

provide temporary electricity supply in favour of the Writ Petitioner/present Respondent No.1 which amounts to granting the main relief sought for in the writ petition by the Respondent No.1.

- 2.** The appellant's case, in nutshell, is that the respondent No.1 who is a gold merchant having a number of properties in prime locations of Keonjhar town including a huge Mall with name and style as "B.S. Mall". He was a tenant under joint family firm of the Appellant-M/s Kumar Multiplex Pvt. Ltd. and Dillip Kumar Ram for the Shop No.2 in Block-B and first floor of Block-B, Mayur Market Complex, now Mayur Complex, Keonjhar situated over Plot No.620 under Khata No.187, Block-B, Village-Pabitradiha, District-Keonjhar vide agreement dated 21.02.2012 and 27.02.2012 respectively. The period of tenancy was up to 31.12.2012 and it was never extended even though Clause-4 of the Deed of Agreement expressly provided for extension of the lease period by renewal of the agreement. Similarly, Clause-5 of the agreement, it was clearly stipulated that the Respondent No.1 shall not raise any alternation or construction on the permanent structure in the tenanted premises and shall hand over the premises to the landlord

on the expiry of tenancy. The Respondent No.1 also agreed to pay the house rent by the end of the first week of the succeeding month and non-compliance of the Clause-12 shall be treated as a violation of the agreement and for such violation the respondent No.1 will be liable to be evicted without any further notice. The Respondent No.1 herein did not opt for any extension of the lease period in the absence of any fresh agreement. Hence, it was his solemn duty to hand over the possession of the tenanted premises to the landlord since the tenancy expired on 31.12.2012.

- 3.** In a family partition the aforesaid property fell in the share of the present appellant. Since the tenancy period of the respondent No.1 was over in 2012, the appellant-landlord approached the respondent No.1 to enter into a fresh rent agreement or to hand over the vacant possession to him. But, the respondent No.1 took evasive plea and refused to vacate the possession. The precept of timely payment of lease rent is the essence of the Lease Agreement but it has not been respected by the Respondent No.1 herein. As a result of which, the present Appellant was compelled to file a suit for eviction and the same is pending before the

learned Civil Judge (Senior Division), Keonjhar registered as C.S.No.81 of 2020.

- 4.** There were two electricity connections in the name of the appellant's grandfather from which the electricity was sourced to the respondent No.1 shop. Since the respondent No.1 did not pay the outstanding Electricity dues, the appellant was compelled to pay the outstanding amount of Rs.54,770/- and after clearing all the dues, he was constrained to snap the connection from the Respondent's shop by way of a request letter to the Executive Engineer, NESCO, Keonjhar dated 28.08.2020. After disconnection, the respondent No.1 is generating electricity through his own Digital Generator and utilising electricity.
- 5.** The respondent No.1 herein approached the Executive Engineer for reconnection of the snapped electricity but when the authorities sought for NOC under Section 43 of the Electricity Act from the Landlord for reconnection, the Landlord refused to issue NOC which led to taking the matter before the office of the Chairperson, Permanent Lok Adalat, (PUS), Keonjhar which was registered as PLA Case No.257 of 2020 for reconnection of electricity without impleading the appellant as a party. The Chairperson,

Permanent Lok Adalat vide its order dated 13.08.2020 asked the authorities to examine if temporary supply can be given to the petitioner's rented premises on receiving fees as admissible under rules and objection of the owner if any and directed both the parties to appear for conciliation.

- 6.** The non-availability of the NOC from the landlord acted as a stumbling block in processing of restoration of electricity in the rented premises of the Respondent No.1. This gave rise to a cause of action for filing this Writ Appeal with a prayer for restoration of electricity to Shop No.2 in Block-B, Mayur Market Complex (First Floor) now Mayur Complex, Keonjhar situated over Plot No.620 under Khata No.187, Block-B, village-Pabitradiha, District- Keonjhar.
- 7.** The Respondent No.1 made an application and submitted documents pursuant to order dated 18.08.2020 (Annexure-8 to the writ petition) issued by the Executive Engineer, Keonjhar Electrical Division, NESCO Utility, Keonjhar. But the Executive Engineer, vide his letter dated 25.08.2020 rejected the prayer for temporary power supply to the Respondent No.1's tenanted premises on the ground that the Respondent No.1 has not enclosed "No Objection Certificate" from the land owner along with application for

temporary connection. Being aggrieved by said rejection letter, a Writ Petition was filed by the respondent No.1 herein.

- 8.** The said Writ Petition was listed before the learned Single Judge who issued notice to the parties, but before hearing the appellant and other opposite parties, directed the authorities to provide temporary electricity connection to the writ petitioner without insisting on NOC in the shape of affidavit from the land owner for the time being, which is, in fact, the main relief sought for by the Respondent No.1.
- 9.** Mr. Samir Kumar Mishra, learned Counsel for the Appellant submits that the learned Single Judge having opined that the matter requires consideration and accordingly issued notice to the appellant and other respondents. However, learned Single judge directed restoration of electricity supply in the shape of interim relief before hearing the appellant and other contesting respondents, when such relief amounts to granting the final relief claimed in the writ petition. Thus, the impugned order which granted final relief in the guise of interim relief is unsustainable and erroneous which is reiterated in so many decisions of the Supreme Court and different High

Courts, especially, in ***Dorab Cawasji Warden v. Coomi Sorab Warden & Ors***¹ and ***Hammad Ahmed versus Abdul Majeed and others***², pronounced by the Supreme Court of India and held that the comparative mischief or inconvenience which is likely to cause from withholding the injunction, will be greater than which is likely to arise from granting it. Hence, the balance of convenience is in favour of the Appellant which is supervening than that of the Respondent herein. It is true that final prayer cannot be granted at the interim stage is not absolute principle having universal application. But in the case like the present one such interim relief was totally uncalled for.

10. It was brought to the notice of the Court that the Respondent herein has a massive shopping complex with name and style as “B. S. Mall” in the prime locality of the city for running his jewellery business along with other branches of business. In fact, the present shop in question has been kept locked for most of the time which clearly manifests that this shop is not required for running his

¹1990 AIR 867

²2019 (5) SCALE 698

business. He has unnecessarily creating tension and disturbing the peace of the present Appellant.

11. He further submitted that after the expiry of the tenancy period, the occupation of the tenant upon the tenanted property becomes like an illegal trespasser and once a tenant has become a trespasser, he cannot be in lawful occupation of the tenanted premises which is clearly reiterated in ***M/s Corona Ltd. and others v. Krishna Chandra Patnaik***³. The substance of the argument advanced by the Appellant is that law makes clear distinction between a trespasser and erstwhile tenant. Since, the Respondent No.1 is an illegal occupant of the tenanted premises, he has lost all his rights for claiming electricity connection from the Respondent-authorities.

12. Learned Counsel for the Respondent No.1, Mr. Bibekananda Bhuyan submitted that the Respondent No.1 is running a shop in the scheduled premises for earning his livelihood and the connection of electricity is absolutely necessary for running the shops in question. He further submitted that despite the order of the Permanent Lok

³1997(1) O. L. R. 323

Adalat, the Respondent Nos.3 and 4 in a colourable exercise of power, intentionally failed to extend the power supply.

13. We have considered the respective submissions of the learned counsel for the parties. While exercising the appellate jurisdiction, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. The entire discussions indicate that the Respondent No.1 has not come forward to the Court with clean hands which sparks his contumacious conduct. It is also quite intriguing and surprising that the lease agreement has expired since 2012 and the Respondent No.1 has neither renewed the said agreement nor extended the tenure of lease. It is a well settled law that a tenancy is a creation of contract between the two persons who are capable of entering into contract called lessor/landlord and the lessee/tenant. The sanctity of the contract is lost once the lease agreement expires. The learned Single Judge has erred in entertaining an adventurous litigation without examining the conduct of the Respondent No.1 and granted interim relief like a final relief. Therefore, the writ petition is misconceived and consequential grant of interim relief is uncalled for.

14. It was further reiterated that the respondent No.1 did not pay the electricity dues of the rented premises and the Appellant herein was forced to pay the outstanding electric dues arising out of the use of respondent No.1. Having fully aware of the fact that the respondent No.1 herein is in a weak wicket, he has approached the Writ Court. His right to claim for temporary connection itself is questionable when his conduct is not clean. In fact, the conduct of the Respondent No.1 in seeking the intervention of this Court with unclean hands is sufficient for non-suiting to get any relief which is succinctly echoed in plethora of judgments like ***Dalip Singh v. State of U.P.***⁴ and ***Oswal Fats and Oils Ltd. v. Commr. (Admn).***⁵ Therefore, the impugned order is unsustainable and sans proper reasoning.

15. In the light of foregoing discussions, the Writ Appeal is allowed and the impugned order dated 23.09.2020 passed by the learned Single Judge in W.P. (C) No.23804 of 2020 is set aside. The Respondent No.1 is directed to vacate the rented premises and pay the entire arrear of rent and electricity dues within a period of one month from today.

⁴(2010) 2 SCC 114

⁵(2010) 4 SCC 728

The Respondent No.1 is also directed to pay Rs 30,000/- as litigation expenses to the Appellant within a month for dragging him to this unwarranted litigation. Consequently, the parties are directed to withdraw all the pending cases, if any, and give rest to unnecessary litigation arising out of the tenanted premises.

16. With the above observation, we dispose of the instant Writ Appeal.

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(S. K. Panigrahi, J.)

Sanju Panda, J. I agree.

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(Sanju Panda, J.)