

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

***APPEAL FROM ORDER NO. 616 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 786 OF 2016***

Shri Pannalal Bhulai Yadav,
R/at Adinath Apartment, Shop No.6,
Ground floor, Ramchandra Nagar,
Panchpakhadi, Thane (West). ... Appellant/Applicant

v/s

Shri Rajesh Atmaram Yadav,
R/at Anad Hanuman Bhavan,
Bhaskar Colony, Nr.Punjabi Gurudwara,
Eastern Express Highway, Thane; & ors. ... Respondents

Mr.Dushyant Pagare for the appellant/applicant.

Ms.Neeta Karnik for Respondent No.1.

Mr.R.V.Gangakar for respondent No.2.

Coram: N.M. Jamdar, J.

Dated: 4 August 2016

ORAL ORDER:

The Appellant challenges the order passed by the District Judge, Thane, dated 2 April 2016, rejecting the application taken out by the Appellant for an interim injunction.

2 The Appellant filed a Regular Civil Suit No.469 of 2008 against the Respondents/Defendants. The suit was filed in respect of the property described in the plaint which is commercial premises. It was the case of the Appellant that the Appellant is the owner of this property and Respondent No.1, without there being any ownership right, took loan as against the property and Respondent No.1 and the Bank authority with the help of police authorities were trying to take possession of the suit property. The suit was dismissed by the learned Civil Judge. The Civil Judge answered the issue as regard the ownership against the Appellant. The learned Civil Judge held that the Appellant has failed to prove the ownership as well as the possession over the property. Pursuant to the proceedings for recovery of the loan, the Respondent bank sealed the premises on 23 July 2006. Accordingly, the learned Civil Judge dismissed the suit by judgment and order dated 15 February 2014. As against, the Appellant filed the Civil Appeal No.176 of 2014 in which an application for temporary injunction was taken out, which has been rejected by the impugned order.

3 Heard learned counsel for the parties.

4 There is a finding of fact recorded by the learned Civil Judge that the Bank has taken possession of the suit premises and sealed the same on 29 June 2006. In the application for an interim injunction,

nothing is stated as to how inspite of this position how the Appellant has continued in possession. In fact, it is recorded that the Appellant took law in his own hands, broke opened the lock and forcibly entered the suit premises. In a suit filed by Respondent No.1 against the Appellant, it is held that the remedy of Respondent No.1 will be against the Bank. The Appellant has not been able to produce any title deed to demonstrate that he has any title to the suit premises. Nothing is shown as to why the proceedings taken by the Bank for sealing the premises in June 2006 will have to be discredited. That being the position, the learned District Judge has rightly held that neither *prima facie* or balance of convenience is in favour of the Appellant. The present case is not a simplicitor case for injunction but is in respect of a loan advanced by the Respondent Bank. In the circumstances, the discretion used by the learned District Judge in refusing to grant injunction cannot be faulted with.

5 The appeal from order is accordingly dismissed. The civil application is disposed of.

(N. M. Jamdar, J.)