

CASE NO.:
Special Leave Petition (civil) 16193 of 2007

PETITIONER:
Purushottam Das Bangur & Ors

RESPONDENT:
B.Majumdar Samajpati & Sons Hotel (P) Ltd

DATE OF JUDGMENT: 25/03/2008

BENCH:
Tarun Chatterjee & Harjit Singh Bedi

JUDGMENT:
JUDGMENT
O R D E R
REPORTABLE

SPECIAL LEAVE PETITION) No.16193 of 2007

1. This special leave petition is filed against the order dated 24th of April, 2007 passed by the High Court at Calcutta in APOT No.44 of 2007 whereby the High Court had dismissed the appeal filed by the appellant challenging an order passed by a learned Judge sitting in the original side jurisdiction of the High Court.

2. The petitioners are trustees of a trust named Gouri Devi Trust, which at all times was and still is the absolute owner of premises situated at 95A Chittaranjan Avenue, Calcutta-700 073 (in short the disputed premises). The disputed premises consists of a three storied building and comprises an area of 1 Bigha 4 Cottahs of land and is situated in the heart of the city. A portion of this building comprising 11 rooms on the 1st floor and 11 rooms on the 2nd floor including 2 kitchen rooms was let out by the then trustees of the said Trust to one M/s.B.Majumdar Samajpati at a monthly rent of Rs.1610/-. In the year 1992, at the request of the said B.Majumdar Samajpati, the tenancy in respect of the tenanted portion was transferred by the then trustees in favour of B.Majumdar Samajpati & Sons Hotels Pvt. Ltd. which is now respondent before us in this petition on the same terms and conditions contained in a letter dated 18th of November, 1992 with effect from December, 1992. On 5th of October, 2005, the petitioners has filed the instant suit in the original side of the High Court for a decree of Rs.12 lakhs and for mandatory and perpetual injunction and for recovery of possession, and for damages of mesne profit which have been described in the prayer portion of the plaint and for other incidental reliefs.

3. In this suit on an application filed before a learned Judge, an Advocate Commissioner was appointed to make inventory of the demised premises and also passed an order of status quo. The advocate Commissioner after due notice to the parties inspected the demised premises and made a detailed inventory of the same in the presence of both the parties and on 15th of November, 2005 submitted a detailed report which is already on record. On a perusal of the said report, it reveals that :

(1) The demised premises is used for running a hotel in the name and style of "Hotel Avenue Club".

(2) In the third floor :

(i) a makeshift store room of the Western side

of the Terrace (made up to Bamboos and Canvas) are being used as a makeshift store room in which fridge and freezers and other utensils dumped on the north western corner of the said makeshift of the store room. From the said report, it also appears that a makeshift mezzanine made of plywood having canvases and other utensils dumped on top of it.

(ii) On the eastern side of the terrace, there is a room which is also used as a store room having a number of racks inside it with books, papers and soft drink bottles. (10' x 6')

iii) The rear wall of the room on the eastern side is a common wall of another room adjacent to the front room.

The rear room is also used as a store room and it is filled with utensils for buffet. (8' x 5')

iv) 2 Rooms adjacent to the front room (both 14' x 10')

v) There is a small passage of terrace on the eastern side of the terrace, which leads to the southern wall of the premises.

vi) There is one small room for ironing clothes and two small toilets. From there if one turns to the northern side and walks towards the stair case, one will find a kitchen with is approximately 30' x 15'. (2 rooms made into one by demolishing the partition wall inside.

vii) A huge satellite TV Antenna having a diameter of 14 Feet mounted on top of the room, which is in front of the stair case on the eastern side.

4. A perusal of the report of the Advocate Commissioner, as noted herein above, would show that he found only one room in front of the staircase on the eastern side and two rooms on the southern side. He also noted that almost the entire terrace was converted by the respondent for the purpose of the hotel business and the character of the terrace had been changed considerably.

5. From the aforesaid report of the Advocate Commissioner, it would also be apparent that the respondent has unauthorisedly occupied terrace of the demised premises and has been using by making makeshift arrangement for the purpose of running the hotel. In that view of the matter, an application was filed by the petitioners before the learned Single Judge of the High Court to direct the respondent to deposit additional amount as the respondent has wrongfully and illegally trespassed the property of the petitioners and not paying any amount with regard thereto. The trial court as well as the appellate court on a prima facie finding did not come to a conclusion in favour of the petitioners and the application has been rejected by the learned Single Judge as well as by the Division Bench of the High Court. This special leave petition has been filed by the petitioners against the aforesaid orders of rejection which has been heard in the presence of the learned counsel for the parties after issuing notice.

6. In our view, the only order that can be passed in the special leave petition is to direct the respondent to deposit a sum of Rs.25,000/- every month in court without going into the merits as to whether the respondents are entitled to use

the terrace and also the makeshift arrangement made by him on the same for the purpose of running the hotel in addition to their tenancy. It is no doubt true that the court will decide at the final stage whether the construction or the makeshift arrangement made in the terrace and other portions of the demised premises by the respondents were unauthorized or not and whether the terrace and other places where makeshift arrangement has been made by the respondent for the purpose of running the hotel would be considered at the time of final decision of the suit.

Therefore, after hearing the learned counsel appearing for the parties and after going through the allegations made in the application and the objections filed therein and the report of the Advocate Commissioner, in our view, it would be fit and proper that by an interim measure a direction must be given to the respondent to deposit Rs.25,000/- every month in court within 15th of each succeeding month, the first of such deposit shall be made by 15th of April, 2008 and in default of any of the two deposits, it would be open to the petitioners to recover the amount from the respondent in accordance with law.

7. We make it clear that we have not gone into the merits as to whether the tenancy consists of terrace and the makeshift arrangement of rooms in the terrace would be included in the tenancy agreement of the respondent which shall be decided at the final hearing of the suit. We also make it clear that direction to deposit the rent of Rs.25,000/- per month to use the terrace rooms and other makeshift arrangement would not mean that the respondent are not the tenants of the said rooms which are now being used by them for running the hotel business and we keep it open for the parties to lead evidence on that question which shall be decided after taking evidence at the final hearing of the suit.

8. Before parting with this order, it would be necessary for us to refer to a decision of this Court in the case of Metro Marins & Anr. Vs. Bonus Watch Co.(P) Ltd. & Ors. [(2004) 7 SCC 478] which was strongly relied by Mr. Jaideep Gupta, learned senior counsel appearing for the respondents. Since, we are not granting any order of injunction against the respondent excepting that a direction has been made on the respondent to deposit Rs.25,000/- per month, we are not in a position to rely on this judgment for the purpose of deciding this special leave petition.

9. With the above direction, the special leave petition is disposed of and the order of the High Court is modified to the extent indicated above.