

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 3025 of 2023

Smt. Ruma Bhowmick
Vs.
Leap Infraproject Limited

For the petitioner : Mr. Gautam Mitra,
Mr. Rishad Medora,
Mr. Meghajit Mukherjee,
Ms. Ria Mitra,
Ms. Priyanka Sharma,
Ms. Anusha Nagarajan

For the opposite parties : Mr. Gopal Chandra Ghosh,
Mr. Supratim Dhar,
Mr. Dhananjay Nayak

Hearing concluded on: 23.02.2024

Judgment on: 05.03.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated August 09, 2023, passed by the learned Civil Judge (Senior Division) 2nd Court at Baruipur in Title Suit No.312 of 2023.

2. By the order impugned, the learned court rejected an application under Section 10 of the Code of Civil Procedure filed by petitioner/defendant in the suit. By the same order, an application under Order 39 Rule 4 of the Code of Civil Procedure was also rejected. The parties were directed to maintain status quo in respect of their physical possession, nature and character of the suit property, till disposal of the suit.

3. Only the first portion of the order impugned, by which an application for stay was rejected, is amenable to the jurisdiction of this Court.

4. Mr. Gautam Mitra, learned Advocate appearing on behalf of the petitioner/defendant submits that Title Suit No. 312 of 2023 was filed by the Opposite party/defendant no.1 of Title Suit No.683 of 2023 and its authorized signatory by suppressing the pendency of the earlier suit. Title Suit No.683 of 2023 was filed by the petitioner against the opposite party before the learned Judge, 6th Bench, City Civil Court at Calcutta. In the said suit, an order of ad interim injunction was passed on April 03, 2023. The defendant and its men and agents were restrained from making any construction or alternation or causing any damage to the suit property. The opposite party is the defendant in the Title Suit No.683 of 2023.

5. The said learned court, by the order dated April 05, 2023, had appointed a learned Advocate commissioner for holding inspection of the property, on the prayer of the petitioner. It was alleged by the petitioner that the opposite party had removed the entrance doors, the frames of the doors and windows and had damaged the property. By an order dated May 04, 2023, the petitioner was also permitted to fix two entrance doors and windows. The learned Advocate commissioner was further directed to keep the suit premises under lock and key. The matter was also informed to the local police station.

6. Title Suit No.312 of 2023, was filed by the opposite party before the learned Civil Judge, (Senior Division), Baruipur, on or about May 17, 2023. The said suit was for declaration and injunction. The plaint in the second suit did not disclose anything about the pendency of the earlier suit.

7. In Title Suit No.312 of 2023, an ad interim order of injunction was passed on May 19, 2023. Both the parties were directed to maintain status quo in respect of physical possession, nature and character of the property.

8. The petitioner entered appearance in the suit and filed an application under Order 39 Rule 4 of the Code of Civil Procedure and also an application of stay of the suit. As the said application had been fixed after a long gap, such order was challenged before this Court in C.O.2369 of 2023. C.O. 2369 of 2023 was disposed of by this Court. By an order dated July 26, 2023, this Court directed the learned trial court to dispose of the applications filed by the petitioner under Order 39 Rule 4 of the Code of Civil Procedure, by treating the same as an objection to the application for temporary injunction and also to dispose of the application under Section 10 of the Code, within August 10, 2023.

9. The order impugned has been passed in Title Suit No. 312 of 2023, in terms of the direction of this Court.

10. According to Mr. Mitra, the prayers in the earlier suit and the prayers in the second suit would indicate that both the parties prayed for declaration that the opposite party was a licensee in respect of the suit premises. A direction restraining either party from interfering with the possession of the other party and also from causing any damage to the suit property, was also prayed. Under such circumstance, when the parties were the same, the property involved was the same and the prayers and reliefs prayed for were also the same, the later suit should have been stayed by the learned court.

11. Mr. Gopal Ghosh, learned Advocate appearing on behalf of the plaintiff/opposite party submits that Title Suit No.683 of 2023 was not maintainable before the learned City Civil Court at Calcutta. The suit property was situated within the jurisdiction of the Baruipur Court, under police station Narendrapur, (erstwhile Sonarpur), within the territorial jurisdiction of the Rajpur Sonarpur municipality. Thus, the suit filed in the City Civil Court at Calcutta was barred under the provision of the Code of Civil Procedure, on ground of lack of territorial jurisdiction. The suit was non-existent in the eye of law and the pendency of the said suit, even if the same was an earlier suit, would not give any rise to claim stay of the later suit, filed by the opposite party, in a court of competent jurisdiction.

12. By suppressing the actual address of the suit property, the police station and the name of the municipality, the earlier suit was filed. The schedule of the plaint did not mention the proper address. By clever drafting, the petitioner tried to create an illusion that the City Civil Court at Calcutta had the jurisdiction to decide the suit.

13. Mr. Ghosh further submits that unless issues were framed, it would not be possible for the learned court to decide whether matters directly and substantially in issue in the earlier suit, were directly and substantially in issue in the second suit.

14. According to Mr. Ghosh, what necessarily had to be deduced while passing an order of stay of the subsequent suit was to see whether the decision in the subsequent suit would operate as a res judicata in the earlier suit. Further if the court before which the prior suit was filed, did not have

the jurisdiction to grant the reliefs claimed, Section 10 of the Code of Civil Procedure could not be invoked.

15. Mr. Mitra, referred to the following decisions :-

**a) *Saqib Khan vs. Ravindra Suri* reported in *MANU/MP/1370/2014*,
Fulchand Motilal Vs. Jetha Lall Mehta reported in *AIR 1973 Pat 196*,**

**b) *Shri Ram Tiwary and Anr. vs Bholi Devi and Anr.* reported in
AIR 1994 Pat 76,**

**c) *Sohrab Merwanji Modi vs. Mansata Film Distributors* reported
in *AIR 1957 Cal 727*,**

**d) *Rup Chand Dharam Chand Kanpur vs. Basant Lal Banarsi Lal*
reported in *AIR 1975 P&H 171*,**

e) *C.L.Tandon, G.S. vs. Prem Pal Singh Rawat* reported in *AIR 1978 Delhi 221*,

**f) *Raunaq International Ltd. vs. Ota Kandla Pvt. Ltd.* reported in
AIR 1987 Guj 213,**

16. Mr. Ghosh referred to the following decisions :-

**a) *Patel Roadways Limited, Bombay vs. Prasad Trading Company*
reported in *(1991) 4 SCC 270*,**

b) *P.V. Shetty vs. B.S. Giridhar* reported in *AIR 1982 SC 83*,

c) *Jado Rai vs Onkar Prasad* reported in *AIR 1975 All 413*

17. It is an admitted position, that Title Suit No.683 of 2023 is an earlier suit. The opposite party had entered appearance in the earlier suit and had also contested the proceedings. The order dated May 04, 2023 records that the opposite party was before the learned court and the order was passed in

the presence of the opposite party. The application under Section 151 of the Code of Civil Procedure, filed by the petitioner, was disposed of with permission to the petitioner to fix entrance doors and windows under the supervision of the learned Advocate commissioner. Police authorities were also directed to ensure that the learned Advocate commissioner was not prevented in any manner whatsoever. The report of the learned Advocate commissioner was recorded by the learned court, inter alia, stating that the learned Advocate commissioner had found massive damage to the flat, entrance doors etc. The fixtures, steel racks, water purifier and W.C. had been destroyed. The fittings were uprooted and thrown away.

18. The second suit was filed by the opposite party by suppressing the pendency of Title Suit No.683 of 2023 and the orders passed therein.

19. Section 10 of the Code of Civil Procedure deals with stay of a suit.

20. The following are the ingredients which are required to be satisfied before a court grants stay of a suit :-

- (1) The section applies only to suits and not to applications and complaints.
- (2) There must be two suits, one previously instituted and the other subsequently instituted.
- (3) The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.
- (4) The parties in the previous suit and the subsequent suit, must be the same or claiming under the same title.
- (5) The parties should be litigating under the same title in both the suits.
- (6) The previously instituted suit must be pending in the same court in which the subsequent suit is brought or in any other court in India or in any court beyond the limits of India established and continued by the Central Government or before the Supreme Court.
- (7) The Court in which the previous suit had been instituted must have jurisdiction to grant the relief claimed in the subsequent suit.

21. Mr. Ghosh had asserted before this Court that the City Civil Court did not have the jurisdiction to grant the reliefs claimed. The City Civil Court

lacked territorial jurisdiction. Mr. Ghosh also relied on Section 16 of the Code of Civil Procedure, in support of his contention.

22. However, the issue of jurisdiction of the City Civil Court has not yet been decided. The learned court did not refuse to stay the suit on such ground either. The opposite party has already filed an application under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of the plaint on the ground of jurisdiction. The said application has not yet been heard.

23. It is also an admitted position that the issues have not been framed in the suit. However, a bare perusal of the plaint in the earlier suit being Title Suit No.683 of 2023 indicates that the prayers and reliefs sought for are almost similar in both the suits.

24. Prayers in Title Suit No.683 of 2023 are quoted below: -

“a) Declaration that the defendant being a purely Licensee under the plaintiff is not entitled to violate any of the terms and conditions of the said Leave and License Agreement dated 01.03.2023 including causing any damages to the suit premises as described in the Schedule hereunder written;

b) Permanent injunction restraining the defendant its men, agents and/or servants and/or each one of them from making any damages and/or addition or alteration and/ or unauthorized construction at the suit premises as described in the Schedule hereunder written in any manner whatsoever;

c) Temporary injunction in terms of prayer (b) above;

d) Attachment;

e) Receiver;

f) Costs & Advocate's fees;

g) Commission;”

25. Prayers in Title Suit No.312 of 2023 are quoted below :-

“a) Judgment and Decree for Declaration that the Plaintiff is lawful occupier as Licensee in the Schedule property;

b) Judgment and Decree for Permanent Injunction restraining the Defendant to disturb the Possession of the Plaintiff in the suit property in any manner;

c) Judgment and Decree for Permanent Injunction restraining the Defendant and her men and agent from forcefully oust or disposes the Plaintiff from the suit property without due process of law;

d) Temporary and ad-interim Injunction in terms of Prayer (c);

e) Such other relief or relives as the Plaintiff is entitled to get in law and in equity; The previous suit the plaintiff/petitioner had claimed that a leave and license agreement for a period of 11 months had entered into between the parties commencing from March 01, 2023 and expired on January 31, 2024. By the said leave and license agreement, the opposite party had become a licensee in respect of the flat in question and the agreed license fees was Rs.50,000/- along with Rs.25,000/- towards maintenance, aggregating to Rs.75,000/-.

26. In the previous suit, the plaintiff/petitioner had claimed that a leave and license agreement for a period of 11 months had been entered into between the parties commencing from March 01, 2023, which would expire on January 31, 2024. By the said leave and license agreement, the opposite party had become a licensee in respect of the flat in question and the agreed license fees was Rs.50,000/- along with Rs.25,000/- towards maintenance, aggregating to Rs.75,000/-.

27. It was specifically covenanted in the said leave and license agreement that the licensee would not cause any damage to the suit property or create any nuisance. No structural change would be permitted. As the licensee had broken down and damaged major portion of the suit property, the Title Suit No.683 of 2023 was filed for the reliefs claimed. Allegations were that the

massive unauthorized construction, removal of doors and windows, damage to the floors, bathroom, W.C, and removal of fixtures from the suit property, had been caused by the licensee. FIR was also lodged before the concerned police station against the licensee. By continuing such unauthorized construction, the defendant opposite party was trying to create a cloud over the title of the petitioner and had also violated the terms and conditions of the agreement for leave and license.

28. Accordingly, prayers were made for declaration that the defendant/opposite party was only a licensee in the suit property and was not entitled to cause any damage to the suit property by violating the terms and conditions of the leave and license agreement. Permanent injunction restraining the defendant/opposite party and its men and agents from causing any damage or addition or alteration or unauthorized construction in the suit property was also prayed for.

29. In the second suit i.e., Title Suit No. 312 of 2023, which is the later suit, the plaintiff/opposite party stated that the petitioner/defendant in the said suit with her men and agents, reached the suit property and threatened the carpenters and the manager of the opposite party, who were carrying out some interior works in the property in question. As per the leave and license agreement, the opposite party was allowed to be use the licensed premises for business purpose and some interior decorations were being executed in the property in question. The petitioner unlawfully stopped the carpenters, masons and labourers from carrying out such internal works. The petitioner/defendant threw out the furniture, equipments, apparatus, tools, belonging to the opposite party, from the flat. The petitioner and her men

and agents were trying to dispossess the plaintiff/opposite party from the said suit property. Hence, the suit was filed for a declaration that the opposite party was a lawful occupier and a licensee in respect of the suit property. Injunction was prayed restraining the petitioner from disturbing the peaceful possession of the plaintiff/opposite party in respect of the suit premises.

30. In both the suits, the parties prayed for declaration that the opposite party was a licensee in respect of the premises. Both the parties claimed damage and destruction to the property. Both the parties alleged that not only substantial damage had been caused to the property by the opponent, but also the furniture, fixtures, gadgets, apparatus, tools had been thrown out from the property in question, by the other party.

31. Submissions of Mr. Ghosh, that the City Civil Court is not capable of granting relief in view of lack of jurisdiction, cannot be decided by this Court, at this stage.

32. The cause of action and the jurisdiction as pleaded in Paragraph 15 of plaint is also quoted below:-

“The cause of action of the suit are bundle of facts pleaded herein above and the same inter alia arose on 30.03.2023 when the plaintiff first time detected the damages and/or illegal construction made by the defendant in respect of the suit premises by violation of terms and conditions as mentioned in the said Leave and License Agreement and the same is continued from day to day at the defendant’s place of business at “Diamond Prestige”, Unit No.611, 6th Floor, 41A, A.J.C. Bose Road, P.O. and P.S. Shakespeare Sarani, Kolkata -700017 and specifically in view of the facts that both the parties have in writing agreed that the Court of Calcutta shall have exclusive jurisdiction in the matter.”

33. The application for stay was not rejected on the ground that the City Civil Court did not have jurisdiction to grant the reliefs. Learned court rejected the application on the ground that until issues were framed, the matter could not be decided. This, in my view, was an improper appreciation of the law and the facts. The plaint in both the suits and the reliefs claimed would indicate that the issues would also be identical. However, the objection with regard to the jurisdiction, is pending adjudication in the application under Order 7 Rule 11 of the Code of Civil Procedure which has been filed in connection with the prior suit. The opposite party will be at liberty to pray for early disposal of the said application.

34. Thus, this Court is of the view that the order impugned should be set aside to the extent of rejection of the prayer for stay of Title Suit No.312 of 2023, which is pending before the Baruipur Court. The suit shall remain stayed till disposal of Title Suit No.683 of 2023, which is pending before the learned Judge, 6th Bench, City Civil Court at Calcutta.

35. The issue as to whether the City Civil Court at Calcutta, was capable of granting the relief as prayed for in the plaint, upon taking note of the jurisdiction, is not decided. In the event the learned court decides that the Title Suit No.683 of 2023 was not maintainable before the City Civil Court at Calcutta on account of lack of jurisdiction, consequences will follow and parties shall take steps in accordance with law. The stay of the later suit will automatically stand vacated in such a situation.

36. Hence, the revisional application is disposed of.

37. The order impugned is set aside.

38. There shall be no order as to costs.

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

(Shampa Sarkar, J.)