

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

WRIT PETITION NO. 11514 OF 2015

Shri. Ramniklal Pranolal Doshi & Anr. .. Petitioners

Versus

Nitin Dhirajlal Sanghrajka & Ors. .. Respondents

Mr. N.V. Walawalkar, Senior Advocate, a/w Mr. E.K. Sasidharan, for the Petitioners.

Mr. Jayesh Bhatt, for the Respondents.

**CORAM : R.M. SAVANT, J.
DATE : 27th November 2015**

P.C. :

1. The Writ Jurisdiction of this Court is invoked against the Order dated 12th October 2015 passed by the Appellate Bench of the Small Causes Court, by which order, the Appeal in question being Miscellaneous Appeal No. 705 of 2008 came to be dismissed and resultantly, the order dated 24th October 2008 passed by the learned Judge of the Small Causes Court directing the Defendant No. 5 by mandatory order to handover possession of the suit premises came to be confirmed.

2. The Suit in question being R.A.D. Suit No. 892 of 2008 has been filed by the Respondent No. 1 herein for a declaration that he is the tenant in respect of the suit premises viz. Stall Board admeasuring 2 ft. wide and 10 ft. high and 1 ft. deep installed on the wall of the Swami Narayan Building situated at 24-26, 3rd Bhoiwada, Shahajanand Marg, Bhuleshwar, Mumbai - 400 002 wherein the business of Vishubh Electricals was being carried out.

3. Second relief sought in the Suit is an injunction restraining the Defendants, their servants and agents from dispossessing the Plaintiff from the suit premises. The cause of action for filing the suit according to the Plaintiff, has arisen in view of the apprehension faced by him that the Defendants would take the law into their own hands and dispossess the Plaintiff. It is the case of the Plaintiff that he was carried on the business in partnership with Defendant No. 1 in the name and style of Vishubh Electricals in the suit premises. The said partnership was pursuant to a Partnership Deed executed between the Plaintiff and the Defendant No. 1 on 25th October 2004. It seems that the Plaintiff and the Defendant No. 1 are closely related the Plaintiff being the nephew of the Defendant No. 1. There are certain antecedent facts relating to how the Plaintiff

came into the said business. However, the same are not material for the purposes of the present Petition. It is the case of the Plaintiff that the said premises are tenanted premises. However, the Trust in question within whose property the Plaintiff's premises are situated was not recovering rent as the said Trust is financially a sound Trust. It is the case of the Plaintiff that the Defendant No. 1 resigned from the partnership on 5th January 2008 and that from then onwards the Plaintiff was in exclusive possession of the suit premises. It is the case of the Plaintiff that thereafter, on or about 13/14th April 2008 there was a threat to his possession as certain anti social elements sought to dispossess the Plaintiff on account of which the Plaintiff has filed the instant Suit on 28th April 2008. However, it is the case of the Plaintiff that on the very next date i.e. on 29th April 2008, the Plaintiff has been dispossessed from the Suit premises by the Defendant No. 5. The Plaintiff after the Suit was filed, amended the Plaint and incorporated the facts relating to his alleged dispossession on 28th April 2008 at the hands of Defendant No. 5. The Plaintiff has thereafter, filed the instant Application **Exh.10** for *status quo ante* i.e. restore his possession.

4. The said Application of the Plaintiff was replied to on

behalf of the Defendants No. 1 and 5. The Defendants No. 2, 3 and 4 did not appear before the Trial Court whereas the Defendants No. 1 and 5 appeared. It was the case of the Defendants that the son of the Defendant No. 5 one Sunil Subhash Rawal was in possession of the suit premises pursuant to the tenancy agreement in his favour executed on 22nd April 2008. The Defendants also sought to contend that the Plaintiff has no right in respect of the suit premises and sought to rely upon various documents i.e. the Shops and Establishment Licence, payment of electricity bill, etc. which stand in the name of one Jaswantraai Doshi and the Defendant No. 1. The Defendants questioned the Partnership Deed dated 29th October 2004 as also the Deed of Retirement dated 5th January 2008 as got up documents.

5. The Trial Court considered the said Application and by its order dated 24th October 2008 allowed the same. The Trial Court took into consideration the fact that the Defendant No. 1 had retired from partnership on 5th January 2008 which was evidenced by the Deed of Retirement wherein the payment of the consideration of Rs. 3,00,000/- to the Defendant No. 1 was mentioned. The Trial Court on the said basis reached a conclusion that it was the Plaintiff who

was in possession of the Suit shop after the retirement of the Defendant No. 1 from the partnership. The Trial Court also held adversely against the Defendants in view of the fact that the Defendants No. 2, 3 and 4 have not chosen to appear though they have executed the agreement in favour of the said Sunil Subhash Rawal. The Trial Court was of the view that the Defendants have colluded with each other in obtaining the possession of the suit premises on 29th April 2008 and also executed the tenancy agreement in favour of the said Sunil Subhash Rawal. The Trial Court was of the view that though mandatory orders are passed in rare cases, where a strong case has been made out by the party applying for the grant of mandatory order the facts in the instant case warranted the issuance of the mandatory order so as to do justice between the parties. The Trial Court as noted above has accordingly by its order dated 24th October 2008 allowed the Application and issued the mandatory order which is contained in clause (1) of the operative part of the order, which reads thus :-

“The Defendant No. 5 is hereby ordered to hand over vacant possession of the suit premises viz. Stall board admeasuring about 2 ft. wide, 10 ft. high and 1 ft. deep

installed on the wall of the building known as “Swami Narayan Building” situated at 24-26, 3rd Bhoiwada, Shahajanand Marg, Bhuleshwar, Mumbai - 400 002 on or before 21.11.2008”

6 . The Defendants No. 1 and 5 challenged the order passed by the Trial Court on 24th October 2008 by filing Miscellaneous Appeal No. 705 of 2008. The Appellate Bench of the Small Causes Court has by the impugned order dismissed the Appeal and thereafter, confirmed the order passed by the Trial Court issuing the mandatory directions to Defendant No. 5 to handover possession of the suit premises being the Stall mentioned in the Plaint. The lower Appellate Court as can be seen from the impugned judgment and order has reiterated the findings of the Trial Court leading to the conclusion that the Plaintiff was in possession of the suit premises on the day when he was dispossessed. The Appellate Bench of the Small Causes Court has also reiterated the findings of the Trial Court that the Defendants have acted in concert to dispossess the Plaintiff. Hence, both the Courts below have concurrently held that the Plaintiff was in possession on the day when the Suit was filed and has been dispossessed thereafter by the Defendants and more

especially the Defendant No. 5.

7. The learned Senior Counsel appearing on behalf of the Petitioners sought to contend that the Courts below ought to have appreciated that insofar as the tenancy is concerned, the Plaintiff has not been able to demonstrate that he is the tenant of the premises in question. The learned Senior Counsel for the said purpose sought to place reliance on the averments in the Plaint wherein the Plaintiff has averred that the rent for the premises was not recovered as the Trust in question was financially sound.

8. Per contra, the learned Counsel appearing on behalf of the Respondent No. 1 herein that is the original Plaintiff sought to make submissions for sustaining the impugned order. The learned Counsel would contend that though it was the case of the Defendants that the said Sunil Subhash Rawal was in possession pursuant to the tenancy agreement executed in the year 2008, the Defendant Trust remained absent before the Trial Court to justify the said tenancy agreement.

9. Having heard the learned Counsel for the parties, in my view, there is no merit in the above Petition. It is required to be noted that the fact that the Plaintiff was carrying on business with

the Defendant No. 1 in the name and style of Vishubh Electricals has not been denied by the Defendants. Insofar as the Partnership Deed dated 29th October 2004 pursuant to which the Plaintiff and the Defendant No. 1 were carrying on the business in the name and style of Vishubh Electricals is concerned, as also the Deed of Retirement dated 5th January 2008 executed by the Defendant No. 1, the same are sought to be questioned on the ground that they are got up documents. The Trial Court has considered the said two documents which can be said to be the foundation of the case of the Plaintiff. The Trial Court has observed that the said documents are witnessed by two witnesses i.e. Balaram Dagdu Bhosle and Rameshchandra Hemchand Parikh. The Trial Court also compared the signature of the Defendant No. 1 on the said documents with the admitted signatures of the Defendant No. 1 by taking recourse to Section 73 of the Evidence Act and on such comparison came to a *prima facie* conclusion that the case of the Defendants cannot be accepted that the said documents are got up documents. It is on the said basis that the Courts below came to the conclusion that it is after the retirement of Defendant No. 1 dated 5th January 2008 from the partnership that the Plaintiff was in exclusive possession of the suit premises and was ousted therefrom on 29th April 2008. The Courts below have also

referred to complaints made by the Plaintiff to the Police as regards apprehension of dispossession prior to actual dispossession on 29th April 2008 and the complaint lodged by the Plaintiff with the Police after the said dispossession. Insofar as the case of the Defendants based on the tenancy agreement in favour of the said Sunil Subhash Rawal is concerned, the Courts below have observed that the said case would have to be tested in the Trial Court and could not be accepted at the threshold without evidence being led.

10. In my view, in the facts of the present case the concurrent orders passed by the Courts below directing the Defendant No. 5 to handover possession to the Plaintiff pending the Suit cannot be found fault with. No case for interference in the writ jurisdiction of this Court is therefore made out, the above Writ Petition is accordingly, dismissed.

11. At this stage, the learned Counsel appearing for the Petitioners prays for stay of the execution of the orders passed by the Courts below. In the facts and circumstances, the said prayer is rejected.

[R.M. SAVANT, J.]