

DINESH MATHUR
v.
O.P. ARORA AND ORS.

APRIL 11, 1997

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

Code of Civil Procedure, 1908 :

Ad interim injunction—Grant of—Party running hotel business since 1937—Lower Courts granting ad-interim injunction against running the business—On appeal held balance of convenience does not lie in issuing the ad-interim injunction and the party cannot be adequately compensated if ultimately the other party succeeds in the suit, for prohibiting the running of the business by which he acquired goodwill having used the premises for 60 years—Courts below committed gross error of law in granting injunction.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3004 of 1997.

From the Judgment and Order dated 7.12.95 of the Delhi High Court in C.R.No. 974 of 1995.

M.P. Jha for the Appellant.

Gopal Subramaniam, A.K. Mahajan, S.P. Mehta, Shashi Bhushan and Pramod Dayal for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard counsel on both sides. This appeal, by special leave, arises from the judgment of the High Court of Delhi, dated December 7, 1995 made in C.R. No. 974/90.

It is not necessary to narrate all the details for the purpose of disposal of this appeal. Suffice it to state that the respondent had a perpetual lease in 1937 and ever since he has been using the premises for running a hotel. The respondent filed a suit in 1991 for the first time alleging that the appellant had violated clause 7(2) of the conditions of lease as he has been obtained the prior permission of the Commissioner. *Ad-interim* injunction was granted. When he sought for vacation, it was not

ordered. On appeal, it was confirmed and revision was dismissed. Thus this appeal, by special leave.

It is an indisputable fact that ever since 1937 the appellant has been using the premises for commercial purpose, viz., running a hotel business. It is not a case where the balance of convenience would lie if prohibition on running the hotel on the basis of the lease is granted to him. Whether the appellant has violated the conditions of the lease is a matter to be gone into in the suit itself. We decline to go into the merits though Shri Gopal Subramaniam, learned senior counsel, sought to impress upon us the non-compliance of the covenants of the lease. He also brought to our notice the conduct on the part of the appellant in not obeying the *ex-parte* order of injunction granted on December 2, 1991 till September 24, 1994. It may be that he did not obey the injunction but remedy is different. On that ground, it cannot be said that balance of convenience lies in grant of injunction in favour of the respondent. Granting injunction is a matter of discretion. Balance of convenience and irremediable injury are triable issues and are required to be examined and *found positively*. All are apparently *lacking*. Since the appellant has been running the business right from 1937, balance of convenience does not lie in issuing the *ad-interim* injunction and he cannot be adequately compensated if ultimately the respondent succeeds in the suit for prohibiting the running of the business by which he acquired a goodwill having used the premises for long 60 years. Under the circumstances, the courts below have committed gross error of law in granting injunction.

The appeal is accordingly allowed. *Ad interim* injunction stands dismissed. The trial Court is directed to dispose of the suit as expeditiously as possible. No costs.

Appeal allowed.