surrendered the premises to the petitioners in January, 2014 and they have been in possession of the same thereafter. It is their further contention that the respondent, with ulterior motive, laid the suit claiming to be continuing in possession even after January, 2014 and contending that there has been an attempt to forcibly evict him from the premises.

4. O.S. 169 of 2014 was laid by the respondent on 9.6.2014. The allegations in the plaint were that the respondent had taken a contention that the building belonging to the petitioners herein was taken on rent on

1.8.2007 for running a business in cable TV. It is not in dispute that no rent deed was executed between the parties. However, the rent was fixed as Rs.3560/- per month and the tenant claimed that he has been regularly paying the rent. Complaining that taking advantage of his absence from the place, the petitioners before this Court who were the defendants in the suit locked the premises and thus tried to prevent the plaintiff from continuing tenancy arrangement in the premises. It is also stated in the plaint that when the amenities were cut off, the plaintiff approached the Accommodation Controller and the amenities were restored. On the basis of the allegation that the defendants in the suit were forcibly preventing the plaintiff from continuing his possession in the premises and running business therein and also complaining about the high handed action of the defendants, the suit was laid.

5. Along with the suit, two interlocutory applications were filed, namely I.A. 681 of 2014, for temporary prohibitory injunction and also I.A. 682 of 2014 praying for an interim mandatory injunction seeking to have the possession of the premises restored to the plaintiff.

6. The defendants having entered appearance in the suit resisted the petitions. According to them, the premises had been surrendered about seven months prior to the filing of the suit and the present attempt was to regain possession under one pretext or another. They also pointed out that the premises were under their lock and key and the plaintiff tried to trespass into the premises and that led to a tense situation. They disputed that they have forcibly tried to evict the plaintiff. In the light of these submissions, they prayed for a dismissal of the interlocutory applications.

7. For the purpose of the interlocutory applications, the trial court had Exts.A1 to A8 series marked

from the side of the plaintiff and Exts. B1 to B3 were marked from the side of the defendants. Exts. C1, C1(a), C1(b), C2, C2(a) and C2(b) are the commission reports and plans.

8. The trial court, on an evaluation of the materials before it, came to the conclusion that having admitted the tenancy arrangement between the plaintiff and the defendants and having failed to show that the tenancy was terminated as is known to law, the plaintiff is entitled to have the interim relief granted. The court below prima facie came to the conclusion that the complaint voiced by the plaintiff is more probable and therefore, granted reliefs on both the applications.

9. Aggrieved by the orders in the interlocutory applications, the defendants in the suit carried the matter in C.M.As. before the District Court, Pathanamthitta. The said court, on an independent evaluation of the materials, came to the conclusion that there were no grounds to interfere

with the finding of the courts below and dismissed the appeals.

10. Shri. Bechu Kurian Thomas, learned counsel appearing for the petitioners, very vehemently contended that the courts below have misdirected themselves both on facts and in law. Referring to the reliefs sought for in the plaint, it was contended that what is sought for is only a permanent prohibitory injunction and there is no prayer for mandatory injunction. When a final relief in the form of mandatory injunction could not have been granted, it was imprudent on the part of the court below to have granted the same as an interim relief and that vitiates the order. It was also contended that even as per the averments in the plaint and the case put forward by the plaintiff he has been dispossessed by the defendants and if that be so, the only remedy available to the plaintiffs is to resort to Section 6 of the Specific Relief Act to regain possession. For the proposition that interim mandatory injunction in the

circumstances of the case could not have been granted, learned counsel relied on the decisions reported in **Sadasiva Panicker v. Suresh Kumar** (2012(3) K.L.T. 679), **Cotton Corporation of India Limited v. United Industrial Bank Limited** ((1983) 4 SCC 625) and **Metro Marins v. Bonus Watch Co. (P) Ltd.** ((2004) 7 SCC 478).

11. Learned counsel for the petitioners went on to contend that there is nothing to show that the plaintiff was running a business in Cable TV since he has not been able to produce any license or such other document which he had obtained from the local authority. All that is now available before the court below is the commissioner's report which shows that certain articles which might have belonged to the plaintiff still remains in the premises. That is totally insufficient to grant relief to the plaintiff. At any rate, learned counsel went on to point out that by no stretch of imagination interim relief of injunction could not have been granted.

12. Shri. P.B.Krishnan, learned counsel appearing for the respondents on the other hand contended that having resorted to high handed action of locking the premises, the petitioners before this Court cannot be heard to say that the respondent should be left with no remedy than to approach the court under Section 6 of the Specific Relief Act to regain possession. It is an admitted fact, according to the learned counsel, that there was tenancy arrangement between the parties and if that be so, it is for the person who claimed surrender of tenancy to establish that fact. Both the courts below have considered the materials before it and they came to the conclusion that there is continuous payment of rent and also that on the basis of Ext.A5 document, the claim put forward by the defendant in the suit could not be countenanced.

13. Learned counsel on the other hand contended that it is not the law that under no circumstance interim mandatory injunction could be granted. If it is shown that

certain state of affairs existed and a change was brought about to that by the mischievous or high handed action of others concerned, certainly it is open to the court to order restoring of the status as obtained before the mischievous act was committed. The court cannot be a party to the high handed action resorted to by the petitioners in such cases and insist that the plaintiff in the suit should resort to an independent civil suit for regaining possession. It is also contended by the learned counsel for the petitioners before this court that the petitioners before this Court has no consistent case with regard to the case of surrender. Finally, it is pointed out that unless the orders are so perverse and are totally unsustainable both on facts and in law, even assuming a different view is possible, interference by exercising jurisdiction under Article 227 of the Constitution of India is not warranted.

14. After having heard learned counsel on both sides, and having perused the records and orders of the

courts below, there seems to be considerable force in the submission made by the learned counsel for the respondent. The case put forward was that there was a surrender of the premises in January, 2014 voluntarily by the respondent herein and thereafter the petitioners before this Court have been in possession. However, it needs to be mentioned here that there is no consistent case for the petitioners in this regard.

15. In counter to one of the interlocutory applications, it is contended that the respondent herein surrendered the premises and in the counter to another interlocutory application, they do not say so.

16. Both the courts below have adverted to the documents produced by the plaintiff and found that there has been payment of rent even after the alleged date of surrender and also that telephone bills have been paid which has been served in the premises in question thereby indicating that the so-called claim of surrender made by the

plaintiff may not be correct.

17. It is true that interim mandatory injunction is very seldom granted and only in exceptional circumstances. One can have no quarrel with the proposition laid down in the cited decision. But as rightly pointed out by the learned counsel for the respondents, it is not the law that under no circumstance interim mandatory injunction cannot be granted. If as a matter of fact, it is shown that by a contumacious conduct on the part of one of the parties, the other party is seen to have suffered and to bring peace and order between the parties, interim mandatory injunction is necessary, there is nothing which prevented the court below from granting the relief so as to ensure that justice is done.

18. Viewed from that angle, in the case on hand, as already noticed, the tenancy arrangement is admitted. The dispute relates to the question as to whether there is a surrender or there was attempted forcible dispossession. In

this context, reliance placed by the courts below on Ext.A5 document assumes importance. Of course, the genuineness of the said document is very vehemently disputed by the learned counsel for the petitioners before this Court. However, on a mere perusal and comparison of Ext.A1 and Ext.A5, it is difficult as of now to hold that Ext.A5 is a manipulated document. Anyhow, the genuineness of that document needs to be decided on the final stage. Prima facie, it would appear that the defendants are the authors of Ext.A5. If Ext.A5 is taken into consideration, it would to a great extent explode the case put forward by the petitioners before this Court. There is no whisper in Ext.A5 regarding the so-called voluntary surrender of premises by the plaintiff in the suit. On the other hand, what is claimed in the said document is that on failure of the plaintiff to accede to the demand for enhancement of rent and also to execute a fresh rent agreement, the defendants had locked the premises. This averment seems to have considerably

weighed with the court below and there is no reason as to why it should not have been taken into consideration.

19. True, there is no prayer for mandatory injunction in the suit as the main relief. But the prayer in the suit is for a permanent prohibitory injunction seeking to have the parties restrained from forcibly evicting the plaintiff from the premises. The contention that since he has already been dispossessed, the question of mandatory injunction does not arise has already been dealt with. At the risk of repetition, one may notice that if as a matter of fact as now things stand, it is disclosed that there is no prima facie evidence of surrender as contended by the defendants, but the more probable case is that of the plaintiff that the premises was forcibly locked by the respondents, then of course, the contention that the status anterior could not have been restored cannot be countenanced.

20. One cannot omit to note the details in the commission report. It contains details of several materials as are found in the premises. The defendants in the suit have no case that the articles thus found in the premises exclusively belonged to them. It is also significant to notice that in one of the counter affidavits the defendants in the suit have specifically averred that the plaintiff had removed all the articles from the premises and had continued his business elsewhere. This does not appear to be correct. It was the above facts and circumstances which had persuaded the court below to grant interim relief to the plaintiff in the suit. As rightly pointed out by the learned counsel for the respondent, it could not be said that the view taken by the courts below are perverse or contrary to records and so unreasonable and unjust and no reasonable man in such circumstances would come to such a conclusion. The view taken by the courts below are possible views and interference under Article 227 of the Constitution of India,

even assuming a different view is possible, is not justified and warranted.

The result is that these Original Petitions are without merits and they are liable to be dismissed. I do so.

sb.

P. BHAVADASAN,
JUDGE