

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 1753 of 2019
With
CAN 2 of 2020
M/s Messerger Courier & Cargo Pvt. Ltd.
Vs
UMA Forzing works (P) Ltd. & ors.**

For the petitioners : Mr. Sabyasachi Chaudhury
Mr. Rajarshi Dutta
Mr. Sayantan Bose
Mr. Sattik Raut

For the opposite parties : Mr. Prabal Mukherjee
Mr. Malay Dhar
Mr. Biswajit Sarkar

Heard on : 19.06.2023

Judgment on : 27.06.2023

Ajoy Kumar Mukherjee, J.

1. Order No. 41 dated 14th January, 2019 passed by learned Additional District Judge, First Court, Howrah, in Miscellaneous Appeal no. 71 of 2015, has been assailed in the present application. Opposite party no. 1 herein as plaintiff filed a suit for declaration and permanent injunction being Title Suit No.; 178 of 2014, praying for a declaration that the plaintiff/company is an irrevocable licensee in

respect of the suit property and also for declaration that plaintiff/company is the absolute owner of the entire factory shade together with plant and machineries installed therein, lying and situated in the suit property and also for injunction. In the said suit plaintiff/opposite party no. 1 herein filed an application under order XXXIX Rule 1& 2 read with section 151 of the code with a prayer to restrain the defendant no. 1 and his men and agents from interfering with the peaceful possession of the plaintiff and smooth egress and ingress of the men, employees and directors of the plaintiff/company in respect of the suit property. The petitioner herein filed a written objection against the said prayer for injunction and also filed written statement in the suit.

- 2.** Plaintiff stated in his plaint that originally defendant no. 2,3 and 4 and one Sufal Chnadra kundu (who is the father of the defendant no. 4) were the owners of the suit property mentioned in the schedule to the plaint. Plaintiff's further case is aforesaid owners granted an irrevocable licence in favour of the plaintiff to set up a factory in the non-agricultural land and in pursuance thereto, the said land was transferred in favour of plaintiff/respondent. Plaintiff's further case is he has invested huge amount over the said land and constructed a permanent structure in the year 1982. Plaintiff's further contention is in order to run said factory, he obtained necessary approval and compliances from the competent authority. However dispute and differences arose between the plaintiff and the West Bengal State Electricity Board and ultimately the Electricity

supply was disconnected by the Board and challenging such disconnection, plaintiff preferred writ petition and thereafter an appeal was also preferred before this court.

3. It has been further contended that plaintiff /respondent came to know in May, 2014, that aforesaid owners i.e defendant no. 2 to 4 had sold the said suit property to defendant no. 1/petitioner herein by two registered deeds dated 22nd December, 2009. Plaintiff further stated in his plaint that on 17th June, 2014, representative of the defendant no. 1/petitioner herein, along with some anti-socials, came to the factory of the plaintiff and threatened to take forceful possession. In the aforesaid background plaintiff filed the said suit and also for injunction.

4. Petitioner herein as Defendant filed written statement wherein he has contended that the defendant no. 2 to 4 have sold the property in his favour and defendant no. 1 published a notice in an English daily newspaper on 11th June, 2008 in connection with said sale. By a letter dated 22nd December, 2009, the defendant no. 2 to 4 handed over physical possession of the suit property to the defendant no. 1 and since then the defendant no. 1/petitioner herein is in exclusive possession of the suit property. On 1st November, 2013 the appellant/defendant had applied for mutation of the said suit property. On 27th June, 2014 an inspection was held on the said suit property and the concerned revenue inspector after inspecting the suit property came to definite conclusion in his letter dated 27.06.2014 that the petitioner herein/ defendant no. 1 was in exclusive

possession of the suit property. It is further submitted in the written statement that defendant no. 2,3 and aforesaid Sufal Chandra Kundu (who is the father of defendant no. 2 and 4 and husband of defendant no. 3) were the directors of the plaintiff company and at present the son of defendant no. 2 is one of the directors of the plaintiff company which clearly proves that the suit is a collusive suit having been purposely filed by the plaintiff in collusion with defendant no. 2 to 4 in order to deny the legitimate right title interest of defendant no. 1.

5. However, plaintiff's aforesaid application for injunction came up for hearing before the court below and learned court below by an order dated 17.03.2015 has been pleased to direct *status quo* till disposal of the suit. Being aggrieved by the said order the defendant herein preferred Misc. Appeal being no. 71 of 2015 and the Appellate court by the impugned order dismissed the appeal and affirmed the order of the Trial court.

6. Mr. S. Choudhury learned counsel appearing on behalf of the petitioner submits that both the courts below passed the order without indicating the status of the suit property including who is in possession of the suit property and learned court ought not to have passed a blanket order of status quo, particularly when the Revenue Inspector after causing due inspection of the property has come to a conclusive finding that the petitioner herein is in exclusive possession of the property. The relevant documents filed by the plaintiff in support of their possession are prior to 2009 and the plaintiff could not establish that he is in a possession or carrying any business from

the suit property after 2009. The said order is palpably erroneous and bad in law and is an example of non-application of Judicial mind. Plaintiff has failed to show any document disclosing existence of any irrevocable licence, granted to them either by the present petitioner or by defendant no. 2 to 4.

- 7.** Mr. Chaudhury strenuously argued that plaintiff's status at best was that of a licensee, only had a right to occupy but he was/is never in possession of the suit property after petitioner's purchase. Learned court below also acted illegally in failing to appreciate that the learned trial judge has erred in passing the order of status quo without coming to a conclusion regarding prima facie case, balance of convenience and irreparable injury. In fact said suit has been filed collusively in order to extort more money from the petitioner. Learned court below is erred in finding that licence was granted by the defendant no. 2 to 4 in favour of the plaintiff and further came to an erroneous conclusion that there is difficulty to ascertain whether the licence granted by defendant no. 2 to 4 in favour of plaintiff was or was not irrevocable. Trial court also acted illegally in coming to the finding that an order of status quo is the rightful remedy for preservation and protection of the suit property. In fact both the courts below have committed wrong and passed the order of status quo merely for the reason that the entry in record of rights shows the nature of land as 'Sali' and/or 'Karkhana' and both the courts below further came to erroneous conclusion that as rival claim has to be investigated, it is proper to direct both parties to maintain status quo.

- 8.** Mr. Choudhury submits that the defendant no.1/petitioner has paid all land revenues from date of purchase and applied for mutation for recording his name in the Record of Rights but the order of Status Quo has prevented the petitioner from obtaining mutation certificate of the suit property from the concerned office. He further contended that suit itself is barred under the provisions of Specific Relief Act and no interim relief can be granted in a frivolous suit which has been initiated as an arm twisting and/or pressure tactics. Accordingly the petitioner has prayed for setting aside the order impugned.
- 9.** This court by its order dated 19.11.2019 made a prima facie observation that there does not appear to be prima facie even one document which the opposite parties have produced before the court below to show that they are in possession as on the date when the orders were passed. At the same time the allegations that the plaintiff/opposite parties have constructed factories on the said land after obtaining irrevocable license from the owners of the land, which is reflected by the conversion of the said land from Sali (agriculture) to karkhana (factory) gives this court pause. None of the courts below proceeded to have local inspection of the suit property. Since no local inspection of suit property has been held, this court appointed one Advocate as special officer for the purpose of visiting the suit property and for ascertaining the nature and character of the property and also to see whether there is any factory, shade or quarters and such visiting of the suit property would be in the nature of surprise visit.

The special officer submitted his report wherefrom it appears that the name of the petitioner company is appearing on the closed gate of the factory premises. Some pictures were also taken and the pictures along with report shows that the premises of the factory without a single living soul. On the basis of the report this court was of prima facie view that special officer's report inclines more to the case of the petitioner than opposite parties but in order to hold the same this court had given opportunity to the opposite parties to take exception to the report of the special officer.

- 10.** The opposite party plaintiff had taken exception to the report of the special officer contending that it is surprising to see that only on the basis of sign bond, the special officer came to conclusion that the petitioner defendant no. 1 is in possession of the suit property. It is specific case of the plaintiff that plaintiff was in possession and still in possession of the suit property and photocopy of the purchase bills show that plaintiff had purchased the plant and machinery of the said factory. Mr. Mukherjee learned counsel appearing on behalf of the plaintiff/opposite party further submits that plaintiff/opposite party no. 1 is a company registered under the companies Act and dispute arose in between plaintiff and WBSEDCL and for which Writ Petition was preferred and same is still pending. However, the plaintiff was running the factory with the help of generator but due to heavy loss, the plaintiff company did not continue such business and manufacturing process was suspended The plaintiff/opposite party is still in possession of the suit property along with all factory shed

and/or structure and plants and machineries. In support of possession by running factory, Mr. Mukherjee pointed out certain documents which includes written complaint lodged by plaintiff on 17.06.2014 and 18.06.2014, certificate of enrolment dated 31.07.2015, Trade Registration certificate issued by Gram Panchayat in the year 2016, Trader licence document and some other documents and receipts, which were issued long after 2009. He further contended predecessor of opposite party no. 2 filed a Title Suit being No. 1614 of 2015, whereby plaintiff of that suit prayed for cancellation of the said deed for the year 2009. Opposite party no. 2 also filed the suit for cancellation of the said deeds being no. 13071 and 13072 of 2009 in suit being no. 16625 of 2014 which are pending for disposal. He further contended that it is settled principle of law that it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction and in this context he relied upon ***Anand Prosad Agarwala Vs. Tarakeswar Prosad and others*** reported in **(2001) 5 SCC 568**. Accordingly Mr. Mukherjee argued that since a serious triable issue involves in the present suit as to whether plaintiff acquired irrevocable licence in respect of the suit property or not, the courts below have committed no mistake in directing both the parties to maintain status quo. He further contended that for protection and preservation of the suit property as well as the nature and character of the suit property including the plant and machineries installed by the plaintiff, status quo order is

badly needed till disposal of the present suit and as such the order impugned does not call for any interference.

11. In reply Mr. Chowdhury on behalf of the petitioner submits that the plaintiff /opposite party no. 1 filed an affidavit before this court on 16th December, 2019 where they have clearly admitted that they are not in possession of the suit property. In paragraph 3 (c) of the affidavit plaintiff/opposite party no. 1 herein has made specific averment on oath that defendant no. 1 illegally and forcefully ousted the plaintiff from the said premises in question without due process of law, during the pendency of the suit and for which the plaintiff is preparing to file amendment application to insert the said event in the plaint, along with prayer for recovery of possession of the premises in question before the court.

12. In further reply Mr. Mukherjee on behalf of the plaintiff/opposite party no. 1 submits that even if any averments of forceful dispossession by the petitioner/defendant no. 1 have been made, even then for protection and preservation of the valuable assets installed by the plaintiff within suit premises are required to be protected till disposal of the suit and for which the order of status quo is justified so that the nature and character of the suit property cannot be changed.

13. I have considered submissions made by both the parties. Before going to further details let me reproduce the relevant ordering portion of the impugned order passed by the trial court on 17.03.2015:-

“Hence considering all of the above, documents on record, and various rulings cited unless the triable issues are determined by extensive trial an Order of Status Quo is relevant at this stage to be maintained by both parties till disposal of Suit.

*Hence Ordered,
That petition u/o 39 r 1 and 2 is Disposed. Both parties are directed to maintain Status Quo till disposal of the Suit.”*

14. On bare perusal of the said order it appears that Trial Court passed the said injunction order in the form of status quo even without mentioning what kind of status the parties are directed to maintain and it is also not there in respect of which property said order of status quo was passed. The reason of passing such order of status quo is, “unless the triable issues are determined by extensive trial, an order of status quo is relevant at this stage.” In fact pendency of triable issue which needs to be adjudicated by extensive trial is practically no ground for passing an order of status quo. Unless there can be a triable issue there would have been no need to go for trial, even need of filing the suit perhaps does not arise and it is also not possible to say at this early stage whether in order to decide the triable issue an extensive trial is required or not, and it can never be a ground for granting Status-Quo.

15. In fact on various occasions it is found that the civil courts have developed a tendency of taking a short cut method of granting status quo without determining the status of the parties. While ordering Status-Quo, court must state in unequivocal term what Status-Quo is. He must state as to whether the Plaintiff or defendant is in possession. Leaving the matter in doubt and ambiguity will result in dangerous consequences and such order is also not proper. Such

practice of judicial officers presiding in the civil courts has been deprecated in various judgment passed by this court and also the Supreme Court. This court already held that Hon'ble Supreme Court on several occasions, inter alia in the case of ***Kishore Kumar Khatiar Vs. Praveen Kumar Singh*** reported in **AIR 2006 SC 1474** held that an order of status-quo cannot be passed on the asking, without recording what status was to be maintained. It is of no use of passing order of status quo without indicating status of the property i.e. what to be preserved.

16. When the court thinks that an order of status quo in respect of the possession is required to be passed the court must record a finding as to who is in possession of the property. If the court is convinced regarding prima facie possession of the plaintiffs, the status quo regarding possession of the suit property should continue till disposal of the suit. But a finding to that effect ought to have been recorded. For the said purpose the court ought to examine the affidavit and the documents judiciously. If from the available documents the court cannot prima facie decide as to who is in possession, he ought to examine the issue judiciously and decide in its discretion what order should have been passed to serve the interest of justice best at the interlocutory stage. In the absence of plaintiffs prima facie case in respect of possession, the prayer for injunction should be refused.

17. If status-quo of the nature and character of the suit properly has to be preserved till disposal of suit, then also before passing order

of status quo in respect of nature and character of the property, the conditions thereof obtaining on that date must be indicated and for which a local inspection commission in respect of suit property might have become necessary. But passing an order of status quo without indicating the status, is a short cut procedure sometimes adopted by the civil courts to dispose of injunction application, with the mind set to let me make the order at the interlocutory stage and if the other side is aggrieved, it will be vacated at the end of trial. This is not a correct attitude. Before making the order, the court must be satisfied that it is a case, which calls for such an order. This obligation cannot be avoided by placing the onus upon the affected party to prove in trial that such order needs to be vacated or must not continue at the end of trial. In fact while passing an order of status quo if the civil court does not decide as to who is in possession of the property and what is nature and character of the property, at the time of granting status quo then at the subsequent stage of trial, the court will not be in a position to decide as to what was the nature and character of the property on the date when the order was passed. Such vague order of status quo without indicating status by the civil courts cannot be encouraged at any cost because such order unnecessarily generate multiplicity of disputes and such vague order of status quo do not render any effective service to the litigants. Such orders instead of advancing the cause of justice are creating problematic situations, where the litigants are filing one petition after another without knowing where to seek justice.

18. In view of above the order impugned passed by court below as well as the order passed by the Trial court dated 17.03.2015 are hereby set aside. Both parties are directed to place all their documents before Trial court in support of their contention by way of affidavit. The trial court is directed to hear both the parties afresh on the basis of the affidavit and documents to be filed by both the parties for the purpose of determining the status. For this purpose learned court below, if thinks fit will allow prayer for local inspection commission, if it is sought for. After making such hearing, Trial court will pass an order afresh without being influenced by any observation made herein, preferably within a period of eight weeks from the date of communication of the order.

C.O. 1753 of 2019 along with connected application are accordingly disposed of.

Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ajoy Kumar Mukherjee, J.)