Tek Singh vs Shashi Verma on 4 February, 2019

Equivalent citations: AIR 2019 SUPREME COURT 1047, (2019) 199 ALLINDCAS 258 (SC), AIRONLINE 2019 SC 79, (2019) 135 ALL LR 294, (2019) 144 REVDEC 831, (2019) 199 ALLINDCAS 258, (2019) 1 CLR 787 (SC), (2019) 1 WLC(SC)CVL 331, (2019) 2 ALL WC 1665, (2019) 2 CURCC 53, (2019) 2 ICC 209, (2019) 2 RECCIVR 203, (2019) 3 ALL RENTCAS 211, (2019) 3 ANDHLD 29, (2019) 3 MAD LJ 540, (2019) 3 SCALE 86, AIR 2019 SC (CIV) 1119

Author: R.F. Nariman

Bench: Vineet Saran, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1416 OF 2019
(Arising out of SLP (C) No. 10850/2018)

TEK SINGH Appellant(s)

VERSUS

SHASHI VERMA AND ANR. Respondent(s)

J U D G M E N T

R.F. Nariman, J.

1) Leave granted.

2) The Respondent No.1 filed a Civil Suit dated 05.03.2013 before the Civil Judge, Senior Division, Solan under Section 6 of the Specific Relief Act in which the following reliefs were claimed:

"(a) Declaring that the effect the plaintiff was running business in Shop No. 3 in the

name and style M/s Om Garments owned by proforma Defendant No. 2 in Anand Complex, The Mall Solan w.e.f. 28.01.2013 on the basis of partnership deed of the said date with proforma Defendant No. 2 and the plaintiff has been wrongly dispossessed in the intervening night of 03.03.2013 – 04.03.2013 illegally, wrongfully, without the consent of the plaintiff or proforma Defendant No. 2.

(b) Decree for permanent prohibitory NATARAJAN Date: 2019.02.08 16:47:52 IST Reason:

from causing any interference on any mentioned above."

3) A written statement was filed by the appellant herein denying the averments made in the Suit and stating that he has been in possession since 2004 as a tenant of the landlady, who is Respondent No.2 before us.

4) The landlady also filed a written statement dated 05.07.2013 in which she stated that apart from the partnership entered into with Respondent No.1, the petitioner was her tenant w.e.f. 2004. An Order 39 Rule 1 application was filed which was dismissed by the learned Single Judge on 21.04.2015 saying that the relief asked for could not be granted at this stage as it would amount to decreeing the Suit itself. An appeal filed before the Additional District Judge met with the same fate. By the judgment dated 19.12.2016, the appellate Court held:

"However, when it is an admitted case of Defendant No. 2 admittedly land lady of the suit shop that she has rented the suit shop to Defendant No. 1/Respondent and has set up has sublet the suit shop to the plaintiff which is not at all the case of the plaintiff primafacie it is clear on record to respondent/defendant No. 1 and Defendant No. 1 has been running suit shop since 17.09.2004 when both the Defendants have also reduced rent agreement into writing, copy of which is also available in the case file. As per rent agreement, the tenancy had commenced w.e.f. 01.09.2004. Nothing has come on record, if Defendant No. 1/respondent had ever vacated/surrendered the possession of the shop in favour of landlady nor it is the case of Defendant No.

2 that she ever sought eviction of Defendant No. 1 from the suit shop. It appears from the copy of partnership deed having been relied upon by the applicant that both applicant and Defendant No. 2 had connived with each other in order to oust Respondent No. 1 who is tenant over the suit shop and filed the suit as well as application for temporary and mandatory injunction in the Court. Moreover, when the applicant herself has come with the plea that she is out of possession of the suit shop and she has prayed that possession in her favour be restored qua the suit shop by way of temporary injunction and at the same time the applicant has failed to prove on record that she has primafacie case of balance of convenience lies in her favour or that she is going to suffer irreparable loss as discussed above hence by allowing of the application as prayed by applicant would amount to decree of the suit in favour of the applicant without giving the parties to prove their respective claims by leading evidence. Even when it has come on record that Respondent No. 1 is in actual possession of

the suit property which was landlady in the year 2004 and nothing has come on record that the Defendant No. 1 had ever been evicted from the suit shop in accordance with law or he ever surrendered the possession of the suit property in favour of defendant No. 2, it is clear on record that Respondent No. 1 has primafacie case and balance of convenience also lies in her favour."

5) By the impugned judgment dated 10.04.2018, a learned Single Judge of the High Court of Himachal Pradesh set aside the concurrent findings of fact and allowed a revision petition. This was done without dealing with any of the aspects set out by the first Appellate Court. From what one is able to gather, given the language used in the judgment, it appears that the learned Judge was swayed by the fact that a police compliant had been filed on 03.02.2013 in which dispossession was acquiesced in.

6) We are constrained to observe that every legal canon has been thrown to the winds by the impugned judgment. First and foremost, the 1999 amendment to the CPC added a proviso Section 115 which reads as follows:

> "115. Revision-(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-
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> (a) to have exercised a jurisdiction not vested in it by law, or
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> (b) to have failed to exercise a jurisdiction so vested, or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:
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> Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.
>
> Xxx xxx xxx (3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

A reading of this proviso will show that, after 1999, revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders.

7) Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In D.L.F. Housing & Construction Company Private Ltd., New Delhi vs. Sarup Singh and Others(1970) 2 SCR 368 this Court held:

"The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal." at Pg.373.

8) Learned counsel appearing for the respondents argued before us and attempted to support the judgment. He cited the judgment of Dorab Cawasji Wardenvs. Coomi Sorab Warden and Others (1990) 2 SCC 117. Para 16 of this judgment is set out hereinbelow:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief." This judgment also makes it clear that when a mandatory injunction is granted at the interim stage much more than a mere prima facie case has to be made out. None of the aforesaid statutory provisions or judgments have either been adverted to or heeded by the impugned judgment.

9) We, therefore, set aside the impugned judgment and restore the judgment of the Courts below.

10) Since the suit filed is a Section 6 suit which is a summary proceeding in itself, the trial Court should endeavour to dispose of the Suit itself within a period of six months from today.

11) The appeal is allowed in the aforesaid terms.

..... J. (ROHINTON FALI NARIMAN) ..... J. (VINEET SARAN) New Delhi;

February 04, 2019.