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Court : Delhi

Decided On : Jul-29-2010

Judge : Ms. Aruna Suresh, J.

Appeal No. : CS(OS) No.967/2010

Appellant : Charanjit Thukral and anr.

Respondent : Deepak Thukral and anr.

Advocate for Def. : Mr. Surender Chauhan, Adv.

Advocate for Pet/Ap. : Mr.Muneesh Malhotra, Mr. Yogender Pradhan, Adv.

Judgement :

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? Yes

(3) Whether the judgment should be reported in the Digest? Yes

1. Vide this order I shall dispose of the abovesaid three applications. Two of the applications have been filed by the Plaintiffs seeking ad interim injunction against the Defendants and also modification of ex-parte ad interim injunction granted by this court vide order dated 17.05.2010. Third application has been filed by the Defendants seeking vacation of the said ex-parte ad-interim injunction.

2. Plaintiff No.1 happen to be father of the Defendants whereas Plaintiff No.2 is their step-mother. Plaintiff is running his business of hardware as Proprietor of M/s. Gangu Ram Ram Kishan at 5229, Shradhanand Marg, G.B. road, Ajmeri Gate, Delhi for the last about 35-40 years. Plaintiffs and Defendant No.2 are residing in House No.H-32, Kailash Colony, New Delhi whereas Defendant No.1 residing in N-152, First Floor, Greater Kailash-I, New Delhi.

3. Plaintiffs have claimed that Plaintiff No.2 is the owner of Front Portion of the First Floor consisting of drawing/dinning, one bed room, attached bathroom, kitchen and servant quarter on the top along with 1/6th undivided, indivisible and impartable ownership rights in the plot of land measuring 311 Sq. yds., bearing No.H-32, Kailash Colony, New Delhi; the property in dispute. Whereas Defendant No.2 is in possession of the rear portion of the first floor of the said property. Defendants have been assisting Plaintiff No.1 in his business. There have been disputes inter se Plaintiff No.2 and the Defendants and their family.

4. Case of the Plaintiffs is that on 10.05.2010, Defendants conspired and started making unreasonable demands and asked Plaintiff No.1 to partition the business as well as the residential houses to which Plaintiff No.1 politely refused. In the evening Defendants allegedly used filthy language against the Plaintiffs and their daughter and demanded that Plaintiff No.2 should surrender the property in suit and leave the house instantly. Allegedly Defendants asked Plaintiff No.1 not to come to the shop to enable them to run the business. Apprehending dispossession from the front portion of the First Floor of the property in suit as well as from the business, Plaintiffs filed the present suit along with IA No. 6569/2010.

5. Defendants have contested the applications contending inter alia that Plaintiffs misrepresented the fact that they are in possession of the front portion of the property in suit. Plaintiffs are residing on the ground floor whereas first floor is in complete possession of Defendant No.2 in his own right. Ground floor of the property in suit was purchased in the name of Plaintiff No.2 whereas first floor was purchased in the name of Defendant No.1. Defendant No.1 sold the rear portion of the first floor to Defendant No.2 and to avoid dispute in the family front portion of the first floor was transferred to Plaintiff No.2, who executed a Will dated

21.08.2002 in favour of Defendant No.2. Defendants have been working with their father, Plaintiff No.1 in the shop and they have contributed towards the growth of the business and invested substantial money in the said business. They never extended any threat to the Plaintiffs as alleged and even to report of the Investigating Officer indicate that the entire premises on the first floor are under the lock and key of Defendant No.2. Thus Plaintiffs have not come to the Court with clean hands. Plaintiff also owns another property i.e. first floor of House No.H-28, Kailash Colony, New Delhi, which is lying vacant and this suit has been filed to oust Defendant No.2 from the property in suit.

6. I have heard Mr. Muneesh Malhotra counsel for the Plaintiffs and Mr. Surender Chauhan, counsel for the Defendants and have carefully perused the record.

7. During the course of arguments following facts were admitted by the parties.

1. Plaintiffs are residing on the ground floor of the suit property No.H-32, Kailash Colony, New Delhi.

2. Defendant No.2 has been residing on the first floor of the property for quite some time. Defendant no.1 is residing in N- 152, First Floor, Greater Kailash, New Delhi and another property bearing First floor of H-28, Kailash Colony, New Delhi is lying vacant.

3. Plaintiffs did not reside on the front portion of the first floor of the suit property. Defendant No.1 had executed a Sale Deed in favour of Plaintiff No.2 and Plaintiff No.2 in turn had executed a Will in favour of Defendant No.2. Despite these documents Plaintiff No.2 was never in physical possession of front portion of the first floor property.

8. It is submitted by the counsel for the Plaintiffs that dispute arose inter se the parties when Plaintiff No.2 asked Defendant No.2 to temporarily provide her a room for the marriage of her daughter to be used as a guest room to which Defendant no.2 refused.

9. Thus, prima facie, it is clear that Plaintiffs were not in possession of front portion of the first floor of the house at the time when the suit was filed and ex-parte ad-

interim injunction was obtained. This is a concealment of fact by the Plaintiffs. Rather, Plaintiffs have tried to mislead the Court by alleging that they are in possession of front portion of the property in suit and apprehended threat of dispossession at the hands of Defendant No.2.

10. Prima facie it seems that Plaintiff no.1 made arrangement for all his children as he provided first floor of House No. N-152, First Floor, Greater Kailash, New Delhi for residence of his son Defendant No.1 and provided first floor of the property in suit to Defendant No.2. Another House bearing No.H-28 has been purchased by him to be gifted in marriage of his daughter as stated by him during the course of arguments. He alongwith his wife is residing on the ground floor of the property in suit. To my mind, an unnecessary issue has been raised / agitated by Plaintiff no.2 for temporary accommodation on the first floor to be used as a guest room for the relatives who might come to attend the marriage of their daughter. It is not out of place to mention here that plaintiffs have not fixed the marriage of their daughter till date and they are in search of a suitable match. Therefore, the need for a room to accommodate the guests is not in existence. This seems to be a made up ground to pressurize Defendant No.2 to part with possession of one of the rooms.

11. Admittedly, Defendants were working with their father doing the same business in the said shop. May be that Plaintiff No.1 is running the business as sole Proprietor, it is not disputed by him that both the sons have been working with him till he obtained ex-parte ad-interim injunction from this court. Defendants have admitted that they have taken another shop on rent and have started their business from the said shop. Though they claimed that they have invested huge amount in the business which was being run by them with their father.

12. Under Order 39 Rule 1 & 2 sub rule (c) CPC court can grant temporary injunction if Defendant threatens to dispossess the Plaintiff or otherwise cause injury to the Plaintiff in relation to any property in dispute in the suit. The court may grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the Plaintiff in relation to any property in dispute, as the Court

thinks fit till the final disposal of the case on merits.

13. Grant of temporary injunction is governed by three basic principles i.e. prima facie case, balance of convenience and irreparable injury, which are required to be considered in proper perspective under the facts and circumstances of each case and no strait-jacket formula can be laid down. Sometime, there are situations wherein the Defendant may use the suit property in such a manner that the situation becomes irretrievable. In such circumstances, Court should grant interim relief. However, it is not appropriate for a court to hold a mini trial at the stage of grant of temporary injunction. Court has to assess the pleadings of the parties and the documents placed on record to find out if the ingredients/principles governing the grant of temporary injunction are made out or not.

14. In Colgate Palmolive (India) Ltd. vs. Hindustan Lever Ltd., AIR 1999 SC 3105, The Apex Court crystallized the conditions which ought to weigh with the court hearing the application or petition for the grant of injunctions as below:-

"(i) Extent of damages being an adequate remedy;

(ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor ;

(iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;

(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

15. In *Zenit Mataplast Private Ltd. vs. State of Maharashtra & Ors.*, Civil Appeal No. of 2009, decided on 11th September, 2009 by the Apex Court, the considerations which the Court must keep in mind while hearing on the application for grant of interim injunction as laid down in *Colgate Palmolive (India) Ltd's case (supra)* were followed.

16. In *Dalpat Kumar & Anr. v. Prahlad Singh & Ors.*, AIR 1993 SC 276', the Supreme Court explained the scope of aforesaid material circumstances, but observed as under:-

"The phrases 'prima facie case', 'balance of convenience' and 'irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience."

17. Interim order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fate accompli before the final hearing. The purpose of an interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty was resolved in his favour at the trial.

18. It is settled principle of law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which has bearing on the adjudication of the issues raised in the case. It is the duty of the party asking for an injunction to bring to the notice of the Court all facts material to the determination of his right to have injunction and it is not an excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward. Where Plaintiff does not act bona fidely and does not put every material facts before the Court,

the Court is within its inherent power to refuse to grant him injunction, even though there might be facts upon which injunction might be granted. Conduct of the Plaintiff is very material in bringing the case and disclosing the facts before the Court. Plaintiff is required to make fullest possible disclosure of all material facts within his knowledge to the Court and if he does not make that fullest possible disclosure, he cannot obtain any advantage from the proceedings and is liable to be deprived of any advantage he might have already obtained by means of the order which has thus wrongly been obtained by him by concealment of material facts.

19. The preface of the judgment delivered by the Apex Court in Dalip Singh vs. State of U.P. & Ors., 2010 (2) SC 114, reflects the anguish of the Court to the existing value system of the litigants who resorted to false suit and unethical means for achieving their goals, it reads:- "For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. "

20. In the said case holding that the appellants belonged to the category of persons who not only attempt, but succeed in polluting the course of justice are not entitled to the injunction prayed for by them, the Court dismissed the appeal.

The conduct of the appellants in the said case in concealing the material facts was considered as contemptuous.

21. Coming back to the facts and circumstances of the case, as pointed out above, Plaintiffs concealed material facts from this Court that Defendant No.2 is in physical possession of the entire first floor of the property for quite some time before filing of the suit. Due to disputes and differences in the family i.e. between Plaintiff No.2 and the Defendants, the Plaintiffs have approached this Court for grant of ad-interim injunction during the pendency of the suit for restraining the Defendants from interfering in the peaceful possession of the front portion of the first floor of the property in suit, by misrepresentation of facts. Even if there are facts which prima facie entitle the Plaintiffs for a discretionary relief of injunction but as they have not acted with bonafides and have not put other material facts before the Court and have been successful in obtaining ex-parte interim injunction in their favour by concealment of facts, they are not entitled to any injunction as prayed. Plaintiffs cannot be allowed to take advantage from the proceedings for their own act of concealment of material facts within their knowledge. Prima facie, alleged threat of dispossession of the Plaintiffs from the suit premises does not exist as they were never in possession of the same. It is the Plaintiffs, who in the garb of an interlocutory order, intended to enter into the demised premises to take physical possession of the same.

22. Under the circumstances, it is Defendant No.2 who will suffer inconvenience if he is dis-lodged from the premises in dispute, may be one room as suggested during the course of arguments and not the Plaintiffs who are in complete possession of ground floor of the premises besides a vacant house No.H-28, which is hardly at a distance from the suit property. Plaintiffs are at liberty to use House No.H-28 as a guest room for their relatives at the time of marriage of their daughter as it is lying vacant even if it has been kept to be given in marriage to her daughter. Therefore, no irreparable loss and injury is likely to be caused to the Plaintiffs if the relief prayed for is not granted to them.

23. In view of my discussion as above, I conclude that Plaintiffs have made all possible efforts to mislead the court. They are not entitled to any relief as prayed.

The interim order dated 17th May, 2010 is hereby vacated so far as it relates to property No.H-32, Kailash Colony, New Delhi i.e. the suit property.

24. As regards the interference of Defendants in the business of Plaintiff No.1 being carried out at 5229, Shradhanand Marg, G.B. Road, Ajmeri Gate, Delhi, it is made clear that Defendants who have already started their separate business in a rented shop will not interfere in the business activities of Plaintiff No.1 in the said shop without prejudice to their rights in the business till final disposal of the case on merits. However, it is expected from Plaintiff No.1, being father, to ensure that if he along with his sons cannot carry on his business in the same premises, to make appropriate arrangements to rehabilitate the Defendants, being his sons, by providing necessary financial assistance, if need be.

25. Applications stands disposed of accordingly. CS(OS) No.967/2010

26. List on 6th September, 2010 before Joint Registrar.

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