

Case :- MATTERS UNDER ARTICLE 227 No. - 274 of 2022

Petitioner :- Daya Agarwal

Respondent :- The Court Of Civil Judge (Junior Division)Lucknow And Another

Counsel for Petitioner :- Abhishek Khare

Hon'ble Mrs. Sangeeta Chandra,J.

1. Heard learned counsel for the petitioner.

2. It is a case of the petitioner that she had filed a suit for permanent injunction against the respondent praying for restraining the defendant from interference in the peaceful possession of the plaintiff with respect to the property in suit i.e. 109/5, Model House, Aminabad, Lucknow and that the defendant be restrained from evidence the plaintiff from the property in question, without adopting the due process of law and that they be restrained from demolishing any part of the property in suit which would jeopardize the life of the plaintiff and her children. The learned trial court issued notice to the defendant on the application for temporary injunction moved alongwith the said suit on 29.09.2021 and a commission was issued. The commission report submitted before the trial court indicated that the roof of the property in question was being demolished with the help of labour employed by the defendant. Since no ad-interim injunction was granted, and only notices were issued, the petitioner moved an application under Section 151 C.P.C. alongwith photographs of the demolition being undertaken by the defendant, on 06.12.2021 praying that the dates fixed for consideration of application for temporary injunction be preponed. The trial court did not pass any order and directed keeping the application on file as is evident from the order sheet filled as annexure to the petition.

3. It has been submitted that on 29.10.2021 the defendant/opposite party have put in appearance through their counsel and filed vakalatnama, bearing paper No.C14. The matter was listed on

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29.10.2021 and thereafter 12.01.2021 and subsequently, 02.01.2022 and the next date fixed in the matter was 02.02.2022, on which date the trial court has again fixed the matter on 25.03.2022, without making any observation on the application of temporary injunction.

4. This Court has perused the extracts of the order sheet as page 67 of the paper book and finds that the trial court had even not cared to sign the order sheet continuously on four dates i.e. on 29.10.2021, 12.11.2021, 06.12.2021 and 03.01.2022.

5. Learned counsel for the plaintiffs states that the petitioner being faced with demolition has also sent a representation to the District Judge as well as to the District Magistrate praying for their interference to safeguard her life and property. Such applications have also remained undisposed of. Hence this petition has been filed praying for a direction to be issued to the trial court to decide the application moved by the petitioner under Order 39 Rule 1 CPC at the earliest, and in the meantime to direct the opposite party not to demolish the property in suit.

6. Having heard the learned counsel for the petitioner and having perused the plaint and the application for temporary injunction moved therein, this Court is of the opinion that in such matters as has been pleaded before the learned trial court, the provisions of Rule 1 of Order 39 clearly apply, which are being quoted herein below:-

"1. Cases in which temporary injunction may be granted- Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

The Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose

of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders."

7. In this case the property in question is admittedly being demolished, although by the owner. The defendant to the suit, during the pendency of the suit for permanent injunction. In such cases the trial court should be cognizant of the fact that in the event the property in question is demolished, it would cause irreparable loss and damage to the plaintiff, who is living as a tenant therein. In such matters, it would be appropriate for the trial court to expeditiously consider the application for temporary injunction, more so, when the defendants have already appeared in the suit and filed their vakalatnama.

8. Issue notice to the opposite party no. 2 both ways.

9. The petitioner shall serve and file an affidavit within three weeks.

10. List this case on 28.03.2022.

11. Till the next date of listing Status quo as it exists today shall be maintained by the parties to the Suit.

12. The Registry shall issue notice to the Presiding Officer of the Court of Civil Judge (Junior Division), South, Lucknow, Mr. Piyush Bharti, as to why the disciplinary proceedings be not initiated against him for not even caring to sign the order sheet.

13. The order passed today shall be communicated to him forthwith by the Registry and his explanation alongwith the comments of the concerned District Judge be placed on the file by the next date of listing i.e. 28.03.2022

Order Date :- 8.2.2022

Darpan Sharma