

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. 9/2015**

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Decided on: 22nd January, 2015

JAYGEE HOSPITALITY SERVICES PRIVATE LIMITED

..... Petitioner

Through: Mr. Vibhore Bagga, Advocate.

versus

PVR LIMITED

..... Respondent

Through: Mr. Sanjay Poddar, Sr. Advocate with
Aman Nandrajog and Mr. Govind
Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No. 1223/2015 (for exemption)

Allowed, subject to all just exceptions.

C.R.P. 9/2015 and CM No. 1222/2015 (for stay)

1. The petitioner is aggrieved by the order dated 23rd December, 2014 whereby his application under Order 39 Rules 1 and 2 CPC was dismissed, which order of the learned Senior Civil Judge-cum-Rent Controller has been upheld by the learned Additional District Judge on 15th January, 2015 which is impugned in the present petition.

2. Undisputed facts are that the petitioner is the licensee of the respondent since 15th June, 2011 for a kiosk/space in the food court. The leave and license was reduced to writing in this regard on 9th January, 2012 for a period of three years, which expired on 15th June, 2014. Thereafter, instead of extending the license for a further period of three years, till 15th

June, 2017, the respondent issued an *e-mail* dated 1st December, 2014 with an attachment of notice of termination of licence. The petitioner filed a suit seeking declaration that the termination notice was null and void and for permanent and mandatory injunction, wherein the application under Order 39 Rules 1 and 2 CPC was filed, which was dismissed vide order dated 23rd December, 2014, which order has been confirmed in appeal on 15th January, 2015. The only dispute on facts is that according to the petitioner it was orally agreed between the parties that the licence shall be extended for a further period of three years, which fact is denied by the respondent.

3. Learned counsel for the petitioner contends that even a licensee cannot be dispossessed without due process of law and in view of oral extension of licence agreement for a further period of three years, the termination notice is null and void. The petitioner being in settled possession, cannot be dispossessed, and is thus entitled to protection. Reliance is placed on *M/s. Anamallai Club v. Government of Tami Nadu and Others*, (1997) 3 SCC 169 and the decision of this Court in *Rattan Lal v. Municipal Corporation of Delhi*, 100 (2002) DLT 213.

4. Learned counsel for the respondent, on the other hand, relies on the decision in *Thomas Cook (India) Limited v. Hotel Imperial and Ors.*, 2006 (127) DLT 431, and states that the legal possession of the premises continued with the respondent and the petitioner being the licensee, he cannot claim an injunction restraining the respondent from disturbing his possession, otherwise by due process of law.

5. Before advertng to the facts of this case, it would be appropriate to note the decisions relied upon by learned counsel for the parties. In *Rattan*

Lal (supra) Rattan Lal was granted licence by the respondent/Municipal Corporation of Delhi in November, 1976 for running a tourist camp at Qudsai Garden which was extended from time to time after the expiry of every five years and the respondent continued accepting the licence fee from Rattan Lal even on expiry of the period of license on 8th November, 1996. This Court held that Rattan Lal had been able to make out a *prima facie* case of “settled possession” being in possession for nearly 25 years. Noting the fact that Rattal Lal was in juridical possession of the premises, had raised constructions on the premises to the knowledge of the respondent and was enjoying the same without interference of any person, the Court came to the conclusion that he had made out a *prima facie* case in his favour, balance of convenience was also in his favour and he would suffer an irreparable loss if injunction was not granted.

6. In **Chandu Lal v. Municipal Corporation of Delhi, AIR 1978 Delhi 174** a Full bench of this court noted that the intention of the parties is the real test for ascertaining the character of a document. If the document gives only a right to use the property in a particular way but its possession and control remains with the owner thereof, it will be a license. In such a case the legal possession remains with the owner of the property, the licensee being permitted to make use of the property for a particular purpose. It would therefore be seen that but for the permission the licensee's possession would be unlawful. Exclusive possession does not militate against the concept of a license, if the circumstances negative any intention to create a tenancy. The Court further noted that license was for a period of 11 months in the first instance, and thereafter for such term of renewal as may be mutually agreed

from time to time, the benefit of license was neither transferable nor heritable, the license was liable to be cancelled without assigning reasons and the corporation was entitled to resume exclusive possession after revocation of the license. Thus various clauses of the deed indicated that the intention of the parties was apparent that what was going to be auctioned was licensee rights and not tenancy rights. A lease is not a mere contract but envisages and transfers an interest in the demised property creating a right in favour of the lessee '*in rem*'. A license only makes an action lawful which without it would be unlawful, but does not transfer any interest in favor of the licensee in respect of the property. The Full Bench further noted the three principles of grant of temporary injunction i.e. (1) on making out a prima facie case, (2) on showing balance of convenience in petitioners' favour, in that the refusal of the injunction would cause greater inconvenience to them and (3) whether on refusal of the injunction they would suffer irreparable loss. It was thus held that before temporary injunction is granted, the petitioners are bound to show that they have a legal right and there was an invasion of that right.

7. This Court in ***Thomas Cook*** (supra) noted that if a person is dispossessed by use of force even though his occupation or possession was hitherto unlawful, he would still be entitled to be put back in possession in view of provisions of Section 6 of the Specific Relief Act. However, it considered a further question which emerged in the said case that is whether a person who is in unlawful occupation can approach the Court for an injunction order restraining the lawful owner from "dispossessing" him. It was held that there is a distinction between this situation and the situation

which arise post dispossession. In one situation the unlawful occupant has not yet been dispossessed, in the other he has already been dispossessed. Referring to the decisions in *M/s Anamallai Club* (supra) and *Lallu Yashwant Singh Vs. Rao Jagdish Singh & Ors. [(1968) 2 SCR 203]* this Court noted that these decisions do not specifically deal with the situation where the unlawful occupant has not yet been "dispossessed" but, he in apprehension of such "dispossession", knowing his occupation to be unlawful, rushes to court for an injunction restraining the rightful owner from taking any steps towards physically ejecting him. Now, the grant of injunction is based on equitable principles. Injunction itself being an equitable remedy, one of the principles which is well settled is that a person who seeks equity must come to court with clean hands and must himself do equity. This Court further considered the expressions "due process of law", "due course of law" and "recourse to law" which have been interchangeably used in the various decisions and came to the conclusion that the moment the rights of parties are adjudicated upon by the Court of competent jurisdiction the bare minimum requirement of "due process" or "due course of law" stands satisfied and it does not matter who brought the action to the Court i.e. whether the owner in an action for enforcement of his right to eject the person in unlawful possession or the person who is sought to be ejected seeking prevention of the said ejection.

8. In the facts of the case in *Thomas Cook* (supra) it was held that the plaintiff therein only had a right to use the two rooms, the plaintiff was obligated to leave the keys of the room at the reception at the close of each day, the plaintiff was charged a daily tariff; the control and possession of the

rooms was explicitly retained by the defendants; the rights of admission were reserved with the defendants and thus it could not be said by any stretch of imagination that the defendants therein had parted with possession or that the plaintiff was in possession of the said two rooms, even during the period prior to the revocation of the license. Distinguishing the case of ***Rattan Lal*** (supra), this Court noted that Rattan Lal was in settled possession of the premises since November, 1976 and had raised construction, though with permission of the respondent. Therefore, it appeared that the license was of the nature of an irrevocable license taking into consideration the provisions of Section 60(b) of the Indian Easement Act, 1882. When that was the position, clearly, the license could not have been revoked and the licensee was, in any event, entitled to an injunction against dispossession.

9. In the present case Clause 9 of the agreement between the parties provides for the relationship and is noted as under:-

“9. RELATIONSHIP BETWEEN THE PARTIES

It is specifically agreed between the parties that this is purely a leave and license and is granted by the Licensor to the Licensee on a principal to principal basis and shall not be constructed in any manner as a Lease, partnership, Joint Venture, Franchise or Agency between the Licensor and the Licensee nor shall parties constitute an association of persons in any manner. The Licensee shall not make any claim of tenancy or any other right or title or interest for exclusive right to use in respect of the Licensed Premises or any part or portion thereof”.

10. Sections 63 and 64 of the Indian Easement Act, 1882 (in short ‘the Act’) provide for the rights of the licensee on revocation and eviction. Section 63 of the Act provides that on revocation the licensee is entitled to a

reasonable time to leave the property and to remove any goods and as per Section 64 of the Act in case he is evicted by the grantor before he has enjoyed under the license, he is entitled to recover compensation. Thus, even if the contention of oral agreement is upheld, the petitioner can be duly compensated.

11. As noted above, in the present case, the petitioner is running a kiosk in the food court run by the respondent which kiosk though has built up cover there are no doors and is an open structure. The possession and control of the food court continues to be that of the respondent. Thus, it cannot be said that the petitioner is in exclusive possession of the premises. Moreover, the petitioner is in possession for nearly over six years and cannot be stated to be in a long “settled possession”. The nature of occupancy is only “permissive” and does not amount to possession. The leave and licence agreement does not show that the same was irrevocable.

12. The petitioner has neither been able to show prima facie legal right in his favour to continue in premises nor balance of convenience in his favour nor that by refusing to grant interim injunction, he will suffer an irreparable loss. Consequently, I find no illegality in the impugned orders.

13. The petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 22, 2015

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