SRI SAMIR SOBHAN SANYAL A

v.

TRACKS TRADE PRIVATE LTD. AND ORS.

APRIL 16, 1996

[K. RAMASWAMY AND S.P. BHARUCHA, JJ.] B

Code of Civil procedure, 1908/Specific Relief Act, 1963 :

Order 21 Rules 98 and 99—Section 28—Under a lease deed entered into between the landlady and the appellant's employer, appellant put in possession of the property—Landlady entering into an agreement with some other company for sale of the property—She also filed an application under S.28 of Specific Act for rescinding the contract she had entered into with the appellant's employer—However appellant not impleaded—Appellant filing an application under Order 21 Rules 98 and 99—No order or decree of eviction passed against him—However the landlady's suit for possession came to be decreed and appellant dispossessed—Held: Dispossession of appellant unlawful—Court's giving its acceptance to such a high-handed action deprecated—Appellant to be put back in possession within 24 hours—Executing Court directed to dispose of the application under S.28 of the Specific Relief Act, along with the appellant's application under Order 21 Rules 98 and 99—Till the adjudication is over appellant to remain in possession. C D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7515 of 1996 Etc.

From the Judgment and Order dated 6.7.95 of the Calcutta High Court in C.O./C.R. No. Nil of 1995. F

Gopal Subramaniam, Dr. R.N. Mukherjee, K. Madhava Reddy, R.K. Jain, Parag P. Tripathi, Rajesh Kumar Singh, Ranjit Thomas N. Ganapathy, Ms. Sumita Mukherjee, Goodwil Indeevar, Rana Mukherjee, Raj Kr. Gupta, H.P. Sharma, Rajesh, Dr. Sumant Bharadwan, Ms. Mridula Ray Bhardwaj, Mrs. I.M. Achari, K. V. Mohan, Sanjiv Sen, S.V. Deshpande and Pramit Sexena for the appearing parties. G

The following Order of the Court was delivered :

Leave granted. H

A This case is a classic illustration of the travesty of justice and high-handedness in the dispossession of a person in possession without due process of law. The appellant, admittedly, was inducted as a tenant on behalf of M/s. India Foils Ltd. into the premises bearing No. 16, May Fair Road, Calcutta-19. The property belongs to Mrs. Gertrud Chand (hereinafter referred to as 'landlady') who had entered into a lease with B M/s. Indian Foils Ltd. on March 27, 1969 for the demise of the said property to the said company. In furtherance thereof, possession of the premises was, admittedly, given to the appellant. The landlady had entered into an agreement with the 6th respondent, M/s. Habitat Developers on October 17, 1985 for sale of the property for a sum of Rs. 40 lakhs. For C the enforcement thereof, the 6th respondent filed title suit No. 137 of 1986 for specific performance in the court of the Second Assistant Judge, Alipur. In the written statement filed by the landlady, she had admitted thus :

D "One Mr. Sanyal was inducted into the premises by India Foils Ltd. Consequently, the defendant was not in a position to offer the suit property free from encumbrances, but the plaintiff-Company despite full knowledge of such encumbrances expressed its desire to purchase the property at a consideration price of Rs. 40 lakhs."

E It would thus be seen that in the suit for specific performance, the 6th respondent was put on notice that the appellant was in possession and enjoyment of the demised premises and yet the 6th respondent had entered into the agreement subject to the encumbrances. Subsequently, the suit came to be decreed for khas possession also which decree became final. F In spite of the fact that the 6th respondent was aware of the continuance in possession and enjoyment of the demised premises by the appellant, no steps have been taken either to have him impleaded as a party defendant to the suit for specific performance nor a decree personally against him was obtained in any other independent proceedings as on date.

G The question, therefore, is whether the appellant can be dispossessed in execution of the decree in title suit No. 137 of 1986. When the possession of the appellant was sought to be interdicted, admittedly, he filed a petition under Order 21, Rules 98 and 99, CPC claiming adjudication of his right to remain in possession of the said property. It is his case that his employer H had agreed to allow him in possession till alternative accommodation is

given to him even after retirement. It is not necessary to narrate the subsequent events in chronology which have cropped up in several of the proceedings. Admittedly, on a petition filed by the appellant, the High Court had directed a Court Officer to be in possession of the property. In furtherance thereof, the Court Officer did take possession of the property. Later, attempts have been made by the first respondent who was said to have entered into a *lease* with the 3rd respondent, to come into the possession of the property, but they were rejected by the executing Court as well as by the High Court on appeal. The 6th respondent assigned his rights in the decree to the 3rd respondent Pranav Merchandise Pvt. Ltd. In the application for continuance of the appellant's possession the executing Court directed the Court Officer appointed by the High Court to remain in possession of the property till the application filed under Order 21, Rules 98 and 99, CPC was disposed of.

In the meanwhile, the 1st respondent had taken two other applications before the trial Court at different times seeking for possession of the property. The first application was dismissed. Consequently, he filed a revision in the High Court. The subsequent two applications also came to be dismissed, one day prior to hearing of the revision under appeal and the same became final. The High Court in the impugned order dated July 6, 1995 has directed induction of the 1st respondent into possession of the property. We are informed that even before that order came to be passed, he had already come into possession of the property. When the matter had come up before this Court at the time of admission, the 1st respondent had entered appearance through the counsel and it was brought to our notice that he had already come in possession of the property in execution of the decree. Nonetheless, by order dated July 24, 1995 this Court passed the order as under :

> "Issue notice.
>
> Mr. goodwill Indeevar and Ms. Mridula Ray Bharadwaj, Advocates take notice for Respondent Nos. 1 and 2 respectively. Four weeks' time is granted for filing counter affidavits and two weeks thereafter for rejoinder. Post after six weeks.
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> Though the counsel for the respondents state that the possession was taken on 12th July, 1995, on the facts and circumstances, we think that interim suspension of the High Court's order be

made. It is accordingly made".

It would thus be clear that without any decree or order of eviction of the appellant from the demised premises, he had been unlawfully dispossessed from the premises without any due process of law. The question, therefore, is: whether he should be allowed to remain in possession till his application under Order 21, Rules 98 and 99 is adjudicated upon and an order made. Though the learned counsel for the 1st respondent and also for the 3rd respondent, who is one of the transferees from the 6th respondent, sought to contend that the appellant has no right to remain in possession after the lessee, M/s. India Foils Ltd. had admitted by a resolution that the appellant has no right to remain in possession, we are not impressed with the arguments. At this state, we are only concerned with his admitted possession of the demised premises. What rights would flow from a contract between him and him employer is a matter to be adjudicated in his application filed under Order 21, Rules 98 and 99 C.P.C. At this stage, it is pre-mature to go into and record any finding in that behalf. The learned counsel for the 1st respondent also repeatedly sought to bring to our notice that on account of the orders of the Court Officer passed by the High Court the maintenance cost has been mounting up due to the delay in disposal of the proceedings in various courts. Even with regard to that, we are not impressed with the same. Since the letter of the law should strictly be adhered to, we find that high-handed action taken by the respondent Nos. 1, 3 and 6 in having the appellant dispossessed without due process of law, cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct to dispossess the appellant from demised property and would say that the *status quo* be maintained. If the Court gives acceptance to such high-handed action, there will be no respect for rule of law and unlawful elements would take hold of the due process of law for ransom and it would be a field day for anarchy. Due process of law would be put to ridicule in the estimate of the law-abiding citizens and rule of law would remain a mortuary.

Under these circumstances, we are left with no option but to allow the appeal with costs quantified at Rs. 7,500, against each of the respondent Nos. 1, 3 and 6 to be payable to the Supreme Court Legal Aid Committee. If the amount is not paid within one month from to-day, the Supreme Court legal Aid Committee would be entitled to recover the same from them by execution of this order as decree.

The 1st respondent is directed to put the appellant in possession within 24 hours. The executing Court is directed to dispose of the application filed by respondent Nos. 7, 8 and 9, heirs of the landlady filed under Section 28 of the Special Relief Act, 1963 for rescinding the contract along with the application filed under Order 21, Rules 98 and 99, CPC and dispose it of after the former is decided.

Contempt Petition No. 61 of 1996.

Notice is issued to the 1st respondent to show cause why he should not be convicted for deliberate disobedience of the order dated July 24, 1995, directing that the appellant be put into possession through Court Officer. Counsel for the 1st respondent takes notice for contempt. He seeks for and is granted time for filing counter-affidavit. The 1st respondent through its Chief Executive/Managing Director or by whatever name is called, shall be present in person in the Court on *15.7.96* to which date the matter is directed to be posted.

Contempt Petition No. 309 of 1995 to be posted on the same day.

G.N. Appeal allowed.