

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
APPEAL FROM ORDER (St) NO.11596 of 2016
WITH CIVIL APPLICATION NO. 11598 OF 2016**

Vaijayanti R.Sonarikar & anr...

.. Appellants

vs

MHADA & ors

.. Respondents

Mr.B.S.Shukla for Appellants

Mr.S.P.Thorat for Respondent-MHADA

CORAM: G.S.KULKARNI, J

DATE: 2ND MAY, 2016

P.C.

1. Heard learned counsel for the appellant and Mr.Thorat learned counsel for respondent-MHADA.

2. By this appeal, the appellants have assailed the order dated 2nd March 2016 passed in notice of motion No.59 of 2015 in S.C.Suit No.1622 of 2013 whereby the learned Judge, City Civil Court at Mumbai has rejected the notice of motion taken out by the appellants for the following interlocutory reliefs in the suit :

“(a) that pending the hearing and final disposal of the present suit, the defendants their servants, agents and officers and all persons claiming through them or under them be temporarily restrained by an order and injunction of this Hon'ble Court for in any manner interfering with possession of the applicant and/or trespassing, encroaching and/or putting movable guards cabin the suit premises viz plot admeasuring 15'x20' with structure admeasuring 2.80 mtrs x 2.80 mtrs made of patra walla and A.C.sheet roof situated at beside plot no.5/II, Aram nagar, J.P.Road, Andheri (W) Bombay-400 061 in any manner whatsoever.”

3. Learned counsel for the appellant has drawn my attention to certain documents which were placed on record before the trial Court in support of the appellants' case and more pertinently the Agreement dated 24th May, 1973 by which the suit property was granted to the appellant's father on a leave and licence. It is submitted that this licence was granted in respect of the suit structure which in possession of the appellants till date and as now complained to be unauthorized. His contention is that the MHADA had no grievance all these years as regards the possession and enjoyment of the plot of land along with the structure by the appellant, except for certain complaints which were recently made and in pursuance of which action was purportedly initiated against the appellant. My attention is also drawn to a letter dated 20th February, 1976 issued by the Estate Manager of MHADA in favour of the appellant's father (original allottee). Contents of para 2 are relevant which reads as under :

“ You may be aware that the question of increased in service charges in respect of tenements of the Board to meet the rise in the cost of services has been under consideration of the Board for last 2 years. It has now been decided to increase the present of service charges with effect from 1.4.1974. To meet the present loss of nearly Rs 30 lakhs to the Board on account of service charges it has become imperative for the Board to increase the service charges from Rs.4.50 to Rs.7.50 from 1.4.1974 for the premises occupied by you.

On above count, the rent including service charges/compensation/damages for the premises in your occupation is payable at the rate of Rs.58.92 p.m. with effect from 1.4.1974. I have also to request you to pay Rs.84.00 on account of arrears of rent/compensation damages due to increase in service charges from 1.4.1974 to 31.12.75 and start paying monthly rent/compensation/damages w.e.f from 1.1.1976 onwards regularly at enhanced rate.”

(Emphasis supplied)

Yours faithfully,

S/d
Estate Manager (Estt)
Maharashtra Housing
Board, Bombay.

4. This communication as issued by the respondent shows that the appellant's father was called upon to make payment of monthly rent/compensation with effect from 1st Janaury, 1976 onwards regularly at the enhanced rate. Thereafter, my attention is drawn to a receipt issued by MHADA accepting rent/compensation for the period from April 2014 to April 2015. The same is annexed at Exhibit C page 13 of the paper book. Contention as urged on behalf of the appellant is that all these documents show that the appellant was in an authorized and legal occupation of the suit structure/plot of land. It is further contended that there is no notice of termination of the licence.

5. On the other hand, Mr.Thorat learned counsel for the MHADA would submit that the appellant/plaintiff is in unauthorized occupation of the premises and the construction as undertaken is without permission which was required to be obtained from the Municipal Corporation as also the MHADA. He relies on the letter dated 26th November, 2014 issued by the Executive Engineer to show that the appellant had illegally constructed the structures in question though it was earlier demolished.

6. Having considered the rival submissions, it can be noted that by an Agreement dated 24th May, 1973 the appellant's father was permitted to construct a shed for selling vegetables, on the land of MHADA admeasuring 10 x 10 sq.ft which was marked in the sketch annexed to the agreement. Further the letter of the respondents dated 20th February, 1975 shows that the appellant's father was permitted to regularly pay the payment/compensation/damages with effect from 1st January, 1976 onwards regularly at enhanced rate. It also appears that though notice dated 26th November, 2014 came to be issued by MHADA calling upon the appellant to remove it, nonetheless the MHADA had received rent for the period from April 2014 to April 2015. If that be the position, and if these

documents were on record before the learned trial Judge then it was necessary for the learned trial Judge to take them into consideration and ascertain the factual position qua the respective parties for considering whether any prima facie case is made out for grant of an injunction in deciding the injunction application filed by the appellant. The impugned order contains no discussion whatsoever in regard to these documents though on the record of the trial Court.

7. From the submissions as canvassed by Mr.Thorat learned counsel for MHADA it is quite possible that MHADA has certain additional facts which the MHADA would want to place reliance and rightly so, as the affidavit-in-reply which is filed on behalf of the MHADA is not dealing with the specific averments as made by the plaintiff in the plaint and the documents in support thereof, on the basis of which the plaintiff has approached the trial Court.

8. In the above premises, it is desirable that the Notice of motion No.59 of 2014 be decided afresh by the learned trial Judge dealing with all the issues as may be canvassed on behalf of the parties. The impugned

order dated 2nd March 2016 passed by the learned trial Judge dismissing the notice of motion is accordingly quashed and set aside with a further direction that the trial Court shall decide the Notice of motion afresh after an opportunity is granted to the MHADA to file a further detailed reply to all the contentions which are being raised on behalf of the appellant/plaintiff. The said affidavit be filed by the respondent MHADA within a period of six weeks from today. Rejoinder if any, be filed on behalf of the appellant within period of two weeks thereafter.

9. The learned Judge shall thereafter endeavour to take up the notice of motion and decide the same on or before 31st July, 2016.

10. Needless to observe that all contentions of the parties on merits of the matter are kept expressly open.

11. Till the motion is decided respondent is directed not to take any coercive action in regard to the suit structure.

12. Appeal from order is disposed of in above terms. No order

as to costs.

13. Civil Application (St) No.11598 of 2016 also does not survive in view of the orders on the appeal. Civil Application is accordingly disposed of.

G.S.KULKARNI, J

