

CASE NO.:
Appeal (civil) 5901 of 2004

PETITIONER:
Metro Marins & Anr.

RESPONDENT:
Bonus Watch Co. Pvt. Ltd. & Ors.

DATE OF JUDGMENT: 10/09/2004

BENCH:
N. Santosh Hegde, S.B. Sinha & A.K. Mathur

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 1610 of 2004)

SANTOSH HEGDE, J.

Heard learned counsels for the parties.

Leave granted.

Appellant herein questions the correctness of an order made by the Appellate Bench of the High Court at Calcutta which by the impugned order set aside the order made by a learned Single Judge on the original civil jurisdiction of that court in G.A. No. 682 of 1999 in C.S. No. 99 of 1999. Brief facts necessary for the disposal of this appeal are as follows :-

The respondent herein filed a suit for possession alleging the appellant herein to be a licensee and the period of license having expired he was entitled to a decree for khas possession of the suit schedule property as also for certain other ancillary reliefs. In the said suit he filed an interlocutory application, firstly praying for a judgment on admission and in the alternative for an injunction directing the appellant herein to immediately hand over vacant and peaceful possession of the suit schedule property premises to the respondent-plaintiff. The learned Single Judge who heard the said application came to the conclusion that he did not find any reason to pass a decree on admission or to grant interim mandatory injunction directing the appellant-defendant to hand over possession of the flat in view of the fact that the suit was still pending in the court and granting of such relief would tantamount to a decree before trial for which the respondent has not made out a case.

It is against the said dismissal of the plaintiff's application, an appeal was filed confining the appeal only to the reliefs by way of injunction seeking interim possession of the suit schedule property during the pendency of the suit. The Appellate Bench after noticing the arguments of the parties and the documents produced came to the conclusion that prima-facie the relationship between the parties was that of licensee and licensor. It also came to the conclusion at one point of time in 1998 the appellants were willing to voluntarily surrender the possession but did not do so because the respondent did not agree to repay the security amount. It also came to the conclusion that for about 4 years the property in question has been under a Caretaker and the said property was not used for any commercial purpose. In the said background, the appellate court came to the conclusion that it is not proper that the property (Flat) should be kept in a disused condition. The appellate bench also considered the litigation to be a luxury litigation and on this philosophical background it directed the

receiver who was earlier appointed as an interim receiver to take inventory of the movable in the property to take symbolic possession of the suit property and put the respondent-plaintiff in possession of the property under the authority of that receiver subject to final adjudication in the original suit.

It is the above mandatory interim order of directing the interim possession being handed over to the plaintiffs in a suit for possession, the appellants are before us.

Shri Jaydeep Gupta, learned senior counsel appearing for the appellants submitted that it is an admitted fact that the appellants were in possession of the suit property and the suit itself was for eviction and for possession. He contended that there was a triable issue as to the nature of possession hence a decision to hand over possession or not could have been taken only after deciding this issue and on the basis of law applicable to such relationship. Learned counsel pointed out that Trial Court has for good reasons rejected the interim application of the plaintiff holding that allowing such application would amount to grant of a decree even before trial which normally is not permissible in law. He submitted there is no extraordinary circumstances on facts of the present case which could have permitted the Appellate Court to exercise its extraordinary jurisdiction of granting the interim possession in favour of the plaintiff in a suit for possession. He placed reliance on a judgment of this Court in the case of *Dorab Cawasji Warden vs. Coomi Sorab Warden* 1990 (2) SCC 117 wherein this Court held :-

"The Relief of interlocutory mandatory injunctions are granted generally to preserve or restore the status-quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm".

The learned counsel for the appellant submitted that in the present case, it is an admitted fact that the appellant is in possession of the property and the suit itself is for eviction and possession and there is a contested issue in regard to the nature of relationship between the parties. In such a situation issuance of mandatory injunction directing the handing over the possession in favour of the plaintiff would be unsustainable in law and is contrary to the law laid down by this Court in the case of *Dorab Cawasji Warden vs. Coomi Sorab Warden* (supra). Learned counsel also pointed out that the fact that the property in question is not used for commercial purposes or is in the possession of a Caretaker are irrelevant facts for the purpose of deciding whether an interim mandatory injunction to hand over possession should be granted or not.

Shri Raju Ramachandran, learned senior counsel appearing for the respondent submitted that this appeal is liable to be dismissed at the preliminary stage itself since from the document produced by the appellant himself, it is clear that in 1998 he was ready and willing to hand over possession of the property and he has backed out from the same, hence in equity the appellant is not entitled for any relief and Article 136 which being a discretionary jurisdiction of this Court. On merits the learned counsel submitted that as found by the Appellate Court it is ex-facie clear that the relationship between the parties is of that licensor or licensee and period of the license having come to an end the appellant continued to be in possession as trespasser. Therefore, the High Court was justified in granting the mandatory injunction to hand over possession of the property. He

submitted that the appellant has not paid any rent for the last so many years which is also a good ground for rejection of this appeal i.e. assuming he is a tenant, he could not continue to be in possession of the property without paying any rent.

Having considered the arguments of the learned counsel for the parties and having perused the documents produced, we are satisfied that the impugned order of the Appellate Court cannot be sustained either on facts or in law. As noticed by this Court in the case of *Dorab Cawasji Warden vs. Coomi Sorab Warden* (supra) has held that an interim mandatory injunction can be granted only in exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come under anyone of those exceptions and even on facts it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent. As observed by the learned Single Judge the issue whether the plaintiff is entitled for possession is yet to be decided in the Trial Court and granting of any interim order directing handing over of a possession would only mean decreeing the suit even before trial. Once the possession of the appellant either directly or through his agent (caretaker) is admitted then the fact that the appellant is not using the said property for commercial purpose or not using the same for any beneficial purpose or the appellant has to pay huge amount by way of damages in the event of he losing the case or the fact that the litigation between the parties is a luxury litigation are all facts which are irrelevant for changing the status-quo in regard to possession during the pendency of the suit.

For the foregoing reasons, we are of the considered opinion the Appellate Court erred in reversing the order of the learned Single Judge and granting a mandatory order of injunction. In view of our above findings, we think it appropriate that even the appointment of a receiver be it an interim order or otherwise to supervise the possession of the property in question is also unnecessary, hence said appointment of receiver is also set aside.

For the reasons stated above this appeal succeeds and the same is allowed. The order in appeal is set aside and that of the trial court restored.