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

**APPEAL FROM ORDER (L) NO. 25841 OF 2015
WITH
CIVIL APPLICATION (L) NO. 25844 OF 2015**

Mohd. Yusuf Mohd. Ismail Shaih & Anr. ...Applicants/Orig.
Defendant Nos. 2 & 3

Vs.

M/s. Md. Taqi Md Naqi (Metals) Pvt. Ltd....Respondents/Orig.Plttffs

Mr. Haroon Rashid Safdarali ...Respondent/Orig.Defdt.No.1

Mr. Anurag Gokhale a/w. Ms. Anuprita Nalavade, Mr. Ajay Khairnar
i/b. Geetanjali Golatkar, Advocates for the Applicant
Mr. Purav J. Damania, Advocate for Respondent No.1

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 1ST OCTOBER, 2015**

P.C. :

Rule. Returnable forthwith.

1. The appellant was defendant No.2 in the suit filed in the Bombay City Civil Court. The respondent was the plaintiff alleged to have been forcibly dispossessed from the suit property on 30th April, 2015. The plaintiff was in possession of shop Nos. 2 and 2A on the ground floor and room on the first floor in building known as Raza Palace, No.217, Sheriff Devji Street, Chakala Street, Paiduni, Mumbai-400003. The plaintiff showed

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the Court his possession. That is shown by numerous rent receipts, electricity bills, telephone bills etc. The plaintiff has also shown license issued by the BMC for carrying on business in building No.217 at Chakala Street, Paiduni, Mumbai. The plaintiff has also obtained from RTI certain records on the repair of the building in which the plaintiff had the aforesaid premises. The RTI has sent the letter from all the tenants addressed to the Executive Engineer of MHADA dated 3rd March, 2012. The plaintiff is shown amongst tenants at serial No.19. Thereafter the joint inspection was taken of the premises of the tenants. The plaintiff has signed at serial No.3 thereof. This is in respect of the room on the first floor as also the shop on the ground floor.

2. The plaintiff was issued notice by the landlord for terminating his tenancy on 14th December, 2005. The notice was on the ground that the plaintiff had put up a public hostel in his premises. The plaintiff replied to the notice on 2nd January, 2006. Thereafter no action was taken against the plaintiff by defendant No.1 landlord. The plaintiff has shown rents which were continued to be sent by the plaintiff to the landlord even after the aforesaid notice. Counsel on behalf of the plaintiff has shown the letter dated 26th July, 2007 under which a cheque has been sent of Rs.51,546/- to the landlord defendant No.1.

3. These documents prima facie show the continuance of the

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plaintiff's possession in the suit premises which was tenanted to the plaintiff by the landlord defendant No.1. Possession once shown must be taken to be continued until it is shown to be surrendered, abandoned or otherwise taken by another party.

4. Whilst the plaintiff's tenancy and accordingly his possession continued, the defendant No.2 claims to have entered into an agreement of tenancy with defendant No.1 on 8th May 2007. The agreement is unregistered. It is on a stamp paper purchased in Panvel Safala Road though the suit premises is in Chakala Street, Paidhuni, Mumbai. Upon the execution of the tenancy agreement the defendant No.2 claimed to be in possession. Defendant No.2 never got the electricity bills or telephone bills changed to his name. Defendant No.2 has not shown all the rent receipts for the rents paid to the landlord from 2007 onwards. The plaintiff has shown the continuation of the rents paid.

5. Defendant No.2 has sought to show the tenancy in a unique manner. Defendant No.2 filed a suit against the landlord on 11th March, 2015 for no apparent reason. The landlord replied on 23rd March, 2015 and filed an affidavit in reply not contesting the suit stating that he has no objection if the reliefs were granted as prayed and that he would not forcibly dispossess defendant No.2 who was the plaintiff in that suit. Soon thereafter on 11th April, 2015 the parties filed consent terms. Thereafter the Advocate of defendant No.2 informed the police

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station on 18th April, 2015 that an ad-interim order was passed on 23rd March, 2015 in his suit.

6. Thereafter defendant No.2 claims to have licensed the premises to defendant No.3 on 25th April, 2015 and the plaintiff is dispossessed on 30th April, 2015.
7. The defendant No.2, who is the appellant has tendered a compilation of his documents. It consists of rent receipts of May, 2007, January, 2008 and thereafter from December, 2013 only. It also shows the electricity bill only of August, 2015 and in application made to the BEST on 14th May, 2015 for a meter connection. Defendant No.2 has shown two letters written by him to the landlord defendant No.1 in 2011 and 2013 which are wholly immaterial. Defendant No.2 has also shown an application made for issue of license on 10th September, 2008. The license has not been granted until today and it is not known what defendant No.1 did in suit premises without the license.
8. The learned Judge in the impugned order considered the case of the plaintiff alongside all the documentary evidence including the electricity bills, telephone bills and the license under the Shops and Establishments Act. The learned Judge correctly saw the prima facie case of possession by the plaintiff and accordingly granted the plaintiff's notice of motion and appointed the Court Receiver to receive possession of shop No.2

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as also residential premises No.2A on the ground floor and the first floor of the suit building Raza Palace, No.217, Sheriff Devji Street, Chakala Street, Paiduni, Mumbai-400003.

9. The learned Judge has also correctly appointed the plaintiff as agent of the Court Receiver without payment of royalty and security and directed the Court Receiver to receive the suit premises by dispossessing defendant Nos. 2 and 3 and appointing the plaintiff as his agent and to deliver possession to the plaintiff. The order is perfectly correct.
10. The appeal is dismissed. The civil application is disposed off accordingly.

(ROSHAN DALVI, J.)

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CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment /order.**