

Sl. 13
24.12.2014.
S.d.

C O 4052 of 2014

Sandip Banerjee @ Bandopadhaya and others.
-versus-
Sri Nilmadhab Majilya

Mr. S. P. Roychowdhury
Mr. Anit Rakshit
....for the petitioners.

Mr. Uttiya Roy
...for the opposite party.

The grievance of the defendants, in a suit where the plaintiff has claimed a declaration as to tenancy in respect of a commercial property in Memari, is that the trial court has issued a mandatory injunction for the plaintiff to obtain possession of the suit premises which, according to the plaintiff, had been forcibly taken possession of by the defendants by putting a padlock at the main entrance to the suit premises after the institution of the suit.

The suit was instituted in the year 2013 and an ad interim interlocutory order was obtained by the plaintiff by which the petitioners herein were restrained from disturbing the plaintiff's possession of the suit premises. The injunction was for a limited

duration and it was not extended on January 2, 2014 upon the defendants resisting the same and the trial court recording a tentative view in the order dated January 2, 2014 that the tenancy agreement between the parties had expired on December 31, 2013.

The plaintiff has preferred an appeal from the order dated January 2, 2014 but, according to the defendants, the plaintiff has not taken any steps to prosecute such appeal.

Earlier this year, the plaintiff complained before the trial court that on or about January 14, 2014, when the principal injunction application was pending before the trial court, the defendants purported to affix a padlock at the gate of the suit premises and, thereby, purported to dispossess the plaintiff from the suit property. The plaintiff applied for a mandatory injunction commanding the defendants to break upon the padlock and allow the plaintiff to enjoy the possession of the suit premises. The plaintiff says that on an application for local inspection filed by the plaintiff, it was reported by the commissioner that the plaintiff was in possession of the suit premises and was running a computer training centre thereat. In course of the plaintiff's subsequent application for mandatory injunction before the trial court, the petitioning defendants raised the bogey of res judicata. The trial

court took a view that a prayer for interlocutory injunction would not be susceptible to the principle of *res judicata*. Though the observation in the order dated November 20, 2014 may not be altogether correct, but the sense reflected therein cannot be questioned that the refusal of a previous injunction would not prevent a subsequent prayer being made for interlocutory injunction on different grounds or subsequent events in course of the pendency of a suit.

By a well-reasoned order, the trial court allowed the plaintiff's application for mandatory injunction and directed the defendants to break open the padlocks at the suit premises for the plaintiff to be entitled to resume possession thereof. The defendants preferred an appeal from such order of November 20, 2014 and the appeal has been fixed for hearing in early February, 2014. The defendants say that since plaintiff admits to be out of possession of the suit premises from or about January, 2014, the appellate court ought to have stayed the operation of the order dated November 20, 2014 pending hearing in the appeal.

The appellate court has appropriately exercised the discretion available to it in declining to stay the trial court order, particularly when the petition for mandatory injunction had been

allowed upon substantial contest. In any event, the balance of convenience demanded that since the plaintiff was in possession of the suit premises at the time of the institution of the suit, as corroborated by the report of the inspection commissioner, the plaintiff's possession ought to be restored since the position as to possession, prima facie, appears to have been disturbed by the defendants during the pendency of the suit. Merely because the order of injunction originally passed in favour of the plaintiff was not extended on January 2, 2014 did not imply that the landlords had the right to take the law into their hands and dispossess the plaintiff from the suit property by affixing a padlock thereat.

The order impugned dated December 10, 2014 does not call for any interference.

CO 4052 of 2014 is dismissed.

The observations herein are tentative. However, it is only the petitioners who are to blame for inviting the observations that may leave some impact on the courts below.

There will be no order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Sanjib Banerjee, J.)