

Misc(J) 61/17

ORDER

13.12.2017. The present Misc (J) case is registered on a petition being no. 2297/17 under Order 39 rule 1 and 2 read with Section 151 CPC praying for restraining the opposite parties, her men and agents from entering the suit premises and from dismantling the suit premises till disposal of the main suit.

Upon motion, this court observing the presence of a prima-facie case, directed maintenance of status-quo in respect of the petitioner' s possession as a tenant in the suit premises, while issuing show cause notice to the opposite parties to show cause as to why the interim order so passed shall not be made absolute.

The opposite party entered appearance and resisted the petitioner's prayer by filing a written objection. Proforma opposite parties failed to contest the proceedings despite receipt of notice and vide order dated 23.10.2017, instant Misc (J) case

Order

13.12.17  
Contd  
proceeded ex parte against the proforma opposite parties.

The facts of the petitioner's case material for disposal of the instant proceeding is given herein under:-

That one Rathindra Mohan Ganguly is the owner of a Assam Type house standing over a plot of land at Bongaigaon Town Part-V under Bongaigaon Revenue Circle and that the petitioner entered into a house rent agreement with the said Rathindra Mohan Ganguly on 02.05.2012 in respect of a shop room measuring 11ft X 15 ft on the ground floor of the said two-storied Assam type house and that said Rathindra Mohan Ganguly died in the year 2015 leaving behind his wife, a son and daughter who inherited the said property and accordingly the land records in respect of the suit-land was mutated in the name of the opposite party on being consented to by the other successors-in-interest and that as per direction, the petitioner had been paying rent regularly to the opposite party through her bank account and continued the tenancy.

It is alleged that opposite parties is trying to dismantle the suit house illegally without giving any opportunity to the petitioner for shifting his godown without any valid reason. It is averred that the petitioner runs his family with the earnings from the said tenanted premises and if the same is demolished it would cause irreparable loss to the petitioner. It is further alleged that on 21.08.2017 the opposite party had required petitioner to vacate the suit premises or to face consequences and accordingly on 31.08.2017, the opposite party started the works of dismantling but same could not complete the same owing to the obstruction of the neighbours. Hence, the prayer for a restraint order.

The opposite party filed the written objection through her constituted attorney. In her witten objection, opposite party raised that the pleas of absence of prima-facie case, balance of convenience in favour of the petitioner's case. The opposite party disclosing her intention to dispose of the property in question, averred that the third party would provide a room to the petitioner for running

Misc(9) 61/17  
Order

13.12.17  
CLD

his business. The opposite party averred that she has not violated the terms of the agreement and question of giving injunction does not arise. It is also averred that temporarily the petitioner would have vacate this possession and will be reinstated soon and this proposal had been conveyed to the opposite party but the petitioner with malafide intention has filed the suit along the injunction petition. The opposite party prays for rejection of the petition.

Heard. Perused C/R.

It is well settled that for grant of the relief of injunction the petitioner has to proof the existence of three cardinal principles namely:- **1. Presence of prima-facie case, 2. Balance of convenience, 3. Irreparable loss of injury**, in his or her case.

Now let me scrutinize the petitioner's case, in the light of aforesaid cardinal principles.

Perusal of the C/R discloses that petitioner has filed the injunction application apprehending his ejection from the tenanted premises without due process of law. The alleged act of demolishing of the premises leading to his ouster discloses that his apprehension is not without basis.

The opposite party, admitting the demolition of the tenanted premises avers that same is a temporary measure to cause reinstatement of the tenant in the premises by another party.

The alleged demolition and the absence of any agreement ensuring the petitioner's reinstatement into the premises after reconstruction, discloses a prima-facie case in petitioner's favour. A case of urgency is made out.

That the petitioner is a tenant in respect of the tenanted premises and that he is running his family out of the income from the said tenanted premises is not in dispute. That the petitioner would have to suffer loss, if ousted from the tenanted premises is not denied.

The opposite party has disclosed her intention of disposing of the premises. The fate of petitioner after the suit-premises

13.12.17

WED

would be sold, is in dark. An agreement ought to have been made between the subsequent transferee and the petitioner or between the opposite party and the petitioner, securing the future of the petitioner/tenant but in the absence of the same, opposite party not having taken recourse to the provisions of law to eject the petitioner/tenant and instead resorting to demolition of the premises, discloses that irreparable loss would ensue to the petitioner and comparative hardship would befall the petitioner, if a restraint order is not passed. On the other hand the opposite party being out of possession and receiving rents regularly and residing at Kolkata would not be put to inconvenience greater than the petitioner if the order is passed.

Accordingly, considering the presence of the three essential ingredients in the petitioner's case, I am inclined to allow the petitioner's prayer. The opposite party is restrained from ejecting the petitioner from the tenanted premises without due process of law.

Misc(J) case is allowed on contest with costs.

  
**Civil Judge,  
Bongaigaon**