

PETITIONER:
BATE KRISHNA DAMANI (DEAD) BY HIS LRS.

Vs.

RESPONDENT:
KAILASH CHAND SRIVASTAVA & ANR.

DATE OF JUDGMENT 11/11/1994

BENCH:

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.

2. Bhagwan Das Damani, Predecessor-in-interest of the original petitioner Bate Krishna Damani, now dead and represented by his legal representatives, was the owner of the premises - Suit No. 5, 19--B Bipin Behari Ganguli Street, Calcutta and Mr. JM Solomon and his wife Ezy. Solomon were his tenant in the said premises. A suit for eviction of the tenant was filed, inter alia, on the ground of subletting of the premises to respondent No. 1. Kailash Chand Srivastava. Respondent No. 1 contested the suit (Ejectment Suit No. 102 of 1972) on behalf of the tenant as his constituted attorney, in the City Civil Court at Calcutta. A decree for ejectment was passed in favour of the landlord on 12.8.1994 by the Calcutta High Court in the appeal arising out of that suit; and the respondents were directed to furnish an undertaking to vacate the premises within the specified period. The decree was put in execution since the respondents neither gave the undertaking nor vacated the premises. Respondent No. 1 instituted Title 133

Suit No. 947 of 1985 in the City Civil Court at Calcutta for a declaration that he was entitled to occupy the said premises and a permanent injunction to restrain execution proceeding for execution of the decree under Order 21, Rule 97 of the Code of Civil Procedure. The wife of respondent No. 1 Smt. Jamuna Srivastava filed an application under Order 21, Rule 108, C.P.C., which was rejected. Respondent No. 1 then filed an application for temporary injunction in the suit filed by him which was rejected by the Trial Court. Respondent No. 1 filed an appeal against refusal of temporary injunction. On 14.8.1992, a Division Bench of the High Court dismissed the appeal of respondent No. 1. The Division Bench held that in the ejectment suit, respondent No. 1 had appeared as the constituted attorney of the Solomons stating therein that he was a caretaker without aggration of any claim that he was a tenant in the said premises. After dismissal of that appeal, respondent No. 1 filed a review application. This review application has been allowed by the Division Bench by the impugned order dated 12.0.1993 and a temporary injunction has been granted

resulting in stay of execution of the decree for eviction. Hence this appeal by special leave.

3. Having heard learned counsel for the parties, we are satisfied that this appeal must be allowed.

4. Narration of the undisputed facts stated earlier leaves no doubt that there is no ground for grant of temporary injunction to restrain execution of the decree for eviction at the instance of respondent No. 1. Unless a strong prima facie case in favour of the plaintiff-respondent No. 1 is made out, there is no occasion to grant the temporary injunction which has the result of restraining execution of a decree for eviction which has become final. The Trial Court refused the temporary injunction and a Division Bench of the High Court dismissed the appeal filed by respondent No. 1 against refusal of the temporary injunction. Indeed, it is extraordinary that thereafter the temporary injunction was granted in a review petition on these admitted facts, Respondents No. 1 participated in the ejectment suit contesting the same on behalf of the Solomons as their constituted attorney claiming to be a mere caretaker of the Solomons and not a tenant directly from the landlord. Moreover, in the execution proceedings, the wife of respondent No. 1 made an objection which too was rejected. In an application for temporary injunction made in the suit of respondent No. 1 thereafter, there was no basis to grant the equitable relief of temporary injunction in favour of the Respondent No. 1. We have no doubt that this was sheer abuse of the process of court resulting in thwarting execution of a valid decree during its subsistence. In our opinion, there was no ground for grant of temporary injunction in such a suit filed by respondent No. 1 much less grant of the same by an order made in review after a Division Bench of the High Court had dismissed the appeal of respondent No. 1 against refusal of the temporary injunction by the Trial Court. The impugned order must, therefore, be set aside.

5. Consequently, the appeal is allowed. The impugned order dated 12.5.1993 is set aside resulting in refusal of the temporary injunction claimed by respondent No. 1 in his suit. The appellant would also get Rs. 10,000/- (Rupees ten thousand) as costs from respondent No. 1.

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The executing court must proceed to execute the decree of eviction forthwith.