

SUPREME COURT**Seelawathie Mallawa****Vs.****Millie Keerthiratne**

*S.C. No. 80/81 – C.A. Application No. 103/81. D.C. Kandy
Case No. 12934/L*

Injunction – Circumstances when it will be granted – suspension – trespasser.

Ptff. R. was owner of premises known as Keerthi Cinema. According to Lease Agreement dated 1st March 1979 Plaintiff leased Keerthi Cinema Hall for a period of 2 years till 28.2.81. There was a reference in the schedule to the machinery and equipment which were to be used for the business of exhibiting films. The Defendant A, having registered the business name of New Keerthi Cinema carried on the business of exhibiting films at the premises using the machinery and equipment in the Hall.

Sometime before the lease expired the Ptff. R advertised the premises in the hope of obtaining a higher rent and inquired from the Defendant Appellant whether she would make a higher offer.

As the Defendant Appellant by her action made it known that she was going to continue occupation on the earlier terms Ptff. R. became apprehensive and brought this action, seeking a declaration that she was entitled to possession of the premises and also sought an injunction to be operative till the final determination of the said action restraining the Defendant A from entering Keerthi Cinema Hall, to hand over the equipment and machinery and to prohibit her from exhibiting any film at the said Cinema pending final determination of action.

The D.J. after inquiry only restrained Deft. A. from exhibiting any films at the Hall.

Deft. A. appealed against this order.

- Held*
1. That the order made by District Judge in restraining the Defendant Appellant from taking any benefits arising out of wrongful possession after expiring of lease was justified.
 2. That the District Judge was also justified in refusing to grant an injunction removing the Defendant from the premises pending determination of trial.

APPEAL from judgment of Court of Appeal.

- Before:** Wanasundera, J., Wimalaratne, J. and Victor Perera, J.
- Counsel:** H.L. de Silva, Senior Attorney-at-law with T.B. Dillimuni for the defendant-appellant.
- K.N. Choksy, Senior Attorney-at-law with L.C. Seneviratne and L. Perera for plaintiff-respondent.
- Argued on:** 11.03.1982. & 31.03.1982
- Cur. adv. vult.*
- Decided on:** 12.05.1982

VICTOR PERERA, J.,

This is an appeal from the judgment of the Court of Appeal dated 25th September 1981 affirming the order of the District Court of Kandy, granting an interim injunction restraining the defendant-appellant, her licensees, agents, servants and workmen, from exhibiting any film in the Cinema which was the subject matter of the dispute till the final determination of the action on the plaintiff-respondent furnishing security in a sum of Rs. 5000/-.

The plaintiff-respondent was admittedly the owner of the land called Rajatotam Estate alias Rajawatte presently known as Keerthi Cinema and Grounds in extent two roods and twelve decimal five perches (OA. 2R. 12.50). According to the Indenture of Lease No. 6107 dated 26th August 1971 (P10) the plaintiff-respondent had leased the said land and buildings for the first time to one A.P. Mallanayake. The Indenture is clearly a lease of the land and the buildings and not of a business and the lessee was given a licence to use the Cinema Hall, machinery and equipment for him to run the business of a Cinema for exhibiting films. Though this lease of the premises was for a period of ten years, it would appear that there has been an earlier termination of the lease, as the plaintiff-respondent had, by Lease Bond No. 2033 dated 15th May 1975 (P6) leased the said

land, Cinema Hall and buildings appurtenant thereto to the defendant-appellant for four years from 1st March 1975 till 28th February 1979. At the expiry of this second lease, the plaintiff-respondent by indenture No. 10 dated 1st March 1979 (P1) leased the said land and buildings once again to the defendant-appellant for a further period of two years from 1st March 1979 till 28th February 1981.

On a careful examination of the Lease Bonds there is no doubt whatsoever that the leases were in respect of the land, together with the Cinema Hall and other buildings standing thereon. The Schedules thereto do not refer to any business. There is reference to a separate inventory to be made of machinery, equipment, furniture and fittings installed and lying in the premises which were to be used for the business of a Cinema for exhibiting films. The Lessee had to use her capital and her employees, she was responsible to their employment, payment of wages and also the running of the Liquor Bar in accordance with Excise Regulations. There is nothing in the Leases to justify even an inference that what was let was a business as a going concern or the goodwill of a business. The facts are similar to the lease of a building described as a "workshop" which was the subject matter of the case of *Nicholas Hamy v. James Appuhamy* (52 NLR 137) where the Supreme Court held that there was the lease of the building along with the machinery, tools and implements but not a lease of a business. It is therefore clear that the defendant-appellant was given a lease of the premises described in the Schedule and a licence to use the Cinema Hall to run the only business that could be run in the premises, namely that of exhibiting films during the pendency of the lease. This licence was ancillary to the lease of the premises and could not exist without the lease. Therefore when the lease expired in terms of the Indenture of Lease on 28.2.81 the licence to exhibit films ceased to exist and there was no further contractual relationship between the parties.

The business belonged to the defendant-appellant and she in 1977 had quite legitimately registered the business name of "New Keerthi Cinema" on 6th March 1977 according to document "A" filed with her statement of objections, claiming the business as one belonging to her and started by her on 6th January 1977 though the building leased to her was the "Keerthi Cinema Hall."

In anticipation of the termination of the lease on 28th February 1981 and the consequent lapse of the licence to exhibit films thereafter, the plaintiff-respondent had from about November 1980 taken steps

to invite tenders for a new lease of the land and buildings from 1st March 1981. She had caused the publication of an advertisement in the Newspapers on the 2nd November 1980 calling for such tenders. The plaintiff-respondent had by letter dated 19th November 1980 (P2) through her Lawyer written to the defendant-appellant herself advertizing to the said advertisement, intimating to her that she had received several offers of leases at a much higher rent than what the defendant-appellant was then paying, invited her to make an offer of a higher rent if she was interested and notifying to her that she will have to hand over the premises on the 28th February 1981 in the event of the plaintiff-respondent leasing the same to another. The defendant-appellant by letter dated 28th November 1980 (P3) sent through her Lawyer to the plaintiff-respondent expressed her willingness to take a new lease for 5 years at the rental of Rs. 1,500/- per month and stating that she was ready to sign a lease bond with the necessary conditions. The defendant-appellant was thus fully aware of the intentions and actions of the plaintiff-respondent, but does not appear to have pursued her own intention or desire to renew the lease.

The plaintiff-respondent had however in the meantime accepted an offer by one R.M. Seneviratne who was prepared to pay a rental of Rs. 3,500/- per month and she and Seneviratne had duly executed Indenture of Lease No. 24 dated 27th January 1981 (P9) with new terms and conditions to be effective from 1st March 1981. Curiously, on the very next date, that is, on 28th January 1981, the defendant-appellant had sent an application to the Rent Control Board, Kadugannawa, in an attempt to forcibly continue in occupation of the leased premises. In her application she had stated that the land owner was maintaining that the premises are *excepted premises* and that they did not come within the operation of the provisions of the Rent Act. The relief sought for by the defendant-appellant by that application was to have the premises declared not to be *excepted premises* as the fair rental value did not exceed Rs. 1,500/- per month in terms of the Schedule 4 to the Rent Act No. 7 of 1972. Having forwarded this application to the Board the defendant-appellant, through her Lawyer, sent a letter dated 29.1.81 (P4) to the plaintiff-respondent stating that she was a statutory monthly tenant and demanding a certificate of tenancy, but making no reference to her application to the Rent Control Board. The Plaintiff-respondent by letter dated 5.2.81 (P5) repudiated this assertion and noticed the defendant-appellant to hand over the premises to her on 28.2.81.

The plaintiff-respondent becoming apprehensive of the threat by the defendant-appellant to continue in forcible occupation of the leased premises after 28.2.81 in defiance of her rights thereby thwarting her implementation of her contractual obligations towards R.M. Seneviratne, the new lessee, filed this action on 16th February 1981 before the expiry of the lease, as a *quia timet* action, in the District Court of Kandy seeking a declaration that she was entitled to the possession of the leased premises from 1st March 1981. She also in her affidavit dated 23.2.81 applied for an interim injunction to be operative till the final determination of the said action restraining the defendant-appellant from entering the "Keerthi Cinema Hall" and directing the defendant-appellant to hand over the Cinema Hall and the equipment therein to her or to prohibit the defendant-appellant from exhibiting any film at the said Cinema pending the final determination of the action. After inquiry the District Judge did not restrain the defendant-appellant from entering the premises but only stopped her from obtaining any benefits from her unlawful acts by exhibiting films at the Cinema Hall.

These being the facts established both by the plaintiff-respondent and the defendant-appellant, it will be necessary to ascertain whether the District Judge had correctly used his discretionary powers in restraining the defendant-appellant in this particular manner.

The power to grant injunctions is now governed by Section 54 of the Judicature Act No. 2 of 1978 read along with Sections 662 to 667 of the Civil Procedure Code. Section 54 has merely re-iterated the powers referred to in Section 86 of the Courts Ordinance No. 1 of 1889.

The principles which the Court must take into account when deciding whether to grant an injunction or not have been formulated from time to time in decisions of our Courts and have sometimes been re-formulated on the basis of decisions of the English Courts. Generally the line of approach in exercising the Court's discretion whether to grant an interim injunction or not has been, first to look at the whole case before it. The primary consideration was the relative strength of the parties cases. The Court must have regard not only to the nature and strength of the plaintiff's claim and demand but also to the strength of the defence. It is when the Court has formed the opinion that the plaintiff had a strong *prima*

facie case, that the Court had then to decide what was best to be done in the circumstances. No doubt this exercise entailed a close examination of the merits at times almost bordering on a trial of the action, but without deciding the main issues that will be raised at the trial. In deciding on the nature or terms of such an interim injunction, the underlying principle to be considered is that the *status quo* must be maintained. Initially the plaintiff therefore needs only to satisfy the Court that there is a serious matter to be tried at the hearing. This was what was laid down by the Supreme Court in the case of *Jinadasa v. Weerasinghe* (31 NLR 33). In the later case of *Dissanayake v. Agricultural and Industrial Credit Corporation* (64 NLR 283) the Supreme Court held that if it appears from the pleadings already filed that such a matter does exist, the further question to be considered was whether the circumstances are such, that a decree which may ultimately be entered in favour of the party seeking the injunction would be nugatory or ineffective if the injunction is not issued. It is in considering this second matter that the question of balance of convenience or the damages are taken into account with a view to ascertain the probable consequences to both parties of granting or refusing an injunction and to decide whether there is an alternative remedy other than an interim injunction.

Much of the argument before us was based on the plea that the plaintiff-respondent could be compensated by damages for the wrongful possession of the land and buildings by the defendant-appellant even though the plaintiff-respondent had made out a strong prima facie case in regard to her claim. It was therefore contended that the order issuing an interim injunction was not justified.

In the present case, the defendant-appellant being an over-holding lessee is a trespasser in regard to the land and buildings leased to her and will be liable to pay damages for wrongful possession thereof, but there is the further fact that she was trying thereby to keep alive a licence to run a business which licence had ceased to exist and to derive for herself the sole benefit therefrom as long as the litigation lasted.

An injunction is the normal way of stopping a wrong doer from obtaining the benefit of such wrong doing to the detriment of the aggrieved party. In the case of *Re W.J. King & Sons Ltd's Application* (1976 1 AER 770) cited to us by Counsel for the plaintiff-respondent,

the appellant's father was the owner of a quarry and certain land adjoining it. He had leased the said quarry and the land to a Company which carried on its business of quarrying hardstone. The lease expired on 25th December 1974. After the expiry of the lease the lessee Company continued to extract hardstone from the appellant's quarry. The lessee Company made an application to court pending the determination of the matters in dispute for an interim order preserving the status quo and obtained an interim order granting the lessee Company the right to continue the search for hardstone at the appellant's quarry until the trial. In appeal, the Court of Appeal held that since the lease granted to the lessee Company had already expired, the Company was acting unlawfully by continuing to work the quarry which was the property of the appellant and that the Court had no inherent power by way of an interim order to override the rights of the appellant.

The principle enunciated in that case could be applied with full force in this case. Here the defendant-appellant's lease in respect to the land and buildings including the Cinema Hall came to an end on the 28th February 1981. After the expiry of this lease, if she continued to use the Cinema Hall, machinery and equipment in the premises and exhibited films on the screen, she would be doing so without any right whatsoever and unlawfully in the absence of a valid contract or licence and the continuation thereof will not preserve the *status quo* at least as regards the machinery and equipment which belong to the plaintiff-respondent and which were not regarded as the leased premises. The District Judge was therefore justified in exercising his discretion in issuing an interim injunction only restraining the exhibition of films pending the hearing of the action, but not disturbing her possession of the leased premises.

It was contended for the defendant-appellant that the District Judge having refused to restrain the defendant-appellant from entering the leased premises, was not justified in preventing the defendant-appellant exhibiting films in the Cinema. The defendant-appellant had during the period covered by the lease a licence to use the Cinema Hall, machinery and equipment for the Cinema business of exhibiting films. But with the expiry of the lease the licence ceased to exist. On the authority of the case of *Pounds v. Ganegama* (40 NLR 73) the District Judge could not possibly have placed the plaintiff-reponent in possession of the leased premises pending the trial. The Supreme Court in that case clearly held, that a Court by an interim injunction

had no power to remove a defendant in possession pending the result of an action. The District Judge quite correctly refused to grant such an injunction. However, the District Judge had addressed his mind to the underlying principle that if a person in unlawful possession could not be ejected pending trial, he could still be restrained from taking any benefits arising out of such wrongful possession, otherwise the Court would be a party to the preserving for the defendant-appellant a position of advantage brought about by her own unlawful or wrongful conduct.

The order of the District Judge is hereby affirmed. The order of the Court of Appeal suspending the operation of the interim injunction is vacated. The appeal is dismissed with costs.

WANASUNDERA, J. – I agree.

WIMALARATNE, J. – I agree.

*Order of Court of
Appeal suspending
operation of interim injunction
vacated.
Appeal dismissed.*