

Sequeira

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

*APPEAL FROM ORDER (St.) NO. 14942 OF 2016
With
CIVIL APPLICATION (St.) NO. 14943 OF 2016*

Hardcastle Restaurants Private Limited. ... Appellant
V/s.
Classic Bhoomi Constructors and
Developers Pvt. Ltd. ... Respondent.

*Along with
APPEAL FROM ORDER (St.) NO. 14944 OF 2016
With
CIVIL APPLICATION (St.) NO. 14945 OF 2016*

Hardcastle Restaurants Private Limited. ... Appellant
V/s.
Classic Bhoomi Constructors and
Developers Pvt. Ltd. and Ors. ... Respondents.

Mr.Ajit Anekar a/w Karan-Singh Shekhavat i/b Mr.Pushkar Patankar, for
the Appellant and Applicant in both the Appeals.

Mr.S.K.Shinde a/w Mr.V.R.Kasle and Ms.Meena Sharma, for the
Respondent and Respondent No.1 in A.O. (St.) No.14944 of 2016.

*Coram : N.M. Jamdar, J.
Monday 20 June, 2016.*

Oral order. :-

These two Appeals are argued together and are disposed of by this
common order.

2. In Appeal (St.) No. 14942 of 2016 the Appellant has challenged the Order passed by the learned Civil Judge, Senior Division, Thane dated 6 May 2016 disallowing the Application below Exhibit 5 for temporary injunction taken out by the Respondent in Special Civil Suit No.648 of 2015. The temporary injunction sought was to restrain the Appellant using the suit property and restraining the use of the suit premises by the Respondent.

3. By Appeal (St.) No. 14944 of 2016 the Appellant has challenged the Judgment and order passed by the learned Civil Judge, Senior Division, Thane dated 6 May 2016 in Special Civil Suit No.633 of 2015 rejecting the Application filed by the Appellant below Exhibit no.5 for grant of temporary injunction to restrain the Respondents from interfering with the possession of the Appellant of the suit premises.

4. The suit premises are Unit no.18 on the ground floor and Unit no.115 on the first floor admeasuring 3450 sq.metres situated at Palm Beach Galleria mall, Turbhe, Navi Mumbai. An Agreement was entered between Lavina Estates Private Limited and the Respondent, on 2 March 2006, with subsequent assignment of interest in favour of the Appellant. As per this arrangement the Respondent was to conduct a restaurant.

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5. In the order impugned in this appeal, the learned Civil Judge came

to the conclusion that the prima facie case was in favour of the Respondent and if the injunction is not granted to the Respondent, irreparable loss will be caused. The learned Civil Judge held that ultimately, the Appellant had only a conducting license in its favour and the physical possession was with the Respondent, who is the owner of the premises. The learned Civil Judge observed that the only dispute was whether the Appellant was physically removed, which could be decided in the pending Suit. The learned Civil Judge also took note of the fact that the premises have been demolished. Accordingly, the learned Civil Judge by the impugned Order allowed the Application below Exhibit no.5 filed by the Respondent and enjoined the Appellant from interfering with the possession of the Respondent.

6. The learned counsel for the Appellant submitted that the Agreement dated 2 March 2006 had a lock in period of 25 years and the Respondent could not have taken action of dispossession and thereafter try to demolish the premises, as the Agreement was in existence. He submitted that the entire structure has not been demolished and it is only partly demolished and the premises specified in the Agreement dated 2 March 2006 exists even as on today and therefore no prejudice will be caused if the Appellant is allowed to run the restaurant therein. The learned counsel for the Respondent-original Plaintiff submitted that the Agreement stands terminated by notice dated 25 September 2015 as the Appellant did not pay the dues. He submitted that substantial demolition of the entire structure, after taking possession of the suit premises has already been carried out and the interference by the Appellant is causing

great inconvenience to the Respondent.

7. There appears to be a dispute whether the demolition of the entire structure is carried out. The photographs that have been placed on record by the learned counsel for the parties however show that demolition has been substantially carried out. Apart from this position it will have to be seen whether the Appellant as of today has any right to restrain the Respondent- original owner from carrying out demolition and reconstruction. The right that the Appellant claims is qua the Agreement dated 2 March 2006. This is only a conducting Agreement. The clauses of the Agreement indicate that in case of premature termination of the Agreement by the owner, compensation is payable to the Appellant. Therefore, at the highest the Appellant would have a right to claim damages, which right of-course will be subject to the case of the Respondent. The Agreement dated 2 March 2006 however does not create any right qua the premises such as lease, license etc. Once the primary document on which the Appellant relies does not confer any right to remain in the premises, the Appellant cannot seek to restrain the Respondent owner from reconstructing the premises. The learned Civil Judge therefore, was not in error in granting the Application filed by the Respondent-Plaintiff for temporary injunction below Exhibit no.5. The discretion used by the learned Civil Judge cannot be said to be perverse so as to warrant interference.

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8. The Application was filed by the Appellant in Special Civil Suit

No.633 of 2015 filed by the Appellant. In the Application below Exhibit No.5 which was filed on 3 November 2015, the only prayer that was made by the Appellant was that the Defendant Nos.1 and 2 be restrained from disturbing the possession of the Appellant over the suit premises. This Application was heard along with the Application below Exhibit no.5 in Special Civil Suit No.648 of 2015 filed by the Respondent. During the hearing of the Application below Exhibit no.5 in Special Civil Suit No.648 of 2015, the learned Civil Judge noticed the admitted position that Appellant had lost possession of the suit premises. In fact an Application below Exhibit no.18 and 19 was also taken out by the Appellant in that Suit to restrain the Respondents from creating third party rights. Since the Appellant had admittedly lost possession of the suit premises, the Application filed below Exhibit no.5 in the present Suit had become infructuous and therefore, it was rightly disposed of as infructuous by the learned Civil Judge by the impugned order. This Appeal filed by the Appellant therefore, is without any merit.

9. Both the Appeals are dismissed. Civil Applications stand disposed of.

(N.M. Jamdar, J.)