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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 19th October, 2015

+ **C.R.P. 177/2014**

MAMTA ANAND

..... Petitioner

Through: Mr. Sunil K. Kalra, Advocate

versus

RAVINDER KAUR

..... Respondent

Through: Mr. Rahul Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM APPL.9501/2015 (restoration)

For the reasons stated in the application the same is allowed as sufficient cause is shown. The order dated 23.04.2015 is set aside and the revision petition is restored to its original number.

Application stands disposed of.

C.R.P. 177/2014 & CM APPL.21361/2014 & 21362/2014

1. This is a revision petition filed by the petitioner against the order dated 31.07.2014 passed by the learned Senior Civil Judge, Karkardooma Courts, Delhi by virtue of which possession of the shop in question is to be restored back to the respondent herein (Ravinder Kaur).

2. For the sake of convenience the parties herein are being referred to by their names and their status in the present revision petition.

3. Briefly stated the case of the parties is that Ravinder Kaur respondent herein filed a suit under Section 6 of the Specific Relief Act against the present petitioner claiming herself to be in occupation of the suit premises as a tenant for the purpose of running a beauty parlour. It was her case that after having successful stint as a beautician of running a parlour at the suit premises Mamta Rani (defendant), petitioner herein with the help of her goons dispossessed her from the suit premises and put her own lock, because of this she was constrained to file a suit under Section 6 of the Specific Relief Act.

4. It may be pertinent here to mention that a suit under Section 6 of the Specific Relief Act, 1963 permits a party to file a suit for possession even if she is a trespasser and is in settled possession of the suit premises provided that she was dispossessed within six months prior to the date of filing of the suit without following due process of law.

5. In the instant case precisely these were the averments made by the respondent. The respondent's case essentially was that she was a tenant

in suit premises on a monthly rent of Rs.9,000/- per month. The suit premises was owned by Mamta Anand, petitioner herein. It was stated that respondent Ravinder Kaur used to pay electricity and water bills and also had a licence issued by the Department of Labour, GNCTD for the purpose of running a beauty parlour.

6. In the suit filed by the respondent Ravinder Kaur, an application under Order 39 Rules 1 & 2 CPC was filed by her seeking *ex-parte* ad interim relief of restoration of possession of suit premises in her favour. Said application was allowed by impugned order and the petitioner Mamta Anand was accordingly directed by the Trial Court by way of an ad interim direction to restore the possession of the shop in question to the respondent Ravinder Kaur on the ground that she was able to satisfy all the three requirements of getting an ad interim order, namely, she has a *prima facie* case, that balance of convenience was in her favour and that she would suffer irreparable loss of not being able to maintain herself and her son if possession is not restored.

7. Feeling aggrieved, the petitioner Mamta Anand preferred the first appeal before the Court of learned ADJ which was dismissed as barred under Section 6 of the Specific Relief Act, 1963.

8. Mamta Anand has now filed the present petition contending that the order of restoration of the possession is not sustainable legally on account of the fact that by permitting this ad interim relief, the respondent/plaintiff has got the main relief in her suit, which is seeking a decree of declaration as well as restoration of the possession. The learned counsel for the petitioner has stated that there are a number of judgments which lay down that the court should be slow in passing such an interim order or direction which is similar to the final relief claimed by a party. However, the learned Trial Judge on the basis of the fact of the case came to the conclusion that prima facie respondent Ravinder Kaur was in the position of licensee and that she could not have been dispossessed without following due process of law and accordingly it ordered the possession of the shop to be restored back to her.

9. I have heard the learned counsel for the parties and gone through the record. There is no dispute about the fact that the ad interim relief of retrieval of possession of the suit premises is the same relief which is claimed in the main petition and normally the courts are loath to grant ad interim relief where main relief happens to be the same in the main suit. The reason for this is, that this may be construed to be tantamount to

decreeing the suit itself but this is not an absolute rule which is to be followed in each and every case. There may be circumstances where such an order is necessitated because of special circumstances. In the instant case also because of this special circumstance the Court was asked to rule on the fact as to whether this relief could have been granted which issue was decided in favour of respondent Ravinder Kaur and the possession of the shop in question was ordered to be given back to her. In any case even if this relief would not have been granted it would not have resulted in termination of proceedings as envisaged by the proviso to Section 115 CPC which is a pre-condition for entertaining the revision petition itself.

10. Therefore, in view of the above discussion, I feel that the revision is not maintainable as there is no illegality, impropriety or jurisdictional error in the impugned order as the interim relief which was claimed by the respondent was for restoration of possession when she has produced prima facie evidence to show that she was let out the shop for the purpose of running a beauty parlour and she had obtained licence from the Department of Labour, GNCTD for running the same and had claimed to be paying the rent and was in settled possession of the said shop apart

from revision being not maintainable. If the application of the respondent was rejected by the Senior Civil Judge, then the suit would have continued. Therefore, the impugned order could not have finally terminated the proceedings in favour of the petitioner Mamta Anand.

11. The impugned order is also legally sustainable for the reason that in case the main claim in the suit is decided at later stage and then a revision is preferred, then decision of said petition will take considerable time and therefore, during these legal proceedings, great prejudice would be caused to respondent Ravinder Kaur if she is kept out of possession and use and occupation of the property to which she is prima facie found to be entitled.

12. For the aforesaid reasons, the revision petition is dismissed as being without any merit.

13. Pending applications, if any, also stands disposed of.

V.K. SHALI, J.

OCTOBER 19, 2015

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