

12.09.2023  
Sl. No.8(DL)  
srm

**C.O. No. 3160 of 2022**  
**Sardar Yadvindar Singh Walia**  
**Versus**  
**Sri Dilip Sharma**

Mr. Sovan Mukherjee

...for the Petitioner.

The revisional application arises out of an order dated July 20, 2022 passed in Misc. Appeal No.47 of 2021 by the learned Additional District Judge, 2<sup>nd</sup> Court at Barrackpore, North 24-Parganas.

The plaintiff filed the suit for declaration and injunction. The plaintiff prayed for a declaration that the plaintiff was the lawful lessee in respect of the suit property on the basis of a deed of lease and that the defendant/opposite party did not have any right, title and interest over the suit property. Permanent injunction restraining the defendant and his men and agents from disturbing the peaceful possession of the plaintiff in respect of the suit property was also prayed for.

The learned trial court rejected the prayer for ad-interim injunction. The plaintiff prayed that the defendant be restrained from disturbing the plaintiff's peaceful possession in respect of the suit property on the basis of the police report.

Misc. Appeal No.47 of 2021 was filed by the petitioner from the order of rejection of the prayer for ad interim injunction. The petitioner also prayed for injunction against the opposite party and his men and agents from disturbing the peaceful possession and enjoyment in respect of the suit property during the pendency of the misc. appeal.

By the order impugned, the learned lower appellate court rejected the prayer for injunction made in the misc. appeal and fixed the misc. appeal for final hearing. According to the learned lower appellate court, the petitioner could not make out a strong *prima facie*, case for grant of injunction, during the pendency of the misc. appeal. It was the, *prima facie*, finding of the learned lower appellate court that the defendant was carrying on the business of motor repairing and bodybuilding of the vehicle from Premises No.134, B.T. Road. The passage for egress and ingress to the garage of the defendant had been blocked by the petitioner, by taking advantage of the initial ad-interim order of injunction that was passed in the misc. appeal. That the petitioner was using the said ad interim order as a sword and not as a shield, by unlawfully blocking the passage to the garage of the opposite party. On the basis of such, *prima facie*, finding, backed by the police report filed in M.P. Case No.2286 of 2021, the prayer for

injunction made against the defendant/opposite party, was rejected. The learned lower appellate court fixed the misc. appeal for final hearing.

Learned Advocate submits that the learned lower appellate court acted with material irregularity inasmuch as, the statements made in the plaint would indicate that the petitioner had a strong prima facie case.

Mr. Mukherjee, learned Advocate appearing on behalf of the plaintiff/petitioner submits that the order impugned suffers from the following irregularities:

- (a) The learned lower appellate court confused itself with regard to the description of the 'A' and 'B' schedule property and thereby rejected the prayer for injunction, during the pendency of the appeal, *inter alia*, holding that the 'A' and 'B' schedule property suffered from mis-description and the petitioner was not entitled to any protection in respect of the property involved in the dispute.
- (b) The learned lower appellate court failed to take into consideration the lease deed in which the description of schedule 'B' property had been categorically mentioned. Schedule 'B' property was a part of the schedule 'A' property. The learned lower appellate

court mis-guided itself and refused to protect the petitioner without appreciating the averments made in the plaint.

(c) That the documents filed before the rent controller and the records of a writ petition would indicate that the High Court had observed that the defendant/opposite party could not produce any document with regard to his claim of tenancy, in respect of the property in question.

(d) On account of such refusal, the defendant/opposite party was continuously disturbing the petitioner in respect of the peaceful enjoyment of the demised property.

Heard Mr. Mukherjee.

It appears from the order impugned that the learned lower appellate court went into a detailed enquiry with regard to the rights and interests of the parties involved in the misc. appeal. The learned lower appellate court found that the opposite party had specifically stated in the written objection that he was running a business of motor repairing and bodybuilding of the vehicles, under the name and style of G.D. Body Buildings for the last 25 years, from Premises No.134, B.T. Road. He had also been given a trade licence from the

Baranagar Municipality. The opposite party claimed to be a tenant under the father of the petitioner, who was the original lessee in respect of the premises in question. Such lease was obtained from Ranjit Kumar Bhowmick for 21 years, in the year 1965. The father of the petitioner expired in 1981. The petitioner approached the Ranjit Kumar Bhowmick for renewal of the said lease deed and accordingly Ranjit Kumar Bhowmick granted a sub-lease in respect of 8 cottahs 7 chittaks on the divided back portion of Premises Nos.133 and 134, B.T. Road. Whereas, the court found that the opposite party was running his business of motor repairing and bodybuilding of the vehicle from Premises No.134. Thus, the learned lower appellate court was of the, *prima facie*, opinion that, on the facts and circumstances of the case and going by the police report filed in MP case, the stand of the opposite party could not be ruled out.

The court did not decide the issue of tenancy. The court only considered the possession and the description of the property in question and came to a, *prima facie*, finding that the balance of convenience and inconvenience was in not granting any injunction in favour of the petitioner.

Moreover, the learned lower appellate court was of the opinion that the free ingress and egress of the opposite party

should be protected. However, without passing any orders to that effect, the learned lower appellate court decided to hear out the misc. appeal.

In my opinion, the discretionary relief sought for by the petitioner has been rejected by both the competent courts. It does not appear that the orders suffer from any perversity. The learned lower appellate court acted within the jurisdiction vested upon him by law. The lower appellate court had gone into the materials available and had come to a finding that the plaintiff failed to make out a strong case for an injunction. The appeal which was otherwise ready for hearing, has been fixed.

Under such circumstances and on the basis of the findings of facts, as narrated hereinabove, this Court is not inclined to entertain the revisional application.

The revisional application is, accordingly, dismissed.

The misc. appeal filed by the petitioner, shall be heard on its own merits and on the materials on record, without the learned lower appellate court being influenced by the order impugned as also the observations made by this Court. All points raised by the petitioner shall be available at the time of final hearing of the appeal. The appeal should be disposed of within a period of three months from the next date fixed.

There shall be no order as to costs.

Parties are directed to act on the basis of the sever copy  
of this order.

**(Shampa Sarkar, J.)**