

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**APEAL FROM ORDER NO. 69 OF 2015
WITH CA/9624/2015 IN AO/69/2015**

**LAXMINARAYAN VENKOBASA DAMAM AND OTHERS
VERSUS
MEERA VIJAY MUKHEDKAR**

...

Advocate for appellants : Mr. Tribhuwan Nitin T and Mr. D. D.Desai
Advocate for Respondents : Mr. Amit Mukhedkar h/for Mr. S. M Kshirsagar
WITH
APEAL FROM ORDER NO. 73 OF 2015

**MEERA VIJAY MUKHEDKAR
VERSUS
LAXMINARAYAN VENKOBASA DAMAM AND OTHERS**

...

Advocate for appellants : Mr. Amit Mukhedkar h/for Mr. S. M Kshirsagar
Advocate for Respondents : Mr. Tribhuwan Nitin T and Mr. D. D.Desai

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CORAM : S. V. GANGAPURWALA, J.

DATE : 24th August, 2015

PER COURT :

1. Appeal From Order No. 73 of 2015 is filed by the original plaintiff and Appeal From Order No. 69 of 2015 is filed by the defendants. The plaintiff has filed a suit for seeking possession, mandatory injunction so also perpetual injunction.

2. Mr. Mukhedkar, the learned counsel for the plaintiff submits that the appeal from order is filed by the plaintiff being aggrieved by non grant of interim damages. The court has come to the conclusion that the demolition of shop occupied by the present appellant/plaintiff is illegal. Because of the demolition of the shop, business of the plaintiff has suffered. In fact

the plaintiff is not in position to carry on her business. Once the court had come to the said conclusion, the damages will follow. However the Court has refused interim damages only on the ground that the appellant has stored her articles in her house.

3. Learned counsel further submits that even the observation are made by the Court that the demolition of shop in the year 2013 is erroneous. The shops have been illegally demolished by the defendants on 03.11.2014.

4. Mr. Tribhuvan , the learned counsel for the defendant submits that in fact, by way of an agreement possession was already delivered by the plaintiff to the defendants of the suit shop in the year 2006. Even Rs.5 lacs were paid to the plaintiff while getting the suit shop vacated. Learned counsel submits that admittedly, the plaintiff is not in possession of the suit property, as such injunction could not have been clamped. Learned counsel submits that the Court has erroneously directed the defendants to construct the suit shop within 18 months or else the plaintiff is given right to construct and occupy the same. The same is illegal.

5. I have considered the submissions.

6. Aspect of payment of damages would require evidence. Whatever observations are made by the Court while deciding temporary injunction application and application for grant of interim damages are only prima

facie in nature. Those orders are required to be passed to adjust the equity. It would be unsafe to pass any orders with regard to damages without the parties having adduced evidence.

7. There are rival contentions. It is a fact that the shops are demolished. Whether they are demolished in 2013 or on 03.11.2014 will have to be considered by the trial Court after the parties lead evidence. The story put forth by the defendants about the agreement and the defendants having paid amount to the plaintiff for getting vacant possession will also have to be considered after the parties have adduced evidence.

8. All these aspects cannot be accepted as they are at this Stage. The Court has observed that the plaintiff was in possession of the suit shop. The suit shops are demolished. The Court has considered the fact that the plaintiff was a tenant and the provisions of Maharashtra rent control Act would apply.

9. Prima facie, the court has observed that the relationship of landlord and tenant existed between the parties. Whether the said alleged dispossession was in accordance with the provisions of the statutes will also have to be decided by the Court. The Court has passed an equitable order. I do not find any error committed by the Court while passing the impugned order.

10. The matter is now for evidence. Taking into account the fact that at present the shops are demolished and the business place of the plaintiff is not in existence, it would be expedient for the trial court to decide the proceedings in the suit, expeditiously, preferably by the end of September, 2016.

11. Appeal from Orders are accordingly disposed of. Civil application also stand disposed of.

(S. V. GANGAPURWALA, J.)

JPC