

Sequeira

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

**APPEAL FROM ORDER NO. 111 OF 2016
Along with
CIVIL APPLICATION NO. 358 OF 2016**

Suresh Ramchandra Gangan .. Appellant
Versus.
Tukaram Ramchandra Gangan & ors. .. Respondents

Mr. Deepak Chitnis i/b M/s Deepak Chitnis-Chiparikar & Co., for the Appellant / Applicant.

Mr. Lalit Doshi, for Respondent No.1(a) to 1(e).

Mr. A.V. Diwate i/b Mr. U.H. Deshpande, for Respondent No.2-BMC.
Chandra Naik, for Respondent No.4.

Mr. S.P. Thorat a/w Mr. G.B. Walawalkar, for Respondent Nos.7 to 9 -MHADA.

**CORAM: N.M. JAMDAR, J.
Monday, 11 April 2016.**

Oral Order :

Admit. Taken up for disposal forthwith by consent.

2. The Appellant challenges the order passed by City Civil Court, Mumbai dated 5 September 2015 dismissing the Notice of Motion No.3646 of 2014 in L.C. Suit No.1500 of 2011. The Notice of motion was taken out for withdrawal of an amount deposited by Defendant No.4 with interest in the City Civil Court and also for a direction to Respondent No.4 to pay amount of ₹ 52,116 towards loss of business and an order of injunction against the Respondent

Nos.1(a) to 1(e) in respect of Shop No.10, admeasuring 379.86 sq.metres (carpet area) situate in 'A' Wing, ground floor of the newly constructed building known as 'Dalal Estate Complex' situated at Mumbai Central. The learned City Civil Court Judge has rejected all the prayers made by the Appellant and has directed the Respondent No.4 to deposit the monthly compensation in the Court and to be invested in Nationalised bank.

3. I have heard the learned counsel for the parties.

4. The learned counsel for the Appellant pressed the Appeal two prayers i.e. withdrawal of the amount and injunction against the Defendant No.1(a) to 1(e). The learned counsel for the Appellant submitted that the Appellant had filed proceedings on the Original Side of this Court being Testamentary Petition No.232 of 2009 and has been granted Letters of Administration in respect of the will executed by the Defendant - father of the Appellant. He submitted that the Letters of Administration establishes the right in favour of the Appellant in respect of the suit shop. He submitted that inspite of this position, the Respondent No.4 - developer has entered into an agreement with the Respondent No.1 in respect of the suit shop. He submitted that the transfer of tenancy in favour of Defendant No.1 and the agreement executed by Defendant No.4 in favour of Defendant No.1 on 25 August 2011 are not binding on the Appellant whose right is established in letter of administration. He further submitted that no prejudice will be caused to the heirs of Respondent No.1, who have not made any application for

withdrawal of the amount, if withdrawal in favour of the Appellant is permitted on security. He also submitted that the earlier orders passed by the City Civil Court have not been challenged.

5. The Suit has been filed by the Appellant with a prayer that the tenancy executed by the erstwhile landlord in favour of the Defendant No.1 is not valid. The tenancy as of today is in the name of the Defendant No.1. The Suit of the Appellant is yet to be tried on merits. It is the contention of the learned counsel for the Defendant No.1(a) to 1(e) that such Suit seeking declaration that the transfer of tenancy is not valid is not maintainable in the City Civil Court. The Defendant No.1(a) to 1(e) have handed over the possession of the suit shop and the structure has been demolished. The Respondent No.4-developer has deposited certain amounts in the Court which according to the Defendant No.1(a) to 1(e) is in lieu of the shop and according to the Appellant it is in lieu of loss of business. The transfer of tenancy has taken place in the year 1994. Prima facie it appears that there are records maintained by MHADA which also show the tenancy in the name of Defendant No.1. The question is whether at this prima facie stage the Appellant whose case that the tenancy is not validly transferred is yet to be established, be permitted to withdraw the amount.

6. In the impugned order the City Civil Court Judge has relied upon decisions of this Court in which the effect of Letters of Administration *vis-a-vis* the tenancy rights have been considered. Therefore the discretion exercised by the learned City Civil Court

in not permitting the Appellant to withdraw the amount on the ground that the Appellant has not prima facie established any right to override the right of Defendant No.1 of being tenant in the suit shop, can be stated to be perverse. As of today the shop is not in existence and if the corpus is also allowed to be withdrawn, it will create various complications in the suit.

7. The learned counsel for the Appellant then submitted that an order of injunction has been already passed against Defendant No.1 and Defendant No.4, that Defendant No.4 will not hand over possession of the premises in lieu of the suit premises and that the Defendant No.1 will not create any third party rights. He submitted that this prayer has not been continued against the heirs of Defendant No.1. This grievance made is justified. There is no reason that the injunction which was operating against the Respondent No.1 and Respondent No.4, be not continued. The learned counsel for Respondent No.1(a) to 1(e) also states that these Respondents have no interest in creating any third party rights. Thus the order which was passed against Defendant No.1 need to be continued against the heirs of Defendant No.1, and the Defendant No.4.

8. In the circumstances, the Appeal is disposed of by directing that Defendant No.4, his servants, agents or any person claiming through them will not hand over the premises a permanent alternate accommodation to the Defendant No.1(a) to 1(e) in respect of the suit shop and they will not create any third party

rights or part with possession of the same during the pendency of the Suit.

9. As far as the other prayers made by the Appellant in this Appeal regarding withdrawal of the amount stand refused.

10. After the permanent alternate accommodation is ready, liberty to the parties to apply to the City Civil Court.

11. It will be open to the parties to make a request for early hearing of the Suit. The learned City Civil Court will keep in mind that as of today neither of the parties benefit from the present situation and will consider their request for expeditious disposal of the Suit sympathetically.

Civil Application also stands disposed of.

(*N.M. JAMDAR, J.*)