

IN THE COURT OF THE ADDL. DISTRICT JUDGE –CUM- SPECIAL  
JUDGE, C.B.I. COURT NO.II, BHUBANESWAR.

PRESENT ;

Dr.A.K.Mishra,  
Addl. District Judge –cum-  
Special Judge, C.B.I. Court No.II,  
Bhubaneswar.

**F.A.O. No. 4/109 of 2015.**

Arising out of order dated 5.10.2015 passed by  
the learned Civil Judge (Junior Division),  
Bhubaneswar in I.A. No. 441 of 2015 (C.S.No.  
4929 of 2015).

Manoj Kumar Moharana, aged about 33 years,  
s/o. Sridhar Moharana, Vill.-Arilo, P.S. Sankhataras,  
P.S. Cuttack Sadar, Dist. Cuttack.

... Appellant.

Versus.

Babita Satapathy, aged about 43 years,  
w/o. Sruti Ranjan Satapathy,  
At- DHPL Home, Flat No.314, Rangamatia,  
P.O. Rangamatia, RC P.S.Mancheswar, Dist.Khurda  
At Present residing at Plot NO.404, Basera Harmony,  
Damana Square, P.S. Chandrasekharapur, Bhubaneswar,  
Dist. Khurda.

... Respondent.

For the Appellant : Sri D.Das and Associates, Advocates.

For the Respondent: Sri J.Mohanty, Adv.  
Sri L.K.Samal, Adv.

Date of hearing : 21.12.2015  
Date of Judgment : 22.12.2015.

**JUDGMENT**

1. Aggrieved by the order dated 5.10.2015 in refusing to grant temporary injunction U/O.39 rule 1 and 2 CPC by learned Civil

Judge (Jr.Dvn.) Bhubaneswar in I.A.No.441 of 2015 the plaintiff-appellant has preferred this appeal.

2. The sole defendant is the respondent. The facts necessary and ascertained may be recapitulated hereunder.

The suit land is a shop house of 250 sqft. in a two roomed single storied building situated at Trinath Bazar Phulnakhara of which revenue description has been given in plaint A-schedule. The respondent owns that house. The plaintiff was a tenant in the said suit house under name and style "Maa Mangala Jewellery Work Shop". In the year 2013, on the persuasions of the owner -respondent, the plaintiff executed a written agreement and kept with him. The monthly rent was Rs.2000/- The agreement was stipulated to terminate on 1.9.2014. The respondent had taken refundable security money of Rs.15,000/- from plaintiff-appellant . On the oral permission, the tenant-appellant had spent four lakhs for the interior decoration of suit room and had spent Rs.10,000/- towards repairing . He had also installed shutter and gate spending Rs.50,000/- after theft occurred in his shop on 16.8.2014. The landlord-respondent had agreed verbally to continue tenancy of plaintiff for another five years. But instead of executing any written agreement, threatened forcible eviction. Plaintiff on receipt of caveat notice on 12.4.2015 filed C.S.No.2949 of 2015 on 17.4.2015 with prayer to permanently injunct the landlord. On that day a separate petition u/o.39 rule 1 CPC was filed praying ad-interim injunction against O.P.-respondent from interfering the peaceful possession of the plaintiff-petitioner or from disconnecting the electric supply to the suit shop. On 30.4.2015 the landlord-defendant filed written statement and a counter claim for mandatory injunction to get vacant possession and realization of damages. Admitting the

tenancy, it is stated that on 30.9.2013 the plaintiff was inducted as tenant to the shop room of which period was expired on 1.9.2014 and the original written agreement was with the plaintiff-tenant. The fact of oral assurance to continue as tenant for five years, investment and repairing are categorically denied. Specifically default in paying rent is pleaded. It is stated that the house is required for bonafide occupation of the landlord and for non-repairing it has been damaged. In terms of written statement the show cause was filed stating therein that after termination of tenancy agreement on 1.9.2014 the plaintiff-appellant has been in unauthorized occupation of suit shop and has no right to as such.

During pendency of interlocutory application, plaintiff filed one affidavit with a memo that electric supply to the shop room has been disconnected with effect from 5.9.2015 and unless direction in a mandatory form is given for restoration of the same, the petitioner would suffer irreparable loss. The copy was not served and it is urged that learned lower court has not taken note of that. No document was filed in the lower court. Having heard both parties on 5.10.2015, the impugned order was passed. The learned Civil Judge (Jr.Dvn.) has referred to the decisions cited by both parties and took exception to the non-filing of written agreement. She disbelieved the plea of oral agreement for continuation of tenancy and thereby found no prima facie case in favour of petitioner. A plea was advanced in the lower court by the learned advocate for plaintiff-petitioner that due to typographical mistake, in the plaint it is mentioned that the plaintiff was in custody of written agreement, though in fact it was with the defendant.

3. After hearing of the appeal, to-day learned counsel for the appellant has filed documents as per list like caveat petition and electric bills with an endorsement that learned advocate for the respondent refused to receive the copy.
4. Learned advocate for appellant put forth his submission that appellant-tenant being admittedly in possession of the suit house, he should not be dispossessed without recourse of law and as electric supply has been disconnected, the learned lower court should have maintained status quo till disposal of the suit. With regard to seeking mandatory injunction for restoration of electric supply it is argued that such a relief is permissible without special prayer in that regard. In support of above contention, learned counsel for appellant has relied upon a decision reported in **AIR 1982 Orissa 268 Bauri and others - vrs- Natabar Swain, AIR 2006 Orissa, Page-1 Bivas Ch.Samanta -vrs- Hira Mandan Mohan Biswal and others.**
5. On behalf of respondent it is urged that no interim order of injunction should be passed where it would amount to allowing the prayer made in the suit and temporary injunction being a equitable relief should not be granted when the plaintiff-petitioner has failed to do equity. It is also urged that in the appeal against dismissal of injunction order, no interference is warranted as the lower court exercised discretion properly. Learned counsel for respondent has relied on the decisions reported in **(2007) 2 CLR -17 Mahavir Prasad Santuka and others – vrs- Sankari Lal Tiberwala and AIR 1996 Delhi 351 D.T.T.D.C -vrs- M/s.D.R. Mehera and sons.**
6. The instant appeal lays a challenge to an order dated 5.10.2015 of lower court whereby the learned Civil Judge (Jr. Dvn.) has dismissed the interlocutory application. In this regard in the

appeal memo the appellant has raised a ground vide “**Q- For that though the learned court below has passed the impugned order on dated 8.10.2014 but signed the (sic) by putting a back date i.e. 5.10.2015**”. The above ground conveys nothing but one that the Presiding Officer has passed impugned order putting back date. No attempt is made to prove the above ground. I find the order sheet of the lower court record in consonance with date i.e. 5.10.2015. The unanswered ground touching judicial propriety should not have been attributed without proof. Any deficiency in propriety should have been brought to the notice of the Presiding Officer. This is not done. The mala fide raised but not established cannot be ignored in consideration of equitable relief.

7. The jurisdiction of the appellate court in interfering the discretion exercised by the lower court in disposal of order 39 rule 1 C.PC petition is no more res Integra. It is consistently conveyed by the Hon'ble Apex Court that the interference should be minimal. The law in this regard is reiterated in the decision reported [In Skyline Education Institute \(India\) Pvt. Ltd. v. S.L. Vaswani](#) (2010) 2 SCC 142, where the 3-Judge Bench considered a somewhat similar question in the context of the refusal of the trial Court referred to the judgments in [Wander Ltd. v. Antox India \(P\) Ltd](#) (supra), [N.R. Dongre v. Whirlpool Corpn.](#) (1996) 5 SCC 714 and observed:

"The ratio of the above noted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity."

8. On the advent of above law, in the impugned order, the learned lower court is found to have exercised his discretion analyzing the three basic ingredients of granting injunction i.e. Prima facie case, balance of convenience and irreparable loss. The tenant appellant has categorically pleaded in para-4 of the plaint that the written agreement of tenancy was in his possession. The landlord-defendant in his written statement para-10 has stated that the original agreement being in custody of plaintiff is deliberately withheld to misguide the court. In my considered opinion for consideration of prima facie case a document basing upon which the plaintiff has sued, is required to be filed at the time of presentation of plaint and it is a requirement u/o.7 rule 14 CPC. The said document can unfold the nature and scope of tenancy because save and except that document, everything is alleged as oral understanding. Rise and fall of "felt need" of a tenant or landlord at the time of disposal of interim application can be gathered from the document like written agreement and when the same is not brought to the notice of the court, finger must be raised for the latches.. In course of argument learned counsel for appellant on being asked stated that no amendment of plaint is necessary to accept his contention that it was a typological mistake. It is nothing but bereft of law. For the non-compliance of order 7 rule 14 C.P.C, the prima facie case posed falls short to favour plaintiff-petitioner.

With regard to mandatory direction for restoration of electric connection to the shop room, the affidavit was made on 29.9.2015 alleging disconnection to 5.9.2015. Learned counsel for respondent submitted that due to default in making payment of electric dues, the electric line was disconnected and the

plaintiff -tenant had consistently failed to tender the admitted rent. Learned counsel for plaintiff-tenant refutes the same stating that money tendered was not accepted by the landlord. When parties have entered into dispute of which epicenter is tenancy, payment of admitted rent should have been done in a better manner to prove bonafideness of tenant. Similarly, the mala fide of landlord for disconnection of electricity is not inferable from filing of electricity bills standing in the name of Sri B.Mishra. Prima facie, fact remains in shadow when parties preferred to allege against each other based upon unrecorded words. In the plaint, it is categorically stated that the plaintiff-petitioner would suffer high pecuniary loss in case of eviction. This averment sparks repairable loss if injunction is refused. Balance of convenience leans in favour of possessor. But one ingredient is not sufficient to connect the golden thread of principle of granting injunction. Learned Civil Judge (Junior Division) has exercised her discretion properly and no interference is warranted.

9. Reasons remain recondite as regards the judicial propriety questioned with regards to the date of impugned order stated above. In the decision reported in **2004 (3) S.C.C. 137 Sopan Sukdev Sable and others-vrs- Assistant Charity Commissioner** it is reiterated that-

**"In Mahadeo Savlaram Sheike v. Pune Municipal Corporation (1995 (3) SCC 33), it was held, after referring to Woodrofe on "Law relating to injunction; L.C. Goyal 'Law of injunctions; David Bean 'Injunction' Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted Shiv Kumar Chadha v. MCD (1993 (3) SCC 161)**

**wherein it was observed that injunction is discretionary and that:**

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

Reference was also made to [Dalpat Kumar v. Prahlad Singh](#) (1992 (1) SCC 719) in regard to the meaning of the words 'prima facie case' and 'balance of convenience' and observed in Mahadeo's case (supra) that:

"It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

10. For want of error apparent on the record or infirmity in the impugned order no interference is warranted in this appeal.
11. In the result, the appeal stands dismissed on contest without cost.

Additional District Judge,  
-cum- Special Judge, CBI-II  
Bhubaneswar

Judgment is pronounced in the open court  
today this the 22<sup>nd</sup> day of December, 2015.

Additional District Judge,  
-cum- Special Judge, CBI-II  
Bhubaneswar.