CASE NO.:
Appeal (civil) 1101 of 2006

PETITIONER:
KISHORE KUMAR KHAITAN & ANR

RESPONDENT:
PRAVEEN KUMAR SINGH

DATE OF JUDGMENT: 13/02/2006

BENCH:
S.B. SINHA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

(ARISING OUT OF S.L.P. (CIVIL) NO.11469 OF 2005)

P.K. BALASUBRAMANYAN, J.

Leave granted.

1. The respondent herein, hereinafter referred to as the plaintiff, filed a suit TS No.119 of 1998 before the Civil Judge, Junior Division, Howrah for a declaration of his status as a tenant of the suit property and for a perpetual injunction restraining the appellants herein, hereinafter referred to as the defendants, the owners of the building, from interfering with the peaceful possession of the plaintiff and for other incidental reliefs. Along with the suit, the plaintiff moved an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (hereinafter referred to as the 'Code'), for an interim injunction pending the suit, restraining the defendants from interfering with his possession of the plaint schedule property. When the application for interim injunction was moved on 12.6.1998, the trial court found that there was no urgency which justified the grant of an ad-interim ex parte order of injunction and taking the view that the delay will not defeat justice, refused to pass an ad-interim order of injunction and issued notice to the defendants to show cause within 15 days of the receipt of the notice, as to why the temporary injunction, as prayed for by the plaintiff, shall not be granted. Feeling himself aggrieved by the non-grant of an ad interim ex parte injunction, the plaintiff filed an appeal under Order 43 Rule 1 of The Code of Civil Procedure before the District Court. The Additional District Judge on 19.6.1998, while entertaining the civil miscellaneous appeal admitted the same and issued notice to the defendants fixing 4.9.1998 for their appearance. After allowing an application for amendment of the application for injunction by way of incorporating a schedule thereto, the Additional District Judge along with the issuance of notice to the defendants to show cause why the prayer for temporary injunction shall not be granted, stating that in the light of the materials available it was just and proper to direct the parties to maintain the status quo as on date and delay in the grant of an ad-interim order may cause complications, passed an ex parte ad interim order directing both the parties to maintain status quo as on that day till 17.7.1998. Thereafter alleging that he was in possession on 19.6.1998 when the order to maintain status quo was passed by the Additional District Judge and that he was dispossessed on 20.6.1998 in violation of that order, the plaintiff filed an application under Section 151 of the Code for an interim mandatory injunction directing the defendants to put him in possession of the suit premises. The District Court originally passed an order of interim mandatory injunction directing the defendants to restore possession of the suit property to the plaintiff. This was challenged by the defendants before the High Court in a proceeding under Section 115 of the Code. The High Court set aside the order of the trial court and remanded the application for

interim mandatory injunction for reconsideration by the District court. Thereafter, the District court reconsidered the application for interim mandatory injunction and allowed the same by upholding the claim of the plaintiff that he was dispossessed after the interim order of status quo was passed by that Court. A challenge by the defendants to that order before the High Court under Article 227 of the Constitution was rejected by the High Court. This appeal by special leave is filed by the defendants challenging those orders.

2. We may note two incidental facts at this stage. The first is the filing of a suit TS No.153 of 1998 by the present defendants for a declaration that the document relied on as a rent deed by the present plaintiff, be adjudged void and cancelled and for consequential reliefs flowing from the grant of the main relief. The second is that even though the petition for special leave to appeal against the order of the High Court dated 25.11.2004 was filed in this Court on 31.3.2005, in enforcement of the order of the District Court under challenge in this appeal, possession was delivered over to the plaintiff on 8.4.2005 through the process of court.

3. It is the case of the plaintiff that the suit property was leased to him by the first defendant on 17.4.1998 and that the transaction was evidenced by writing in the letter-head of Khaitan Paper Machine Limited owned by the first defendant. According to the plaintiff, there was an earlier litigation between the first defendant and one Shivanand Mishra, Shivanand Mishra claiming a tenancy over a portion of the present suit premises and at the instance of the present plaintiff, that suit was compromised, as part of the compromise a sum of Rs.2 lakhs was paid to Shivanand Mishra and Shivanand Mishra gave up his claim of tenancy. According to the plaintiff, the said sum of Rs.2 lakhs which was paid to Shivanand Mishra was advanced by him to the first defendant and it was in consideration of the same and the help rendered by the plaintiff in the matter of settling the dispute with Shivanand Mishra, that the first defendant agreed to handover possession of the suit premises to the plaintiff immediately after recovering possession from Shivanand Mishra and it was in furtherance of the promise that the tenancy agreement was executed on 17.4.1998. Thus, the plaintiff claimed that he had been put in possession of the suit property as a tenant. In derogation of the tenancy thus created in his favour, the defendants were attempting to dispossess the plaintiff forcibly and it was in that situation that the plaintiff was filing the suit for a declaration of his tenancy rights over the suit property and for a perpetual injunction restraining the defendants from interfering with his possession as a tenant. As already noticed, though the plaintiff filed an application under Order XXXIX Rules 1 and 2 of the Code for an interim injunction restraining the defendants from interfering with his possession, the trial court did not pass an ad interim order of injunction, but only issued notices to the defendants calling upon them to show cause why the prayer for injunction shall not be granted. It is against this refusal of ad interim injunction ex parte, that the plaintiff filed the appeal before the District Court in which, on 19.6.1998, the Additional District Judge passed an ad interim ex parte order directing both the parties to maintain status quo.

4. It is necessary to notice at this stage that in an original suit of this nature, it was not appropriate for the Additional District Judge to pass an order directing the parties to maintain status quo, without indicating what the status quo was. If he was satisfied that the appellant before him had made out a prima facie case for an ad interim ex parte injunction and the balance of convenience justified the grant of such an injunction, it was for him to have passed such an order of injunction. But simply directing the parties to maintain status quo without indicating what the status quo was, is not an order that should be passed at the initial stage of a litigation, especially when one court had found no reason to grant an ex parte order of injunction and the appellate court was dealing with only the limited question whether an ad interim order of injunction should or should not have been granted by the trial court, since the appeal was only against the refusal of an ad interim ex parte order of injunction and the main application for injunction pending

suit, was still pending before the trial court itself. Therefore, we are prima facie of the view that the Additional District Judge ought not to have passed an equivocal order like the one passed in the circumstances of the case. But of course, that aspect has relevance only to the extent that before ordering an interim mandatory injunction or refusing it, the court has first to consider whether the plaintiff has proved that he was in possession on the date of suit and on the date of the order and he had been dispossessed the next day. Unless a clear prima facie finding that the plaintiff was in possession on those dates is entered, an order for interim mandatory injunction could not have been passed and any such order passed would be one without jurisdiction.

5. An interim mandatory injunction is not a remedy that is easily granted. It is an order that is passed only in circumstances which are clear and the prima facie materials clearly justify a finding that the status quo has been altered by one of the parties to the litigation and the interests of justice demanded that the status quo ante be restored by way of an interim mandatory injunction. Keeping this principle in mind, it is necessary to see whether in the case on hand, the Additional District Judge was justified in passing the interim order of injunction.

6. Admittedly, the defendants are the owners of the building. The plaintiff was setting up a case that the plaint schedule part of the building had been granted to him on lease on 17.4.1998 and that he had obtained possession thereof on the basis of such a lease transaction. The lease, thus set up by the plaintiff has been denied by the defendants who had pleaded that the plaintiff had been entrusted with some renovation work for which he was being paid and the alleged document relied on by him was a concocted one. The grant of mandatory injunction would necessarily depend upon the plaintiff establishing before the court that on 19.6.98 when the court directed the parties to maintain status quo, he was in possession as a tenant of the plaint schedule property. The burden in that behalf is clearly on the plaintiff, the claim he made, having been denied by the defendants. Therefore, the first question that the District Court had to consider pursuant to the order of remand by the High Court was whether the plaintiff had prima facie established that the building was let out to him as claimed. The building is seen to be of a substantial dimension , within the District of Howrah, part of a city, commercially important. Prima facie it is difficult to imagine that such a building or the second floor and part of the ground floor of a building of this nature would have been let out in such an informal manner and the transaction not being evidenced even by a rent deed executed by the lessor and the lessee in terms of Section 107 of the Transfer of Property Act. What the plaintiff has relied upon is seen to be a letter on the letter-head of Khaitan Paper Machine Limited signed by the first defendant describing himself as Managing Director and Partner of Khaintan Estates. Prima facie it is seen that whereas the letter-head is that of Khaitan Paper Machine Limited, obviously a limited company, the signature is that of the Managing Director and partner of Khaitan Estates, an entity different from Khaitan Paper Machine Limited. It is difficult to imagine that the letter-head of one company was used for dealing with the properties of another entity which appears to be a partnership as per the description contained in the letter. Secondly, the letter purports to be an acknowledgement for having received a sum of Rs.2 lakhs as security from the plaintiff and creating a tenancy in favour of the plaintiff, and inducting the plaintiff into possession in respect of the entire second floor and shop rooms in the ground floor as a tenant on a monthly rent of Rs.7,000/- and conferring upon the plaintiff a right to do certain other acts in the premises. It is also stated that a stamped agreement would be created by the signatory as well as his wife, in favour of the plaintiff. Prima facie, the document does not satisfy the requirements of Section 107 of the Transfer of Property Act and though it acknowledges receipt of a sum of Rs.2 lakhs, there is no stamp affixed to indicate that it was intended to be a receipt for the said sum. As noticed, the rent stipulated is also Rs.7,000 per month. Suffice it to notice, that the genuineness of this document which is seriously disputed by the defendants, its admissibility in evidence and validity, have to be decided

in the suit. Therefore, one of the questions that has to be decided is whether this letter is genuine and if it is genuine, whether it is capable of bringing into existence a lease or accepted as evidencing a lease transaction between the parties. Since this is the document on which the suit is based, the finding on the genuineness and validity of this document and the alleged transaction created by it will have a great bearing on the claim of possession by the plaintiff. No doubt the signature of defendant No.1 found in the document is admitted but with an explanation that it is a got up document. A suit has also been filed by the defendants challenging it.

7. At this stage it is not necessary to go further into this aspect because what we are concerned with is whether pursuant to the order of remand earlier made by the High Court directing the District Court to take evidence and to decide the question falling for decision, the District Court has considered the relevant aspects and whether its order granting an interim mandatory order of injunction is capable of being sustained or is free from jurisdictional error.

8. While setting aside the original order passed by the Additional District Judge, and remanding the application for an interim mandatory injunction, the High Court specifically pointed out that the essential condition for passing an interim mandatory injunction was that the party claiming it must be shown to be in possession on the date of the order directing the parties to maintain status quo and it must be further to shown that he was dispossessed after such an order was passed and that specific findings on both these aspects were necessary to sustain an order. The court had found that such findings were lacking and hence the Additional District Judge acted without jurisdiction in passing the interim mandatory order of injunction. The order passed was set aside and the application filed by the plaintiff was remanded. Certain directions regarding production of documents and their receivability were also issued. The District Court was directed to decide the claim of the plaintiff afresh, in accordance with law and in the light of the directions issued in that order.

9. It is seen that after the remand, the parties produced some evidence. The Additional District Court set out the arguments on the side of both the parties. Then it referred to certain decisions cited by the parties. It observed that there was at least some prima facie foundation in the claim of the plaintiff that the tenancy agreement was executed by defendant No.1 and whether it was concocted out of a signed blank letter head and whether it had legal force could only be decided in the suit. It did not discuss the oral evidence that was taken pursuant to the order of remand and merely stated that it has perused the evidence. After referring to some cash memos and money receipts produced by the plaintiff, it held that they prima facie showed that the plaintiff was in possession. Then it abruptly observed that at least prima facie it is proved that the plaintiff was in possession of the suit property on 19.6.1998, the date of the passing of the order of status quo. It stated that as such his possession must be restored and it was a fit case where the court should invoke its inherent jurisdiction to order restoration of possession.

10. We must say that the approach of the Additional District Judge and the manner in which he dealt with the question in spite of the directions in the order of remand by the High Court leave a lot to be desired. Instead of discussing the evidence properly to find whether the plaintiff had prima facie proved his possession on 19.6.1998 as a tenant as claimed by him and whether he had adduced any evidence to show prima facie that he had been forcibly dispossessed on 20.6.1998, the day after the grant of ad interim ex parte order to maintain status quo, the Additional District Judge has passed the interim order of mandatory injunction. We are of the view that there is no proper or adequate finding by the Additional District Judge either of prima facie possession of the plaintiff on 19.6.1998 or of his forcible dispossession on 20.6.1998, Apparently, not even a neighbour or occupant

of any part of the building was examined in support of the case of forcible dispossession on the morning of 20.6.1998. In fact there does not appear to be any such finding of dispossession in spite of the direction in that behalf in the order of remand. Thus, we find that the order of interim mandatory injunction, an extraordinary relief in itself, is not supported by the necessary findings justifying its grant. We also find that the approach made by the Additional District Judge is not the approach that is called for, in entertaining a claim of this nature put forward by a plaintiff and hence the order is also vitiated by an erroneous approach to the question falling for decision.

11. The High Court, we must say, has also not properly exercised its jurisdiction under Article 227 of the Constitution of India. In fact, it has failed to exercise its jurisdiction. Though the High Court rightly noticed that the burden was on the plaintiff to show that he was in possession on the date of the order directing the parties to maintain status quo and that he was dispossessed in violation of the subsisting interim order, it did not scrutinize the order to find out whether the requisite findings had been entered by the Additional District Judge on both those aspects. It did not even consider whether there was a clear finding that the plaintiff was forcibly dispossessed on 20.6.1998 as alleged by him. It did not also consider whether the finding on possession was rendered based on a discussion of the available evidence and whether the directions in the order of remand had been complied with. In short, in exercise of its jurisdiction under Article 227 of the Constitution of India, it behoved the High Court to consider whether the order of interim mandatory injunction was supported by the necessary findings. That is certainly a question of jurisdiction, since the jurisdiction to pass an interim mandatory order can only be based on such clear findings and the grant of an interim order without such findings would be acting without jurisdiction. We may incidentally notice that there is no prima facie material to indicate that on 20.6.1998 the plaintiff was, in fact, dispossessed by the defendants. We may in this context notice that the plaintiff could not show that he had either become a member of the tenants association of the building or had entered into an arrangement with it for the consumption of electricity in terms of the alleged rental arrangement. We have already noticed that none of the occupants of the building was examined to prima facie show dispossession.

12. The jurisdiction under Article 227 of the Constitution may be restrictive in the sense that it is to be invoked only to correct errors of jurisdiction. But when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction and it will still be amenable to correction at the hands of the High Court under Article 227 of the Constitution. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction. Here the jurisdiction to grant an interim mandatory injunction could be exercised on entering a finding that on the day the order for maintaining the status quo was passed, the plaintiff was in possession and a day after the interim order was passed, he was in fact dispossessed. The interim direction to maintain status quo was an ex parte order. From the order of the Additional District court it is not possible to come to the conclusion that on a proper advertence to the relevant materials, prima facie clear findings had been rendered by that court on these aspects. The prima facie infirmities attached to the letter said to create the tenancy cannot also be ignored, since that transaction is the foundation of the plaintiff’s claim of possession.

13. Thus, prima facie, we find that the tenancy claimed by the plaintiff remains to be proved in the suit. For the present, we should say that prima facie, the plaintiff has not been able to establish the foundation for the possession claimed by him. It is significant to note that not even another tenant of the building among the various tenants in the building, was examined to establish that the plaintiff while in possession, had been

dispossessed on 20.6.1998 as claimed by him. Any way, the Additional District Judge has not referred to any such evidence except referring to the affidavit of Shivanand Mishra, who even according to the plaintiff was no more in occupation. Thus, the disturbance of the status quo by the defendants has not been established. Thus, prima facie it is clear that the plaintiff has not laid the foundation for the grant of an interim order of mandatory injunction in his favour. The order so passed by the Additional District Judge, and confirmed by the High Court, therefore, calls for interference in this appeal.

14. Before parting, it is necessary to notice the argument that after the order of the High Court and after the filing of this petition for special leave to appeal to this Court, the plaintiff was put in possession pursuant to the order under challenge through the process of court. Now that we have set aside the order of the High Court and that of the Additional District court and rejected the prayer of the plaintiff for mandatory injunction, the defendants would be entitled to re-delivery of possession by way of restitution. The possession will be restored to them through court. But considering the questions to be decided in the suit, we direct the defendants, once they are put in possession of the premises in restitution, not to create any third party interest in respect of the plaint schedule building (being a part of the whole building) pending disposal of the suit. Considering the nature of the suit and the question involved, we would request the trial court, in which the suit has been filed, to try and dispose of the suit expeditiously. We clarify that it would not be necessary to consider the interim application for prohibitory injunction separately and the same would also be disposed of along with the suit by the trial court. The suit will be disposed of after trial untrammeled by any of the observations contained in these interim orders.

15. The appeal is, thus allowed, the orders of the High Court and that of the Additional District Court are set aside with the directions as above and the trial court is requested to dispose of the suit itself expeditiously and in accordance with law. The appellants would be entitled to their costs throughout.