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SMT. SATI RANI SEN

v.

M/S INDIAN STANDARD CASTING CO. AND ANR.

MARCH 17, 1997.

B

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908:*

C Order 21, Rule 90 read with s. 151, Order XXXIX, Rules 1 and 2—Order XLIV, Order XL Rule 1—Cross suits by sub-tenant and landlord for declaration of their respective rights—Order by trial court maintaining status quo and giving ad Interim injunction restraining landlord from disturbing possession of sub-tenant—Pending suits landlord filed in a different court another suit against principal tenant only in respect of self same property and obtained an ex parte decree—In execution proceedings the sub-tenant filed an application under Order XXI Rule 90 r/w s. 151 CPC—Later, sub-tenant filed another application under Order XXXIX Rules 1 and 2—Application allowed—Held, though the sub-tenant filed an application under Order XXXIX Rules 1 and 2 in substance it is one under Order XLIV CPC for restitution of the possession by virtue of the order of status quo granted in earlier suit—So long as the status quo order and ad interim injunction in the earlier suit maintaining the possession of the sub-tenant continue to subsist, the execution of decree in later suit though became final without impleading the sub-tenant is to over reach the order of injunction and is an abuse of process of the Court—However, since the sub-tenant stood dispossessed, the landlord should be appointed as Court receiver under Order XL Rule 1 and in the event of any decision against the landlord, the sub-tenant would be put into possession—All the cases would be transferred to one Court, i.e. to the Court of IV Addl. Judge Alipore.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2545 of

1997.

From the Judgment and Order dated 14.10.96 of the Calcutta High Court in C.O. No. 2514 of 1995.

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Raju Ramachandran, Rana, Ms. S. Mukherjee and Goodwill Indeevar for the Appellant.

Vijay Hansaria, Sunil K. Jain, J.K. Bhatia and S. Mukherjee for the Respondents. A

The following Order of the Court was delivered :

Leave granted. We have heard learned counsel for the parties. B

This appeal by special leave arises from the order of the learned Single Judge of the High Court of Calcutta, made on October 14, 1996 in C.O. No. 2514/95. The present position appears to be that the Premises No. 31, Raja Santosh Road, Alipore, Calcutta is the subject matter of the suit. M/s Indian Standard Casting Company filed suit No. 86/90 on the file of the IVth Additional District Judge, Alipore. Therein, they had claimed that they were duly inducted by 2nd respondent, M/s. Metal Box India Ltd. as a tenant and, therefore, they have the leasehold right in the premises. Similarly, the appellant filed suit No. 435/90 on the file of the learned IInd Munsif, Alipore. Therein, the appellant claimed that M/s. Metal Box India Ltd. is the tenant and the first respondent has no manner of interest of tenancy right therein as against the appellant. Admittedly, both the suits are pending. In Suit No. 86/90, the trial Court passed an order on July 14, 1990 directing that *status quo* be maintained and also given *ad interim* injunction restraining the appellant from disturbing the possession of the first respondent. Admittedly, the said order is still in operation. While the proceedings were pending, the appellant filed another suit bearing No. 66/93 on the file of the learned IInd Munsif Judge wherein the appellant impleaded only M/s. Metal Box India Ltd. as the sole defendant and had an *ex parte* decree. In execution thereof, the possession was taken on May 23, 1995. C D E

The first respondent, viz. Indian Standard Casting Co. filed an application under Order XXI, Rule 90 read with Section 151, CPC in Suit No. 66/93 stating that he is having lawful possession and cannot be unlawfully dispossessed in execution of the decree dated January 4, 1995. Though the first respondent filed an application under Order XXXIX, Rules 1 and 2, CPC but in substance, it is one under Order XLIV, CPC for restitution of possession by virtue of the order of the *status quo* granted on July 14, 1990. The said application was ordered which is the subject matter in this appeal. F G

Though Shri Raju Ramchandra, learned senior counsel appearing for H

- A the appellant, contends that the appellant in execution of the decree dated January 1, 1995 in Suit No. 66/93 came to have lawful possession of the property in his right as a decree-holder and owner of the property. The civil Court was not right in directing restitution. Palpably, the argument is palatable and seemingly acceptable but in view of the fact situation, the contention stands no merit. Obviously, so long as the *Status quo* order and
- B ad interim injunction maintaining the possession of M/s. Indian Standard Casting Company continue to subsist, the execution of the decree in Suit No. 66/93 though became final without impleading the said respondent is to over reach the order of injunction and is an abuse of the process of the Court. It would be obvious that the appellant being the defendant in Suit
- C No. 86/90 and having suffered the order of *Status quo* as also ad interim injunction which is still subsisting, without that order being vacated or suit being disposed of, the appellant could not have the decree in Suit No. 66/93 executed without bringing it to the notice of the Court or without taking steps to have respondent No. 1, Indian Standard Casting Co., impleaded
- D as a party-defendant to that suit. Since Indian Standard Casting Co., had already obtained the order which is operating, it could not be dispossessed by execution of an *ex parte* decree to which it was not a party. Obviously, the appellant wanted to over-reach the order passed in Suit No. 86/90. Normally, we would have directed the appellant to reconstitute possession to the respondent. The status of the respondent itself is to be decided in its
- E suit. Unfortunately, the respondent stood dispossessed on May 23, 1995. Under these circumstances, the question is: what would be the proper course? In view of the above factual situation, we think that the appellant should be appointed as Court receiver under Order XL, Rule 1, CPC and would obviously be answerable to the Court. In the event of any decision against the
- F appellant in the above suits, it would be obvious that the appellant shall surrender possession to M/s. Indian Standards Casting Co. Otherwise, the possession would remain with the appellant, the owner of the property.

- In view of the fact that Suit No. 86/90 and Suit No. 435/90 are pending in different courts and also the proceedings under Order XXI, Rule 90 in
- G Suit No. 66/93, we are of the view that all the three proceedings should be transferred to one Court. Accordingly, we direct that suit No. 435/90 and the application filed under Order XXI, Rule 90, CPC should be transferred to the IVth Additional Judge, Alipore to be tried along with Suit No. 86/90. We are informed that the appellant has not filed written statement so far.
- H Thirty days time from today is granted to the appellant to file the written

statement. If the written statement is not filed, the appellant would forfeit his right to file the written statement. IVth Additional Judge is directed to dispose of both the suits as well as application under Order XXI, Rule 90, CPC as expeditiously as possible within a period of six months from the date of the receipt of this Order. A

The appeals is accordingly disposed of. No costs. B

R.P.

Appeals disposed of.