

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8741 OF 2016

Shabbir Abdulkarim Momin & Ors. .. Petitioners

vs.

Dongarmal Shankarji Oswal & Ors. .. Respondents

Mr.Bhushan Walimbe for the respondent no.1

CORAM : K. K. TATED, J.
DATE : AUGUST 12, 2016

PC.:

- 1 Heard the learned counsel for the parties.
- 2 By this petition under Article 227 of the Constitution of India the Petitioner defendant challenges the concurrent finding of fact recorded by both the courts below.
- 3 In the present proceeding, respondent plaintiff filed Regular Civil Suit No. 522 of 2015 in the court of Civil Judge, Junior Division, Islampur for an order of injunction restraining the petitioner defendant from disturbing his possession in respect of the suit property without following due process of law. In that Suit, the defendant preferred application below Exhibit-6 under Order 39 Rule 1 of the Code of Civil Procedure, 1908 for an order of injunction. That application was allowed by the Trial Court by order dated 15.2.2016 and passed following order:

- “1. Application Exhibit-6 is allowed as follows.
2. Defendants, by order of temporarily injunction, are restrained from causing obstruction in peaceful possession of the plaintiff over the suit property and they are directed not to oust the plaintiff from the suit property, without following the due process of law, till the final decision of the suit or till further orders.
3. Cost follows event.”

4 Being aggrieved by the order passed by Trial Court defendant preferred Misc.Civil Appeal No.10 of 2016 in the court of District Judge-2, Islampur. The District Court framed following points for determination:

“Points

- [1] Whether order of lower court is illegal?
- [2] Whether there is need to interfere in impugned order?
- [3] What order?”

5 The appellate court after considering the evidence on record and documents dismissed the defendant's appeal by judgment and order dated 2.5.2016. Hence, the present Writ Petition.

6 The learned counsel for the defendant submits that both the courts below failed to consider the fact that the suit premises is in dilapidated condition. It may collapse at any time. He submits that Municipal Council of Islampur issued several letters / notices for demolition of the entire building. In support of this, advocate for the defendant relies on the following letters issued by Municipal Council:

1. The copy of Notice dated 1.4.2008
2. The copy of Notice dated 27.5.2014

3. Copy of panchnama dated 1.12.2015
4. The copy of Notice dated 21.12.2015
5. The copy of Notice dated 16.7.2016
6. Copy of City Survey extracts and property card extracts
7. Photographs of the suit structure

7 The learned counsel for the defendant submits that it is crystal clear from all the correspondence that the suit structure is in dilapidated condition. These facts were not considered by both the courts below. Hence, impugned orders passed by both the courts below are required to be set aside. He submits that if injunction order is not set aside, irreparable loss will be caused to the defendant.

8 On the other hand, the learned counsel for the plaintiff vehemently opposed the present Writ Petition. He submits that Trial Court by order dated 15.2.2016 restrained the defendant from dispossessing the plaintiff without following due process of law. He submits that though the Trial Court passed order on 15.2.2016, defendant failed and neglected to follow due process of law till today. He submits that in said building as on today in five shops business is going on. He submits that as on today two shops are belonging to the petitioner. In support of these facts, he relies on panchnama prepared by Council, Islampur. He further submits that Regular Civil Suit No. 522 of 2015 is pending for hearing and final disposal on its own merits.

9 On the basis of these submissions, the learned counsel for the plaintiff submits that there is no substance in the present Writ Petition and same be dismissed with costs.

10 I have heard both the sides at length. I have gone through the copy of orders passed by both the courts below, additional compilation

of documents filed by defendant containing several letters issued by Council Islampur in respect of suit premises and also photographs. It is to be noted that there is concurrent finding of fact recorded by both the courts. Apart from that courts below granted liberty to the defendant to follow due process of law for evicting the plaintiff. It is a law that no one can be evicted without following due process of law if he his possession is authorised. Considering these facts, I do not find any substance in the present Writ Petition . Hence, following order is passed:

- a) Writ Petition No.8741 stands rejected.
- b) Considering the facts and circumstances of the present case, hearing of Regular Civil Suit No. 522 of 2015 is expedited.

JUDGE