

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

APPEAL FROM ORDER (ST) NO.14325 OF 2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Rajendra D. S. Bhandari for the Appellant
Mr. P. J. Thorat for the Respondent.

CORAM : K. K. TATED, J.

DATE : JUNE 29, 2015

P.C.:

1. Heard. This Appeal from Order is preferred by the Plaintiff challenging the order dated 15/04/2015 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.1437/2015 dismissing the Plaintiff's Notice of Motion for an order of injunction against the Defendants.

2. The Appellant Plaintiff filed S.C.Suit No.863/2015 in Bombay City Civil Court, Mumbai for an order of injunction restraining the Respondent Defendant from disturbing the Plaintiff's possession in respect of the suit premises i.e. shop premises on first floor, admeasuring 15' x 10' bearing No.A-2(A-C) Naik Nagar, Opposite Sion Railway Station, LBS Marg, Sion (W), Mumbai-400022, without following due process of law.

3. It is the case of the learned counsel for the Plaintiff that the Plaintiff is in exclusive possession of the suit premises and he is doing his business therein. He further submits that even the Defendant executed deed of assignment in favour of the Plaintiff on 19/09/2006 in respect of the same suit premises. He submits that on the basis of deed of assignment and other documents, the Plaintiff is in exclusive possession of the suit premises. Hence, the Respondent Defendant may be restrained by an order of injunction from disturbing Plaintiff's possession without following due process of law.

4. The learned counsel for the Plaintiff submits that the Trial Court has not considered the deed of assignment, leave and license agreement dated 22/02/2012 and other documents at the time of dismissing the plaintiff's Notice of Motion. He submits that the plaintiff has good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to restrain the Respondent Defendant from disturbing the Plaintiff's possession over the suit premises without following due process of law.

5. On the other hand, the learned counsel for the Defendant opposed the Appeal from Order. He submits that the Plaintiff has not produced on record any documentary evidence to show that the Plaintiff is in use and occupation of the suit premises. He further submits that a partnership deed was executed between the parties on 06/04/1993 to carry on business from suit premises. Said partnership deed shows that the Plaintiff as well as Defendant have 50% share in the business. He further submits that the Defendant is also in joint possession of suit property. Hence, there is no question of granting any order of injunction to the Defendant from disturbing the plaintiff's possession in respect of the suit premises.

6. Heard both sides at length. It is to be noted that in the present proceedings, the partnership deed dated 16/04/1993 is executed between the Plaintiff and the Defendant and they are doing their business jointly in the suit premises. It is specifically stated in clause 10 of the partnership deed that both the parties have 50:50 shares in the net profit and loss of the partnership along with the properties.

7. Considering the partnership deed dated 06/04/1993, I do not find any reason to interfere with the well reasoned order passed by the Trial Court. Hence, the Appeal from Order stands rejected.

8. Consequently, the Civil Application, if any stands dismissed as infructuous.

JUDGE