

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1651 OF 2016

Sangeeta Shashikant Dhairyawan ... Petitioner
Vs.
The State of Maharashtra and another ... Respondents

Mr. Vinay Bhanushali a/w. Mr. Sachin Mahagokar and Niraj M. i/b. Divya Shah Associates for Petitioner.
Mr. A. R. Metkari, AGP for Respondent No.1-State.
Mr. P. G. Sawant for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 22, 2016

P.C. :

Heard Mr. Bhanushali, learned Counsel for petitioner, Mr. Metkari, learned AGP for respondent No.1-State and Mr. Sawant, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has prayed for expunging following portion in paragraphs 3 and 4 of the impugned order dated 12.11.2014 whereby the Notice of Motion No.3099 of 2014 taken out by the plaintiff was dismissed:

“3. ... I have no hesitation to observe that after execution of document 'Exhibit D' the plaintiff/applicant would not insist for retention of his position and possession in the suit property. No doubt, competent authority i.e. the Chief Officer, Bombay Building Repairs & Reconstruction Board would assist the defendant for getting possession from the plaintiff. The defendant himself would not trespass and evict the plaintiff from the suit property. ...

4. The defendant may ask MHADA or BMC authority in accordance with her contract with those authorities for getting the premises vacated from the applicant/plaintiff. In other words the defendant himself will keep self restraint. ... ”

3. Mr. Bhanushali submitted that respondent No.2 has instituted

Special Civil Suit No.2322 of 2014 for injunction restraining the petitioner, hereinafter referred to as defendant, from taking forcible possession of room No.2 admeasuring 300 sq.ft. situate on the first floor of Patil Building, 386, N. C. Kelkar Marg, Dadar (West), Mumbai 400 028 (for short 'suit premises') without following due process of law. He submitted that by judgment and order dated 12.11.2014, the learned trial Judge allowed the Notice of Motion No.3939 of 2013 taken out by the defendant under Section 9-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') on the ground that Civil Court has no jurisdiction to entertain and try the Suit. By order dated 12.11.2014, the learned trial Judge held that the Civil Court has no jurisdiction to decide the controversy between the plaintiff and defendant and ordered return of of plaint to the plaintiff for presentation before the competent court on or before 12.12.2014. He submitted that plaintiff has not presented the Suit as per the order dated 12.11.2014.

2. Plaintiff also took out Notice of Motion No.3099 of 2014 for temporary injunction restraining the defendant from taking forcible possession of the suit premises without following due process of law. By order dated 12.11.2014, the learned trial Judge dismissed the Motion. However, while dismissing the Motion, in paragraphs 3 and 4, the learned trial Judge has made observations, which are required to be expunged. Mr. Bhanushali submitted that defendant is disputing possession of the plaintiff in the suit premises. As against this, plaintiff claims tenancy rights in respect of the suit premises and also claims to be in possession of the suit premises.

3. He submitted that the plaintiff has not challenged the order dismissing Notice of Motion No.3099 of 2014, and therefore, the remarks made in paragraphs 3 and 4 deserve to be expunged.

4. Mr. Sawant submitted that plaintiff has not challenged the order returning the plaint as also has not challenged the order dismissing Motion praying for interim relief. He, therefore, submitted that there is no need to expunge the remarks.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The learned trial Judge held that Civil Court has no jurisdiction to entertain and try the Suit and ordered return of plaint. Plaintiffs have neither challenged that order nor presented the Suit in competent court. At the same time, plaintiff has also not challenged the order dismissing the Notice of Motion taken out by him for temporary injunction.

6. In view thereof, it is not necessary to expunge the remarks as prayed for subject to clarification that in case the plaintiff adopts proceedings in pursuance of the order passed in Notice of Motion No.3939 of 2014 or adopts any other proceedings, the concerned authority shall decide the reliefs claimed therein uninfluenced by the observations made in the order dated 12.11.2014 passed in Notice of Motion No.3099 of 2014. Subject to this, no case is made out for granting any relief. Hence, Petition fails and the same is rejected.

(R. G. KETKAR, J.)

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