

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5814 OF 2014

Shri. Shrikant Shivram Godse

.. Petitioner

Versus

Shri. Vilas Jamnaprasad Jaiswal and another

.. Respondents

Mr. K. K. Malpathak, for the Petitioner.

Mr. A. S. Rao, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 9th DECEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 14.03.2014 passed by the Learned District Judge-3, Kalyan, District Thane, by which order the Appeal filed by the Petitioner being Misc. Civil Appeal No.16 of 2013 came to be dismissed and resultantly, the order dated 20.12.2012 passed by the Trial Court i.e. Learned Civil Judge, Junior Division, Kalyan, allowing the application Exh.5 filed by the Respondent Nos.1 and 2 herein in Regular Civil Suit No.827 of 2012 came to be confirmed. The Petitioner herein is the original Defendant to the suit in question and the Respondent Nos.1 and 2 are the original Plaintiffs. The suit in question being Regular Civil Suit No.827 of 2012 has been filed by the Respondents/Plaintiffs for a declaration that they are the tenants in

respect of the suit premises which are on the first floor and the second floor of the building owned by the Petitioner herein. In the said suit, the Plaintiffs have filed an application for temporary injunction for restraining the Defendant/landlord from disturbing their possession. The said application came to be replied to on behalf of the Defendant/landlord. The Trial Court considering the respective assertions of the parties and considering the material on record came to a conclusion that the Plaintiffs are in possession of the tenanted premises and has accordingly injuncted the Defendant from disturbing the possession of the Plaintiffs.

2. The Defendant/landlord carried the matter in Appeal by way of Misc. Civil Appeal No.16 of 2013. The Lower Appellate Court has on a re-appreciation of the material on record which inter-alia includes the tenancy agreement by which the Defendant had agreed to let out the suit premises to the Plaintiffs and had accordingly handed over the possession of the suit premises as also the fact that the Defendant has agreed that he has received the cheque dated 30.06.2006 of Rs.18,00,000/- towards deposit and that the balance amount of Rs.7,21,000/- was to be paid on the next date, as also the electricity bills of the suit premises. It is on consideration of the aforesaid material that the Lower Appellate Court observed that the suit premises are in possession of the Plaintiffs as they are paying the requisite electricity charges. The Lower Appellate Court

took into consideration the copy of the licence issued under the Shops and Establishment Act as also the rent receipts in respect of the suit premises. The Lower Appellate Court observed that a perusal of the agreement dated 03.07.2006 shows that the possession of the suit premises was handed over to the Plaintiffs. The Trial Court as well as the Lower Appellate Court did not countenance the case of the Defendant that some other persons are in possession for the last 30 years and some portion of the suit premises is in possession of Harish Thakur and Dashrath Murudkar who are carrying out business in the name and style as “Apollo Bhojanalaya” since 2009. The Lower Appellate Court also referred to the notices issued by the Defendant to the Plaintiffs, wherein it was stated that the Plaintiffs were put in possession as per the agreement, by the mentioning of the said fact by the Defendant in the notice according to the Trial Court the Defendant had admitted the possession of the Plaintiffs. The Lower Appellate Court therefore did not find any reason to interfere with the discretion exercised by the Trial Court and accordingly dismissed the Appeal and confirmed the injunction granted by the Trial Court.

3. The Learned Counsel appearing on behalf of the Petitioner Mr. K. K. Malpathak draws my attention to the order dated 17.04.2014 passed by this Court in Writ Petition No.5350 of 2013. The said Writ Petition arose out of the rejection of the application Exh.5 filed by Shri. Harish

Manishankar Thakur and Shri. Dashrath Baburao Murudkar in the suit filed by them being Regular Civil Suit No.803 of 2012 which was filed for injunction against the present Plaintiffs i.e. the Respondent Nos.1 and 2 herein. The said application Exh.5 was rejected by the Trial Court. The Plaintiffs i.e. Shri. Harish Thakur and Shri. Dashrath Murudkar aggrieved by the rejection of the application for injunction by the Trial Court carried the matter in Appeal. The Lower Appellate Court had allowed the application for injunction on the ground that the said Plaintiffs were in possession of the suit property i.e. first floor in respect of which the Plaintiffs in the present suit i.e. the Respondent Nos.1 and 2 claimed tenancy. This Court by the said order dated 14.04.2014 had dismissed the said Writ Petition and confirmed the order passed by the Lower Appellate Court granting injunction in favour of the said Shri. Harish Thakur and Shri. Dashrath Murudkar. It was the submission of the Learned Counsel Mr. K. K. Malpathak that in view of the said order dated 17.04.2014 the injunction granted by the Courts below in the instant suit would have to be restricted to the suit premises on the second floor. Upon this, the Learned Counsel appearing for the Respondent Nos.1 and 2 fairly conceded that since the injunction is running against the Respondent Nos.1 and 2 who are the Defendants in Regular Civil Suit No.803 of 2012 the order passed by the Courts below in the instant suit cannot apply to

the suit premises situated on the first floor. Hence, without interfering with the impugned orders passed by the Courts below however by clarifying that in view of the injunction which is operating in another suit being Regular Civil Suit No.803 of 2012 against the Respondent Nos.1 and 2 herein, the injunction in their favour in the present suit would only be restricted to the suit premises on the second floor. With the aforesaid clarification the Writ Petition is dismissed.

[R.M. SAVANT, J]