

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2215 OF 2015**

Karveer Bhagini Mandal

..Petitioner

Vs.

Karveer Bhagini Sahakari Bhandhar Ltd & Ors. ..Respondents

Mr. K. K. Jadhav for the Petitioner

Mr. Chetan Patil for the Respondents

CORAM : R. M. SAVANT, J.

DATE : 10th MARCH, 2015

P.C.

1 There is a concurrent finding recorded against the Petitioner and in favour of the Respondent No.1 herein as regards the grant of temporary injunction. Both the Courts below on the basis of the material on record have come to a conclusion that the possession of the Respondent No.1 is required to be protected and has therefore declined the relief of injunction that is sought by the Petitioner/Plaintiff. The dispute is in respect of an open space which was proposed to be leased out to the Respondent No.1 which is a Co-operative Housing Society. It is the case of the Respondent No.1 that the Plaintiff has passed a resolution in the year 1981 resolving to extend the lease by a period of 50 years. Per contra it is the case of the Plaintiff that though it was proposed to create a right in favour of the Defendant No.1 i.e. the Respondent No.1 herein in respect of 15,000 sq.ft. of open space for which the Defendant

No.1 was to pay Rs.500 per annum to the Plaintiff. The said transaction did not materialise on account of the failure report which was submitted in the year 1977 in respect of the Change that was to be effected in the property of the trust.

2 Be that as it may, both the Courts below have held that the Respondent No.1 is in possession of the suit property. It appears that at one point of time, the persons in management of the Plaintiff and the Defendant No.1 were common. However it seems that the management of the Plaintiff which is a public trust and the Defendant No.1 i.e. the Respondent No.1 which is a Co-operative Society, has changed and there seemingly appears to be a rift in the management. It is the case of the Defendant No.1 that the same has resulted in the proceedings being filed by the Plaintiff seeking recovery of possession of the property in question. It appears that the Defendant No.1 is a women's society which is engaged in the manufacture of food articles and has therefore put up a shed in the suit property. The roof of the said shed was required to be repaired for which steps were taken by the Defendant No.1. It is the case of the Defendant No.1 that the Plaintiff has managed to get a notice issued from the Kolhapur Municipal Corporation in respect of the work to the Shed being carried out. Both the Courts below having regard to the respective stands of the parties have held that the issues relating to the existence of the lease, and the consequential possession of the Defendant No.1 arise which

would have to be tried in the Suit. However the Courts below came to a conclusion that for the present, the possession of the Defendant No.1 would have to be protected. It is on the said basis that the application for injunction filed by the Plaintiff i.e. the Petitioner herein was rejected by the Trial Court and the said rejection was confirmed by the Lower Appellate Court.

3 In my view having regard to the facts prevailing in the instant matter, the concurrent orders passed by the Courts below do not merit any interdiction at the hands of this Court. The Writ Petition is accordingly dismissed. However, the hearing of Special Civil Suit No.152 of 2014 is expedited.

[R.M.SAVANT, J]