

Delhi High Court D.T.T.D.C. vs D.R. Mehra And Sons on 12 March, 1996
 Equivalent citations: 62 (1996) DLT 234, 1996 (37) DRJ 183 Author: M J Rao
 Bench: M Rao, M Sharma JUDGMENT M. Jagannadha Rao, C.J. (1) The plaintiff is the appellant in Suit No. 1693/95. This appeal is preferred against the order in Ia 7540 of 1995 and Ia 7930 of 1995 dated 8.11.1995 vacating the temporary injunction granted earlier on 24.7.95. (2) The facts of the case are as follows: (3) The appellant Corporation wanted to run a liquor shop and gave an advertisement on 16.4.82 inviting tenders from owners of shops for entering into a licence' agreement. The respondent-owners submitted their offers and the said offer was accepted by the appellant on 3.5.82. Thereafter a licence deed was executed on 5.5.1982 whereby the appellant agreed to pay certain percentage as compensation with a minimum guarantee of Rs. 6,000.00 p.m. The licence was to be upto 31.3.83. It was continued upto 31.3.84. On 1.6.84, appellant wrote to the owners inquiring if the respondent would allow appellant to continue till 31.3.85. By letter dated 22.11.84, the appellant wrote to respondent that it would increase the commission at 10% of gross profit with a minimum of Rs. 4,000.00 p.m. w.e.f. 1.4.1984. On 13.6.86, appellant wrote to respondent agreeing to pay a percentage of its gross profits for the year 1986-87. On 18.8.87, appellant wrote to respondent that w.e.f. 1.4.87, it would pay compensation at 12.5% subject to a minimum of Rs. 6000.00 p.m. On 19.9.91 appellant wrote to respondent that its sales have come down and that respondent should accept whatever appellant could pay. On 13.1.92, appellant wrote to respondent declining to enhance compensation from 12.5% to 15% with a minimum of Rs. 16,000.00 . Appellant was prepared to pay only 12.5%. (4) On 14.1.92, respondent wrote to appellant that in view of the delay from August 1991 to January 1992 in responding to the request of the respondents for enhancing the compensation, the appellant is directed to vacate by 15.2.92. Appellant wrote on 13.2.92 requesting to be "allowed to operate its L-2 ven till 31st March,1992" as the licence from Excise Department is current upto 31.3.92. In other words, the appellant agreed to vacate by 31.3.92. (5) On 14.2.92, 16.3.92, 24.5.92,, 18.5.92, 9.6.92, and 21.7.92, the defendant-respondent asked the appellant to vacate and clear its stocks, as agreed in the appellant's letter dated 13.2.92. (6) Instead of vacating the premises on 31.3.92 as agreed above, the appellant continued to occupy the premises without acceding to the repeated reminders by the respondent. Thereafter, there were disputes during 1993 because of disconnection of water-supply and electricity. These continued during 1994-95. Then the appellant filed the present suit in 1995 and obtained temporary injunction on 24.7.95 restraining the respondent from evicting the appellant. Under the imputed order, the injunction has been vacated. (7) In the suit, the appellant has contended that it is a tenant and not a licensee and that the nomenclature in the agreement is not decisive. It may here be noted that the appellant corporation itself invited from owner for a licence and not for a lease. (8) The learned trial Judge said that he was inclined to accept the case of the defendant that plaintiff was only a licensee and that the license stood revoked. It was not a case of a licence coupled with interest. The learned Judge stressed on the fact that while inviting tenders, the appellant corporation

had itself desired to enter into a licence'. On the question of alleged- threats of forcible eviction, the learned Judge said that this was not plausible because on 5.4.95, the respondent wrote to the appellant that the appellant had requested the respondent to find out an alternative shop and that, in fact, respondent had located one at No. 72, Mehar Chand Market, Lodhi Colony, with area of 450 sq. ft. and therefore there was no attempt on the part of the respondent to forcibly disposses the appellant. On 9.6.95, the respondent gave address of another shop-owner who was willing to give his shop to the appellant. It Was clear that the allegation of alleged force was a false allegation. In view of D.H. Manian & Ors. vs. Woman Laxman Kudar , the appellant whose licence was revoked, was in the position of a trespasser and it was not a fit case for exercise of 'discretion' to grant injuncion in favour of appellant. Appellant had not made out a prima facie case. Balance of convenience was not in favour of continuing appellant because respondent is deprived of the commercial value of the user of the shop. For these reasons, the temporary injunction was vacated on 8.11.95. (9) In this appeal learned counsel for the appellant contended that the learned single Judge could not ignore the judgment of Supreme Court in East India Hotel Ltd vs. Syndicate Bank and when appellant was having 'settled' possession, appellant was entitled to temporary injunction. Refusal to grant temporary injunction would amount to giving permission to remove the appellant by force and to violate the rule of law. Even a trespasser cannot be thrown out without resorting to due process of law. (10) The point that arises in this appeal is whether a person who himself asks the owner to enter into a 'Licence' and enters into such an agreement can, after expiry thereof and express request of the owners to vacate, seek the helping hand of the Court for a temporary injunction against the owner and whether the appellant can contend that till he is dispossessed by due process of law, he is entitled for an injunction? (11) In our opinion, there are two different sets of principles which have to be borne in mind. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be dispossessed by the owner except by recourse to law. This principle is laid down in Section 6 of the Specific Relief Act, 1103 (Sic 1963). That Section says that if any person is dispossessed without his consent from immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set lip in such suit. That a person without title but in "settled" possession as against mere fugitive possession- can get back possession if forcibly disposed or rather, if disposed otherwise than by due process of law, has been laid down in several cases. It was so held by the Supreme Court in Yashwant Singh vs. Jagdish Singh Air 1968, Sc 620; Krishna Ram Mohale vs. Mrs. Shobha Venkata Rao , Ram Rattan vs. State of U.P. and State of U.P. VS. Maharaja Dharmender Prasad Singh . The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma vs. Union of India . (12) Before going to the other aspect, we shall refer to one of the cases cited for the appellant. In East India Hotels Ltd. vs. Syndicate Bank (12) Suppl. (2) Scc 29, there was a conflict of opinion between two learned Judges of the

Supreme Court not in regard to the above principle but in regard to the question whether the appellant (owner) of the premises was bound to give back possession to the Bank (plaintiff therein) in the latter's suit for possession under Section 6 of the Specific Relief Act, 1963. Kasliwal J. held that the licence in favour of the Bank stood terminated, and the Bank was in the position of a trespasser in view of *D.H. Manian vs. Woman Laxman Kudav* (1970) (4) Scc 118. If dispossessed, a trespasser could not resort to Section 6 of the Specific Relief Act, 1963. The learned Judge observed that in *K.K. Verma's case* Chagla, C.J. pointed out that a tenant whose tenancy had ceased could get back possession under the summary procedure in the Specific Relief Act but that a trespasser who had been thrown out of possession could not go to Court under Section 9 and claim possession as against the true owner'. Kasliwal J. pointed out that the Bombay case was approved by the Supreme Court in *Lalla Yeshwar Singh vs. Rao Jagjish Singh* (1968 Sc 620). His Lordship would allow the appeal of the owners and dismiss the suit. However Ramaswamy J. differed holding that the possession of the Bank was "settled" possession and even if the Bank was a trespasser, it could resort to Section 6 of the Specific Relief Act, 1963 if dispossessed otherwise than by due process of law. He would therefore dismiss the appeal of the owner and confirm the decree for possession. The matter was referred to a third Judge. (13) Ramaswamy, J. had occasion recently to refer to his views in *East India Hotel's case* while dealing with question whether a person whose tenancy had expired could be said to be in lawful possession' for purposes of grant of licence under Cinematograph Act in *R.V. Bhupal Prasad vs. State of A.P.* . His Lordship held that lawful possession' was necessary at the time of grant of licence by the licensing authority in view of the language in the rule. For renewal of licence also, lawful possession was necessary even though the word lawful' was not used in the rules relating to renewal. His Lordship referred to *M.C. Chokkalingam vs. V. Manichava sagar* and to *Krishna Kishore Firm vs. Government of A.P.* . The possession of a tenant whose tenancy expired was a tenant at sufferance and his possession Was not lawful' and he was not entitled to renewal. No writ could be issued to the licensing authority. We have referred to this case because it refers to the views expressed by Ramaswamy, J. in *East India Hotels case*. This is so far as the first aspect referred to by us earlier, is concerned. (14) We shall now refer to the other aspect of the matter. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, can the trespasser seek injunction against the true owner? In our view this question does not entirely depend upon Section 6 of the Specific Relief Act but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunctions? Recently, the law in this behalf has been clarified by the Supreme Court in clear terms in *Mahadeo Savlaram Shelke vs. Pune Municipal Corporation* . It was there held by Ramaswamy J., after referring to Woodroffe on 'Law relating to injunction; L.C. Goyle 'Law of injunctions; David Bean Injunction' Joyce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context the Supreme Court quoted *Shiv Kumar Chadha vs. Mcd* wherein it

was observed that injunction is discretionary and that “JUDICIAL proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court” (15) His Lordship Ramaswamy, J. also referred to Dalpat Kumar vs. Prahlad Singh in regard to the meaning of the words ‘prima facie case’ and ‘balance of convenience’ and observed in Maha devo Savlaram Shelke (supra) at p.39: “IT is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession”. (16) Therefore as pointed by the above decision of the Supreme Court it is settled law that a trespasser cannot seek injunction against the true owner. It has been so held also by several High Courts stating that an injunction cannot be granted in favour of a person who is a trespasser against the true owner (Hoshiar Singh vs. Goon Sabha . In K.V. Narayan vs. S. Sharana Gowda , Alamelu Achi vs. Ponaiah . Biswabam Pvt Ltd. vs. Santosh , Bishni vs. Bahadur Singh, ; Padmanabha vs. Thkomas . The above decisions accord with the view taken by the Supreme Court in Shiv Kumar Chadha’s case and in Mahadeo Savlaram Shelke’s case. (17) It is true that in some other cases Bhawani Investments Ltd. vs. Shree Properties , Moyitivarapu Annapumaih vs. Melampati Narsimha Rao ; M/s Patel Exhibitors{Pvt} Ltd. vs. The Corporation of the City of Bangalore ; Bhola Nath & others vs. Maharo Raj Saheb Bundi State ; Smt. Geeta and another vs. Ashok Kumar (1982) 84 Pun. L.R.291 and in Sai Balaji Trading Co. vs. Veeraswamy (1980(1) Air 28, a contrary view has been taken that till evicted by due process of law, a trespasser is entitled to injunction against the true owner. These judgments in our opinion run quite contrary to the judgments of the Supreme Court in Mahadeva Savalram’s case and to the two earlier rulings of the Supreme Court quoted therein namely Shiv Kumar Chadha vs. Mcd ; Dalpat Kumar vs. Prahalad Singh and in our view, must be deemed to be wrongly decided. -The approach in the latter group of cases to the question of grant of injunction was from the angle of Section 6 of Specific Relief Act and Lala Yeshwant Singh case (AIR 1968 Sc 620) and K.K.Verma’s case and not from the angle of the Court’s discretionary power to grant injunction. (18) In our view injunction is an equitable relief and the Court must see whether a person who is a trespasser can seek the helping hand of the Court for protecting his unlawful possession as against the owner. A person who seeks equity must do equity. He must also come to Court with clean hands. When he does these things there will be no occasion for him to seek an injunction in as much as the trespass would have automatically stood vacated. If he does not do these things, he cannot at the same time ask for the helping hand of the Court to protect his illegal possession. (19) It is argued for the appellant that this may be anomalous. It is said that the trespasser has a “right”, to an injunction against the true owner, and this is complementary to the duty of the owner not to evict the trespasser outside the judicial process. In our view, there is no anomaly. Each of these is based on a different legal principle. If the plaintiff wants the defendant to act in accordance with law he must first abide by the law himself and vacate the property as one would expect a law abiding citizen to behave. (20) It is then argued that this may lead to multiplicity of proceedings. Should the plaintiff be allowed to be forcibly evicted so as to compel him again to seek

restoration of possession under Section 6 Specific Relief Act, or otherwise? The danger could be prevented? This argument based on multiplicity of proceedings, in fact, goes against the trespasser in possession. The plaintiff can, - on the same parity of reasoning - behave in such a manner as to make it unnecessary for the owner to sue for possession separately. The duty to be a lawful citizen is not one- sided. It does not apply only to the owner but applies to the trespasser as well. (21) For the above reasons, we are of the clear view that the appellant plaintiff whose licence has expired and which had itself pleaded in 1992 for a short period to vacate from the shop and which had been given a large number of notices to vacate and where the owners have even shown alternative premises which appellant could have, occupied - cannot be granted the helping hand of the Court for temporary injunction. The appeal is therefore dismissed in limine.