

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6010 OF 2014

Smt. Diwaliben Rannchhodbhai Wala and Ors.] ... Petitioners

Versus

Mr. Jayesh Ramanlal Upadhyay and Ors.] ... Respondents

Mr. Pratap Nimbalkar for Petitioners.

Mrs. E. A. Gonsalves for Respondent No.1.

Mr. Jayesh Ramanlal Upadhyay, Respondent No.1, present in person.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 21, 2015

P. C. :-

1. The challenge in this petition is to the order dated 02/05/2014 made by the Appellate Bench of the Small Causes Court restraining the petitioners (original defendant nos.1 to 3) in R.A.D. Suit No.352/480 of 2011 from obstructing the respondent no.1's (original plaintiff) use, enjoyment and possession in respect of the suit premises till the final disposal of the suit.

2. Mr. Pratap Nimbalkar, learned Counsel for petitioners, has submitted that the Trial Court, by a reasoned order, had rejected such relief and no case had been made out by the respondent no.1

warranting interference by the Appeal Court. Mr. Nimbalkar submitted that the relief applied for and those granted by the Appeal Court are very wide and consequently, same are capable of abuse. Mr.Nimbalkar adverted to the provisions contained in Order 19 Rule 12 of CPC and submitted that the powers therein are discretionary and can be exercised only for the purposes of maintaining *status quo ante* not for the purposes of permitting a plaintiff to create some rights or amenities qua the suit premises. Mr. Nimbalkar also submitted that under the garb of injunction order, the respondent no.1 may create third party rights in the suit premises and the Appeal Court order has put no condition upon the respondent no.1 in this regard. Finally, Mr.Nimbalkar submitted that the original tenant was Mr. Ramanlal Upadhyay who had stopped using the suit premises for a number of years. In such circumstances, Mr. Nimbalkar submitted that there is no landlord-tenant relationship between the parties and in such circumstances, there was no question of grant of interim relief in favour of the respondent no.1.

3. Mrs. Gonsalves, learned Counsel for respondent no.1, on basis of instructions from respondent no.1 who is present in the Court, states that the respondent no.1 desires to install a split air conditioner and that was the main purpose for filing the application seeking interim relief. In such circumstances, Mrs. Gonsalves contends that there is no question of abusing the liberty granted by the Appeal Court. Further, Mrs. Gonsalves again, on basis of instructions from respondent no.1, states that the respondent no.1 is presently in

possession of the suit premises and that he has no intention whatsoever of either creating any third party rights or parting with possession of the suit premises.

4. Having heard the learned Counsel for parties, the apprehension expressed by Mr. Nimbalkar can be taken care of by restricting the interim relief granted only to the installation of the split air conditioner to the suit premises. There is material on record which suggests that the premises had been air conditioned sometime in the past. Therefore, this is not a case of any serious alteration of the *status quo*. The impugned order is therefore modified to this extent.

5. Besides, the respondent no.1 is put to terms that he shall not create any third party rights or part with possession of the suit premises. This shall be a condition upon which the respondent no.1 shall avail the benefit of the interim order during the pendency of the suit.

6. The issue as to whether the respondent no.1 is indeed a tenant of the suit premises or not, is a matter which will be decided by the Trial Court on its own merits and in accordance with law. However, no jurisdictional error can be traced in the impugned order, in the matter of expression of *prima facie* opinion. Needless to add, however, that the observations or opinion expressed in the impugned order or for that matter in the present order, are only *prima facie* and the Trial Court need not be influenced by them at the stage of

deciding the suit on merits and in accordance with law. Accordingly, all contentions of all parties are left specifically open.

7. Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

8. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)