

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.313 of 2018**

Vijay Kumar, Son of Sri Ram Kishun Prasad Resident of Mohalla-Lodhipur,
Jitu Sahu Lane, PS-Gandhi Maidan, District and Town-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Co-operative Department; Secretariat, Patna.
2. The Bihar State Co-Operative Marketing Union Ltd. Biscomaun, through its Managing Director, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
3. The Secretary, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
4. The Chief Engineer Works, Biscomaun, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
5. The Executive Director, Construction, Biscomaun, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
6. The Estate Officer, Biscomaun, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.
7. The Assistant Estate Officer, Biscomaun, Biscomaun Bhawan, Gandhi Maidan, Patna-800001.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Uday Bhan Singh, Advocate
For the Respondent/s	:	Mr. Amit Prakash G.A. 13, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 08-08-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India for setting aside the order dated 03.08.2017, whereby Misc. Appeal No. 45 of 2016 filed on behalf of petitioner has been dismissed by learned Additional Sessions Judge 10th, Patna. The said Miscellaneous Appeal was filed against the order dated



18.05.2016 passed by the learned Sub-Judge-III, Patna in Title Suit No. 5569 of 2014 whereby the petition under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 filed on behalf of plaintiff / petitioner has been rejected.

3. The brief facts of this case are that the plaintiff / petitioner has filed Title Suit No. 5569 of 2014 claiming that he is running a tea stall in the name and style of Vijay Tea Stall within the premises of Biscomaun Bhavan Annexi Building Gandhi Maidan Patna, since 1976. Later on, he was allowed to construct a gumti and to get electric connection in the year 1997. However, in the year 2003 shop of the petitioner was demolished by Patna Regional Development Authority (PRDA) as it was in the area of parking and sub-way. After that petitioner moved before this Court vide CWJC No. 13123 of 2003. This Court vide order dated 23.11.2007 gave a direction to the Biscomaun authorities to dispose of the representation of the plaintiff. Pursuant thereto Biscomaun authorities vide letter No. ESTATE /B/ 2121 dated 11.09.2008 allotted the plaintiff space measuring area 150 sq. ft. at ground floor in the premises for 11 months with terms and conditions stated therein. The agreement with respect to grant of licence was not executed between the parties but the petitioner is in possession of the said premises.



On 12.06.2014 the Biscomaun authorities gave notice to the plaintiff / petitioner to vacate the suit premises and stated therein that the suit premises is in a dilapidated condition which requires renovation and it may collapse anytime. Biscomaun authorities decided to renovate and strengthen the building and awarded the contract to a builder for this purpose. All the 12 shop occupiers had been served with common notice to vacate the premises. The other shop keepers have vacated their respective shops. The petitioner objected the same and requested to grant some other space in the Biscomaun premises. The petitioner has neither vacated the shop nor accepted the proposal of shifting his shop in Kiosk and he preferred to file the suit being Title Suit No. 5569 of 2014 and an application under Order 39 Rule 1 and 2 read with Section 151 C.P.C. has been filed therein for temporary injunction which was dismissed by the trial court and the Miscellaneous Appeal has also been dismissed vide the impugned order.

4. Learned counsel for the petitioner submits that the annexe building is not in dilapidated condition but the Biscomaun Authorities is trying to lease out the shops to some other party by the advertisement and wants to get the shop vacated without proper legal recourse. The petitioner is a



bonafide renter of the shop in question and the rent is fixed @ Rs. 20 per sq. ft. He further submits that the Biscomaun Authorities has not offered the suitable shop in place of disputed shop so that he may be able to run the tea shop for his livelihood. Further, he submits that petitioner has prima facie case in his favour and balance of convenience is also in his favour and irreparable injury would cause for not granting to petitioner temporary injunction. He has next submitted that the learned trial court as well as Appellate Court below failed to appreciate that all the three necessary conditions for grant of temporary injunction are in favour of petitioner but ignoring the same the trial court dismissed the application under Order 39 Rule 1 and 2 and 151 of C.P.C. filed on behalf of plaintiff / petitioner and the Appellate Court below also confirmed the same by dismissing the appeal which requires interference by this Court in facts and circumstances of the case.

5. Per contra, learned counsel for the defendants / respondents submits that the said annexe building consisting 12 shops including the petitioner's shop was in dilapidated condition which requires an immediate renovation, all the occupiers of the shops were asked to vacate their respective shop by the common notice contained in Memo No. 192 dated



12.06.2014 and all the 11 shopkeepers including the petitioner were given option to run their respective shop in kiosk within Biscomaun Bhavan premises. It has further submitted that owing to financial crunch, the Biscomaun was / is not in a position to renovate the building by its own, hence it is invited new lease who was competent to renovate the building. The other shop keepers have vacated their respective shops. The petitioner is not selling tea or any item but is in his possession using it as his residence having bed to sleep. He has further submitted that more injury and prejudice is likely to be caused to the BISCOMAUN, if relief is granted to the petitioner. The BISCOMAUN is not able to renovate the building by new lessor and only intention of the petitioner is not to run the tea stall but to cause heavy loss to BISCOMAUN. The petitioner has no *prima facie* case in his favour and balance of convenience is in favour of BISCOMAUN on comparative hardship or inconvenience. The petitioner is using the shop as residence and is not opting to run tea shop from other suitable available place shows that there is no irreparable loss to the petitioner on not granting the temporary injunction. Further, he has submitted that the trial court has by the reasoned order rightly dismissed the application for temporary injunction and the appellate Court



below also vide the reasoned order has dismissed the appeal and confirmed the order of trial Court. There is no jurisdictional error or illegality for interference by this Court in its supervisory jurisdiction.

6. The law is well settled that while passing an interim order of injunction under order 39 Rules 1 and 2 CPC, the Court is required to consider: (i) whether there is a prima facie case in favour of the plaintiff; (ii) whether the balance of convenience is in favour of passing the order of injunction; and (iii) whether the plaintiff will suffer irreparable injury if an order of injunction would not be passed as prayed for.

7. This Court in **Dular Chand Sah & Ors. vs. Devnath Sah & Ors.** reported in MANU/BH/0794/2015 observed as follows:-

“The person who is seeking injunction has to satisfy the Court three ingredients, namely, prima facie case, balance of convenience and irreparable loss. If any of the ingredients is missing the Court would refuse to grant injunction. Satisfaction of prima facie case by itself is not sufficient to grant injunction. The Court has to satisfy itself that non-interference by the Court would result in irreparable injury to the party seeking relief and there is no other remedy available



to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely, one that cannot be adequately compensated in terms of money. Even where prima facie case is made out in favour of the plaintiff, the Court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable...”.

8. Grant of injunction is a discretionary relief. The law is well settled that once the Court of first instance exercises its jurisdiction to grant or refuse relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the Appellate Court will not interfere with the Trial Court’s exercise of jurisdiction.

9. In the present case, learned trial Court considering the material on record and submission on behalf of the parties did not find any prima facie case in favour of the petitioner and no irreparable loss to him by reasons stated in the order dated 18.05.2016 including that petitioner is a mere



temporary allottee of the suit premises and it was in the discretion of Biscomaun authorities for renewal / extension / cancellation of the licence. The Biscomaun authorities to carry out repair / renovation work got vacated 1st and 2nd floor of the building from its employees who used to reside with their families and other renters have also vacated the suit premises. It is the responsibility of Biscomaun authorities to ensure safety of all occupants and their lives cannot be allowed to be put at risk. The respondent authorities appear to be making efforts to accommodate the petitioner but the petitioner failed to accept the same. Balance of convenience is also not in favour of the petitioner. The Appellate Court below also in the impugned order observed that it is the responsibility of the Biscomaun authority of the safety of the occupants and noted the fact that other shopkeepers have already vacated the shop / premises allotted to them. He found no illegality or irregularity in the impugned order. This Court is of the view that necessary ingredients for grant of temporary injunction have not been found by the Court below in favour of the petitioner. Accordingly, the learned Court below rightly not granted the temporary injunction in exercise of its jurisdiction.

10. In view of the above, this Court finds no



jurisdictional error or illegality in the impugned order and there is no valid reason for interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. The application is devoid of merit and liable to be dismissed.

11. This Civil Miscellaneous Application, is accordingly, dismissed.

(Sunil Dutta Mishra, J)

shweta/-

AFR/NAFR	NAFR
CAV DATE	01.08.2023.
Uploading Date	08.08.2023.
Transmission Date	

