

Delhi High Court Sh. Kishan Lal Kalra vs N.D.M.C. on 18 April, 2001 Equivalent citations: AIR 2001 Delhi 402, 92 (2001) DLT 67, 2001 (59) DRJ 270 Author: A Sikri Bench: A Sikri ORDER A.K. SIKRI, J. 1. Scars of Emergency, which was proclaimed in the year 1975, are still visible. This case is yet another example that the persons affected by the excesses of that period are still struggling to get justice. The plaintiff in this case claims himself to be a victim of Emergency era. He was given license by the NDMC to run an open air restaurant in Connaught Circus, New Delhi which he started under the name and style of 'Ramble Open Air Restaurant'. The lease was to expire on 31st May, 1978. However, the plaintiff was allegedly thrown out of the premises after taking forcible possession thereof without due process of law by the defendant which sent its demolition squad with police force on 7th August, 1976 for this purpose. The plaintiff has filed the present suit claiming damages to the tune of Rs. 10 lacs suffered allegedly by the plaintiff on this account. 2. The detailed facts as mentioned in the plaint can be stated chronologically in the following manner: License deed to the plaintiff was granted for five years from 1st June, 1968 by NDMC to run an open air restaurant in Connaught Circus, New Delhi, which was so started and run under the name and style of 'Ramble Open Air Restaurant'. The land in question was about 3,000 sq. yds. and had a seating capacity for about 350 persons. The lease rental was Rs.5,104.00 per month for the said land and Rs. 250.00 per month for the car parking area. During June, 1973 the lease got extended by NDMC for another five years (up to 31st May, 1978) at increased rental of Rs.6,380.00 per month for the land and Rs.312.50 per month for the car parking. During June, 1975 Emergency was proclaimed under Article 352 of the Constitution. While the lease was subsisting till June, 1978, the NDMC on 21st June, 1976 initiated proceedings for eviction under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short "PP Act"). On 26th June, 1976 the plaintiff made a representation in detail to the NDMC explaining his investment and praying that it should not be jeopardised. On 24th July, 1976 the plaintiff filed a detailed reply before the Estate Officer to the show cause notice. On 3rd August, 1976 in the proceedings before Estate Officer, NDMC sought time to reply the objection and the matter was adjourned to 22nd September, 1976 for evidence of NDMC. While these proceedings were pending and were at the stage of NDMC's evidence, on 7th August, 1976 the NDMC took the law into its own hands and sent a demolition squad with police force to take forcible possession of the premises without due process of law, ignoring the fact that proceedings before the Estate Officer had already been initiated by the NDMC. After demolishing the structures and under threat of a blank warrant of arrest under MISA, possession was taken by the NDMC and the plaintiff was forcibly dispossessed. On 22nd September, 1976, the case before Estate Officer was adjourned to 19th October, 1976 and again to 4th December, 1976 at the instance of NDMC. NDMC absented on that date before Estate officer and the case was again adjourned to 13th December, 1976 for recording evidence. On 13th December, 1976 Mr. P.R. Gupta, Head Assistant of NDMC appeared and stated the possession of the premises in question had been "recovered" from the

plaintiff and NDMC did not want to pursue the matter further and the case was dismissed. In March, 1977 Proclamation of Emergency was revoked. The Plaintiff (after representations to the NDMC by letters dated 6th December, 1975 issued a statutory notice on 10th May, 1977 to NDMC under Section 49 of the Punjab Municipal Act, 1911 but to no effect. In July, 1979 the plaintiff filed the instant suit for recovery of damages of his wrongful dispossession and loss of profits for the balance period of the lease. 3. The defendant filed written statement in which it is admitted that proceedings were initiated against the plaintiff under the provisions of PP Act. It is also admitted that the defendant licensed this premises to one Smt. Kaushalya Pahwa after removing the plaintiff. However, the defense of the defendant is that the premises were voluntarily surrendered by the plaintiff, and therefore, suit was not maintainable. 4. On 7th January, 1981 two preliminary issues were framed relating to the maintainability of the suit and the limitation in filing the suit. By order dated 10th July, 1981 order was passed holding that the suit was within time and that issue as to maintainability could not be a preliminary issue but could be reframed. Detailed issues were framed on 24th November, 1981 which read as under: 1. Whether the suit is barred by res judicata by reason of the proceedings pending before the Estate Officer as alleged in paragraph 8 of the preliminary objections of the written statement? OPD 2. Whether the receipt dated 7th August, 1976 was obtained by the defendant from the plaintiff by exercising undue influence, pressure, coercion, duress and force as alleged in paragraph 7 of the replication? OPP (This issue will include the plea whether the possession of the disputed site was surrendered by the plaintiff voluntarily or was taken from him forcibly as alleged in para 7 of the replication). 3. Whether the license of the plaintiff was cancelled for violation of its terms and conditions and if so to what effect? OPD. 4. If issue No.3 is answered in the affirmative, was not the defendant entitled to take forcible possession from the plaintiff as alleged? OPP. 5. To what amount of damages, if any, is the plaintiff entitled? OPP. 6. Whether the sale of furniture etc. to Smt. Kaushalya Pahwa was made at the instance of the defendant and whether the defendant is liable for the loss caused to the plaintiff thereby? OPP. 7. Relief. 5. The plaintiff has tried to prove the case by producing Sh. Bhopal Singh, PW-1 who is a person from Estate office, his own evidence as PW-2 and Sh. Harish Chand, PW-3, Accountant of the plaintiff. It may be mentioned that no cross-examination of these witnesses was conducted by the defendant. The defendant failed to produce its own evidence also. One need not state in detail the proceedings to this effect. Suffice is to state that on number of dates nobody appeared on behalf of the defendant and belated efforts to cross-examine the plaintiff's witnesses or to lead its own evidence failed as the defendant suffered various judicial orders passed against it. Thus the position which stands today is that the un rebutted testimony of the plaintiff remains on record. PW-1, Sh. Bhopal Singh has produced the record relating to proceedings initiated against the plaintiff under the provisions of PP Act. PW-2 namely the plaintiff has testified to the various averments made in the plaint which include his deposition to the effect that the plaintiff was forcibly removed and dispossessed from the premises in question and he was coerced to write the

letter as per which he had allegedly given possession of the premises to the defendant and stated that this letter was not given by him voluntarily. PW-3 who is the Accountant of the plaintiff has proved various payments made and losses suffered due to the premature closure of the restaurant. These claims according to the plaintiff and this witness fall under the following heads: Document Loss on sale of Assets Rs. 3.28.949.00 [Investment of Rs.6.55 lacs. after depreciation PW-2/9 to 128] Amount paid as retrenchment Rs. 1,07,190.81} [PW-2/129 to 134] gratuity } (Rs. 55, 860.81 + Rs.55,330.00) } } Amount paid to other Rs. 30,715.31} staff }

Loss of profit for unexpired period of license.	Rs. 5,00,000.00	One week's sale figure Ex. PW-2/136 & 137-150'

	Rs. 9,66,855.12	

Interest @ 12 % p.a. w.e.f. July till decree plus future interest.		

1979

6. Mr. Fali S. Nariman, learned senior counsel appearing for the plaintiff submitted that the plaintiff was entitled to the aforesaid amount. The unrebutted testimony of the witnesses of the plaintiff, which should be believed in the absence of any cross-examination or evidence to the contrary, clearly proves that the plaintiff was forcibly ousted from the premises in question without due process of law. It was submitted that the defendant had itself initiated proceedings under Section 4 of the PP Act but without taking these proceedings to their logical conclusion and when these proceedings were still pending, in a high-handed manner, the defendant took possession of the premises and even forced the plaintiff to sign that he was surrendering the possession voluntarily. In such circumstances according to the learned senior counsel, the plaintiff became entitled to the damages as quantified above along with interest thereon. The submissions were legally phrased as under :
7. When the license was for a particular period which had not expired, the defendant had no right to terminate the said license prematurely and in any case dispossess the plaintiff without due process of law. It was submitted that the defendant had itself initiated the proceedings under the provisions of PP Act and while those proceedings were pending, the plaintiff was dispossessed forcibly. This was clearly illegal and amounted to breach of contract. Referring to the judgment of the Supreme Court in the case of M/s wire-Netting Stores and Anr. Vs. The Delhi Development Authority & Ors. , the submission of the learned senior counsel was that

once the machinery under the PP Act was set into motion, the defendants were entitled to evict the plaintiff only after following the procedures contained in Section 4 of the said Act and only after giving opportunity to the plaintiff in consonance with principles of natural justice. Once the procedure laid down by Section 4 of the Act was not followed by the defendant and no opportunity was given to the plaintiff such dispossession was clearly illegal, contrary to law and also contrary to the principles of natural justice. Specific reliance was placed on the following observations of the Apex Court: “It is only after the procedure in this section is complied with that the eviction of unauthorised occupants under Section 5 can take place. It appears that the Estate Officer did not follow the procedure of Section 4, nor did he give a notice which would comply with its terms and that is the reason why the notice has not been produced before us for our perusal. The petitioners said that they had mislaid the notice and could not produce a copy which probably is also not true. In any case, both sides seem to have suppressed the notice from the Court. In this view of matter we can hold that the procedure laid down by Section 4 was not followed, for it was the burden of the authority to establish to our satisfaction that they were acting in accordance with the law. In any case, no opportunity appears to have been given to the petitioners for showing cause against the proposed eviction. This is contrary not only to the law laid down but also to the principles of natural justice. In these circumstances, we have no option but to allow the petition. The action of the Authority appears to have been most high-handed on the facts of the case brought out before us. If the Authority wished to evict the petitioners from the occupation of these premises it behaved them to follow strictly the procedure laid down for their action. It is a matter of great regret that authorities constituted to take such drastic steps without recourse to civil court should be so oblivious to their own duties as laid down in the Act. We accordingly allow the petition and order the restoration of the premises to the petitioners and return of all the machinery and other goods and parts of their factory which have been sized from them.” On the strength of these observations, the learned senior counsel argued that the plaintiff could even seek restoration of the premises. The learned senior counsel also relied upon the judgment of the Supreme Court in the case of Krishna Ram Mahale(Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao in support of the proposition that the occupant in possession cannot be dispossessed without recourse of law.

8. The learned senior counsel relied upon the proceedings which were pending before the Estate Officer under the PP Act. Notwithstanding such proceedings the manner in which the possession was taken by coercing the plaintiff to sign the letter of possession was highlighted. It was submitted that this letter of possession was not a voluntary act of the plaintiff and forcible possession of the premises was taken by the defendant. It sent a demolition squad with police force giving the threat of blank warrant of arrest under MISA. The plaintiff, appearing as PW-2, had deposed to this

effect and there was no cross-examination which clearly proved the case of the plaintiff. Thus the singing of possession letter was clearly illegal and have no consequence in view of provisions of Section 15 of the Indian Contract Act. The reliance was also placed on the judgment of the Privy Council in the case of Barton Vs. Armstrong & Ors. (1975) 2 All England Law Reports 465.

9. Since, according to the plaintiff, he was dispossessed in contravention of the law and when the tenure of the license had not expired, it amounted to breach of the contract and the plaintiff was entitled to damages. It was submitted that as a consequence of wrongful dispossession, the plaintiff had certain definite calculable damages in the form of loss on sale of assets i.e. the plaintiff was compelled to sell the assets and the price fetched much less than the book value and in the process the plaintiff suffered loss on this account tot he tune of Rs.3,28,949/-. Likewise the plaintiff was compelled to pay retrenchment compensation and gratuity to his employees for their premature termination of services amounting to Rs. 1,07,190.81 paisa and a further sum of Rs.30,715.31 paisa to the other staff. The plaintiff was also entitled to loss of profit for unexpired period of license. A sum of Rs. 5 lacs was claimed on this account which was calculated on the basis of one week's sale figures duly proved on record. For claiming this amount it was submitted that it was for the plaintiff to reasonably assess the said loss and actual certainty as to what amount of damages was not necessary to be proved. For this proposition of law, reliance was placed in the case of Frederick Thomas Kingsley Vs. The Secretary of State for India AIR 1923 Calcutta 49 and in the case of Union Carbide Corporation Etc. Vs. UOI . The learned counsel also extensively read from McGregor on damages, Clerk & Lindsell on torts, Ratanlal & Dhirajlal on torts. In order to sustain the claim of interest at the rate of 12 per cent on the aforesaid amount, the plaintiff took shelter of the Supreme Court judgments in the case of Jagbir Singh & Ors. Vs. General Manager, Punjab Roadways & Ors. & and in the case of Smt. Chamell Wati & Anr. Vs. MCD & Ors. as well as in the case of Andard Mount(London) Ltd., England Vs. Curewel (India) Ltd., New Delhi AIR 1985 Delhi 45. As already pointed out above there is no cross-examination of any of the witnesses of the plaintiff. The defendant has also not led any evidence of its own. Thus the evidence of the plaintiff remains unrebutted. The learned counsel for the defendant, saddled with this hard reality, did not even venture to argue that possession taken from the plaintiff of the dispute premises by the defendant was lawful. His address was limited to the quantum of claim made by the plaintiff which would be noted and dealt with while addressing the issue of relief. It would now be appropriate to record issue-wise findings. Accordingly, I proceed to do so. Issue No: 2
10. The plaintiff appearing as PW-2 has narrated the incident of 7th August, 1976 when the possession was taken by the defendant from him. The relevant portion reads as under: "On 7th august, 1976 at about 2.00 p.m. I was in Hotel Rajdoot, Jangapura, New Delhi. I received a phone call

from my Manager in Ramble restaurant, which was being run by me, that about 15 people from the demolition squad with about 40 police men had come to the site along with defendants, officials including the Assistant Secretary, Shri Balbir Singh and they wanted to demolish my structures and forcibly take possession of the premises. My Manager also informed me that they have already started demolishing some of the structures. I instructed my Manager to request them to wait till I reached there. I reached there in about 20-25 minutes. I reached the site and saw that the demolition squad was demolishing some of the structures. So I requested Shri Balbir Singh, Assistant Secretary to hold the demolition till I had met Shri Ailawadi, Secretary of NDMC at that time. Thereafter I went and met Shri Ailawadi and was there for about an hour. He told me that he had instructions from Shri Sanjay Gandhi and other higher ups and he was helpless in the matter. Shri Ailawadi also told me that I had to sell my entire furniture, fixtures and other Installations to one Smt. Kaushalya Pahwa and her partner for a sum of Rs. 90,000/- which would be paid to me by cheque at the site. He also told me not to protest and accept the payment, otherwise instructions had been issued to arrest me under MISA. I reached back the site. The defendants already had possession note typed and a receipt for Rs.90,000/- in favor of Smt. Kaushalya Pahwa. I was forced to sign the possession note under threat that if I did not do so, I would be arrested and detained under MISA. Likewise when I hesitated in giving away every thing for Rs.90,000/-, a threat was repeated to me. I was shown a blank MISA warrant signed by the competent authority and I was told that my name had to be filled in to detain me. Under those compelling circumstances I was forced to part with my entire belongings for a paltry sum of Rs. 90,000/- while I had spent more than Rs.5 lacs on developing the area and other installation, furniture, fittings etc.”

11. In the absence of any cross-examination of the witnesses and/or any evidence in rebuttal produced by the defendant, the court has to believe the narration of facts as disclosed by the plaintiff. As per this testimony of the plaintiff, the plaintiff was forced to sign the possession note under threat. The threat was that he would be arrested and detained under MISA. As per the plaintiff he was shown a blank MISA warrant signed by the competent authority and he was told that his name had to be filled in to detain him. Under these compelling circumstances, he was forced to not only sign the possession note but also forced to part with his entire belongings for a paltry sum of Rs. 90,000/-.
12. Section 15 of the Indian Contract Act defines ‘coercion’ as under: “Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with intention of causing any person to enter into an agreement.”
13. A person is not bound by any act done by him under duress or coercion. The threat of detaining under MISA was clearly an act of coercion which would fall within the mischief of Section 15 of the Indian Contract Act.

Going by the events which were happening in the Emergency days, it cannot be ruled out that such a threat would have been given by the defendant to the plaintiff. One may usefully quote the observations of Privy Council in the case of *Barton Vs. Armstrong & Ors.*, (1975)2 All England Law Reports. This is what was observed by the majority opinion: “A disposition made under duress or undue influence was to be regarded in the same way as a disposition made as the result of a fraudulent misrepresentation. Thus if A’s threats were but one reason for B’s executing the deed, B was entitled to relief notwithstanding that he might well have entered into the transaction even if A had uttered no threats to induce him to do so. Although B might have thought he was entering into a satisfactory business arrangement with A in order to secure A’s resignation from Landmark, he must have realised the great financial risk he was taking in allowing A such highly advantageous terms without adequate financial guarantees from the finance corporation. There was no burden on B to show that but for A’s threats which he had made to B and the unlawful pressure which he had exerted on him had contributed nothing to B’s decision to sign the deed. Although B might have signed in any event such threats and pressure must have contributed towards his decision to sign. It followed that the deed had been executed under duress and was void so far as it concerned B.”

14. Accordingly, I hold that receipt dated 7th August, 1976 was obtained by the defendant from the plaintiff by exercising pressure, duress and coercion and it was not a voluntary surrender of the premises by the plaintiff to the defendant. The issue is accordingly decided in favor of the plaintiff and against the defendant. Issue No:1
15. In the preliminary objection contained in para 8 of the written statement, it is alleged by the defendant that the suit was barred by *res judicata* as the same subject matter which is substantially and materially in the present suit was pending before the Estate Officer and the same has been decided finally against the plaintiff and in favor of the defendant. While recording the findings on issue NO.2 it has already been held that the possession of the disputed suit was not surrendered by the plaintiff voluntarily and it was taken from him forcibly. Moreover, the Estate Officer did not proceed to decide the matter on merits. PW-1, in his deposition has stated about the proceedings before the Estate Officer. The brief narration of the proceedings has already been recorded above. On 13th December, 1976 one Sh. P.R. Gupta head assistant of defendant appeared and stated that possession of the premises had been recovered from the plaintiff, and therefore, the defendant did not want to pursue the matter further and the case was dismissed. Thus, the Estate Officer neither proceeded to deal with the case on merits nor any findings are recorded which would operate as *res judicata* in these proceedings. Even otherwise, to apply the principles of *res judicata* under Section 11 of the act, the findings should be of a competent court. whether an Estate Officer can be treated as ‘Court’ would itself be questionable. be as it may, since there is no

adjudication nor any finding by the Estate Officer question of res judicata does not arise. The learned counsel for the defendant did not even argue this point. this issue is accordingly decided against the defendant.

16. Burden of proof on these issues was on the defendant. Neither the defendant led any evidence nor any arguments were advanced in support of these issues. These issues are accordingly decided against the defendant.
17. This issue also stands amply proved by the deposition of PW-2 part of which is already reproduced above while deciding issue No.2 wherein it is noticed that the plaintiff was forced to sell his furniture etc. at Rs. 902,000/-. This was at the instance of the defendant who had threatened him with detention under MISA if plaintiff does not do so. Therefore, the defendant would be liable for the loss caused to the plaintiff on this account. This issue is accordingly decided in favor of the plaintiff and against the defendant.
18. In so far as quantum of damages is concerned, as already pointed out above, the plaintiff has claimed the damages under the following heads:
 - i) Loss of sale of assets.
 - ii) Amount paid as compensation and gratuity to the workmen and to the other staff. iii) Loss of profit for unexpired period of license.

16. For proving loss of sale of assets, the plaintiff has produced on record documents (Ex. PW-2/9 to PW-2/128) as per which the plaintiff had made investment in the form of furniture etc. The value of this investment comes to Rs. 6.55 lacs. after depreciation. The plaintiff was compelled to sell these assets at lesser rate and in the process he incurred loss of Rs. 3,28,949/-. From the documents on record it is concluded that the plaintiff has been able to prove the loss suffered by him on account of sale of these assets which he was compelled to do because of his illegal dispossession. The plaintiff would therefore be entitled to a sum of Rs.3,28,949/- on this account.
17. The plaintiff has proved on record documents (Ex.PW-2/129 to PW-2/134) as per which he made payment of Rs.55,860.81 paise as retrenchment compensation, Rs. 55,330/- as gratuity to its workmen in addition to Rs. 30,715.31 paise to the other staff due to the closure of the restaurant. Because of premature termination and illegal dispossession the plaintiff was made to pay retrenchment compensation and payment to the other staff. Therefore, the plaintiff would be entitled to these amounts. However, I agree with the counsel for the defendant that as far as gratuity is concerned, the same is paid for the services rendered by the workmen. This amount plaintiff was to pay to his workmen (even if the license were to continue till the end of its usual term) on the expiry of term while dispensing with the services of the workmen. Therefore, payment made by the plaintiff to his workmen on account of gratuity cannot be attributed to the illegal dispossession of the plaintiff from the suit property. The claim

of Rs. 55,330/- is therefore not admissible. The plaintiff would be entitled to Rs. 55,860.81 paisa and Rs.30,715.31 paisa only under this head.

18. Loss of profit is claimed on the basis of one week's sale figures for which Ex. PW-2/136 is filed. On the basis of such calculation, the profit for the unexpired period of license would have come to more than Rs. 5 lacs. The plaintiff has however confined his claim to Rs. 5 lacs under this head. There cannot be a direct and concrete evidence of such a loss. The Damages on account of loss of profit are in the nature of prospective, and therefore, necessarily contingent. It is now well established principle of law that the mere fact damages cannot be assessed with certainty does not relieve the wrongdoer of the necessity of paying damages. (Chaplin Vs. Hicks, (1911) 2 L.B. 786.) In Biggin Vs. Permanite (1951) 1 K.B. 422, Devlin, J observed "Where precise evidence is obtainable, the court naturally expects to have it, (but) where does not, the court must do the best it can". Since it cannot be measured with precision as to what profits the plaintiff would have earned had he continued to run the restaurant for remaining term of the license and the figure given by the plaintiff for the period he actually did business could be the best indicator. This is what the plaintiff has done and based on this formula the plaintiff has been able to prove the likely loss of Rs.5 lacs. The plaintiff is accordingly held entitled to the amount of Rs.5 lacs under this head.
19. The total amount of damages calculated in the aforesaid manner would come to Rs. 9,11,525.12 paisa.
20. This brings us to the question of interest. The plaintiff has claimed interest from the date of suit and submitted that the interest from the date of the suit could be awarded by the court under Section 34 of CPC. The judgments quoted in support of this proposition are :1) Mahabir Prasad Rungta Vs. Durga Datta, , 2) AIR 1940 Bombay 639 and 3) Mahant Narayana Dasjee Varu & Ors. Vs. Board of Trustees. The Tirumalai Tirupathi Devasthanam, . The learned counsel for the defendant did not dispute and rather conceded that the court had the power to grant interest on the aforesaid damages from the date of suit. The plaintiff would accordingly be entitled to interest at the rate of 12 per cent per annum w.e.f. the date of institution of this suit till decree. The plaintiff shall also be entitled to future interest at the rate of 12 per cent per annum on Rs.9,11,525.12 paisa till the payment thereof. Relief:
21. In view of the aforesaid discussion, the suit of the plaintiff is decreed in the sum of Rs.9,11,525.12 paisa with cost as well as interest at the rate of 12 per cent per annum w.e.f. 7th August, 1979 i.e. the date when the plaint was filed till the decree and future interest at the rate of 12 per cent per annum. Decree sheet be drawn accordingly.