

Before S. P. Goyal, J.

MADAN MOHAN,— Petitioner

versus

ARUN KUMAR AND OTHERS,—Respondents.

Civil Revision No. 3443 of 1982

December 8, 1983.

Code of Civil Procedure (V of 1908) as amended by Act (104 of 1976)—Order 39 Rules 1 and 2—Code of Criminal Procedure (II of 1974)—Section 145—Application for temporary injunction filed by the plaintiff claiming to be a tenant of the premises—Defendant seeking to recover possession on the basis of an order of the Criminal Court passed under section 145—Defendant—Whether could be said to be causing injuries to the plaintiff—Temporary injunction—Whether could be issued.

Held, that the order passed under Section 145 of the Code of Criminal Procedure, 1973 is always a tentative order subject to the decision of civil Court on the question of title and the right to possession of the parties concerned. Where the plaintiff claims himself to be a tenant and entitled to retain possession of the property in dispute till he is evicted therefrom in accordance with the provisions of the Rent Restriction Act, he is not required to specifically claim a declaration of his title to the property or the right to remain in its possession. Such a relief is always deemed to be included in the prayer for a permanent injunction. After the enforcement of the amending Act of 1976, it has been provided under Order 39 Rule 1(c) of the Code of Civil Procedure, 1908 that an injunction can be granted to restrain the defendant from dispossessing the plaintiff during the pendency of the suit. Prior to the insertion of clause (c) an *ad interim* injunction restraining the defendant from dispossessing the plaintiff could not be granted under any of the then existing clauses of rule (1). Under rule 2, it was rather difficult to hold that a defendant by seeking possession in pursuance of an order passed by a competent Court or other authority was causing any injury to the plaintiff for the causing of an injury necessarily implied the doing of some unlawful Act. There can be innumerable cases where inspite of an order of a competent authority or Court of limited jurisdiction, the plaintiff has a triable cause and a good *prima facie* case. The deprivation of possession of immovable property *pendente lite* is usually presumed to cause irreparable loss. The Legislature has stepped in and added clause (c) in rule (1) authorising the Court to pass temporary injunctions to restrain the defendant from dispossessing the plaintiff from the suit property if the interest of justice so required.

(Paras 3, 4 & 5)

Petition under Section 115 C.P.C. for revision of the Order of the Courts of Shri K. C. Diwan, Additional District Judge, Amritsar, dated 8th December, 1982, reversing that of Shri P. K. Goyal, Sub-Judge 1st Class, Amritsar, dated 21st September, 1982, granting ad interim injunction restraining the petitioner and respondents No. 1 to 4 from dispossessing the plaintiff from the shop in dispute till the disposal of the suit.

Harinder Singh, Advocate, for the Petitioner.

R. K. Chhibber, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.

(1) Arun Kumar respondent filed a suit for permanent injunction restraining the petitioner and other respondents from dispossessing him forcibly from the building in dispute where he was stated to be carrying on his business. He claimed himself to be in possession as a tenant and entitled to continue as such till evicted in accordance with the provisions of the East Punjab Urban Rent Restriction Act (hereinafter called the Act). Alongwith the suit he filed an application under Order 39, rules 1 and 2, Civil Procedure Code for ad interim injunction to the same effect which was declined by the trial Court. However, on appeal the learned Additional District Judge reversed the order of the trial Court and granted *ad interim* injunction restraining the petitioner and respondents No. 1 to 4 from dispossessing the plaintiff from the shop in dispute till the disposal of the suit. Aggrieved thereby Madan Mohan defendant has come up in this revision.

(2) The learned counsel for the petitioner has assailed the correctness of the impugned order primarily on the ground that the prayer made in the plaint as well as in the application was that the defendants be restrained from dispossessing the plaintiff except in due course of law but the order passed goes much beyond the said prayer. It was further contended that the petitioner was held entitled to the restoration of the possession of the property in dispute by the order of the learned Sessions Judge passed in proceedings under section 145, Criminal Procedure Code (for short, called the Code) and as such he was not dispossessing the plaintiff forcibly but was enforcing the lawful order passed in his favour. However, none of the contentions raised has any merit.

(3) The order passed under section 145 of the Code is always a tentative order subject to the decision of civil Court on the question of title and the right to possession of the parties concerned. No doubt the plaint is not happily drafted but its sum and substance is that the plaintiff has claimed himself to be a tenant and entitled to retain possession of the property in dispute till he is ejected therefrom in accordance with the provisions of the Act. It is well-established that in a suit for injunction the plaintiff is not required to specifically claim a declaration of his title to the property or the right to remain in its possession. Such a relief is always deemed to be included in the prayer for a permanent injunction. The suit, therefore, in substance is to establish the right of the plaintiff to continue in possession as a tenant which necessarily means that he is not liable to be evicted therefrom in pursuance of the order of a criminal Court under section 145 of the Code. The first ground urged, therefore, has no merit.

(4) As regards the second contention that the petitioner cannot be said to be causing any injury by enforcing a lawful order and as such no temporary injunction can be granted under Order 39, rule 2, Civil Procedure Code, it would suffice to mention that after the enforcement of the 1976 Amendment Act it has been provided under Order 39 rule 1(c) that an injunction can be granted to restrain the defendant from dispossessing the plaintiff during the pendency of the suit. The earlier view expressed by certain High Courts that when the defendant is seeking to dispossess the plaintiff from the property in dispute in pursuance of an order passed by some authority in accordance with law no temporary injunction can be granted as the act of the defendant does not amount to causing of an injury to the plaintiff within the meaning of Order 39, rule 2, Civil Procedure Code, no more holds the field in view of the introduction of the said clause in rule 1 of Order 39, Civil Procedure Code.

(5) Prior to the insertion of clause (c) an *ad interim* injunction restraining the defendant from dispossessing the plaintiff could not be granted under any of the then existing clauses of rule (1). Under rule 2, it was rather difficult to hold that a defendant by seeking possession in pursuance of an order passed by a competent court or other authority was causing any injury to the plaintiff for the causing of an injury necessary implied the doing of some unlawful act. There is never a dearth of cases where in spite of an order of a competent authority or Court of limited jurisdiction, the plaintiff has a triable cause and a good *prima facie* case. The deprivation of possession of immovable property *pendente lite* is usually

presumed to cause irreparable loss. The case in hand is a typical specimen where the denial of an interim injunction is most likely to cause irreparable loss to the plaintiff. As noticed above, he is running his business in the premises in dispute. If he is dispossessed therefrom he may not be able to secure another premises to run his business. In case he is liable to do so, it may not be worthwhile at all for him to re-occupy these premises after the lapse of a long period which in the present set litigation is likely to take to conclude. To prevent the miscarriage of justice in such like cases, the Supreme Court in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, (1) permitted resort to section 151, Civil Procedure Code and ruled that the provisions of Order 39 were not exhaustive and the courts have inherent jurisdiction to issue temporary injunction in circumstances not covered by the provisions of Order 39, Civil Procedure Code. To put the matter beyond the pale of any shadow of doubt, the Legislature has stepped in and added clause (c) in rule (1) authorising the court to pass temporary injunctions to restrain the defendant from dispossessing the plaintiff from the suit property if the interest of justice so require so there is no merit in the second contention as well. No ground, therefore, has been made out to interfere with the impugned order and this petition is accordingly dismissed leaving the parties to bear their own costs. The trial Court is, however, directed to dispose of the suit as expeditiously as possible.
