

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.55/2015
IN
CONTEMPT PETITION NO.323/2014

Ismail Moshinbhai Sham & Ors.

... Applicants

V/s.

M/s. Damodar Tin Works and Anr.

... Respondents

Mr. S. Shamim i/b. Shamim & Co. for the Applicants
Mr. U. V. Singh for the Respondent No.2.
Mr. Damodar Babu Patil in-person for respondent.

CORAM: K.K. TATED, J.
DATED : APRIL 2, 2016

PC. :

1. Heard the learned counsel for the parties. By this Civil Application, the plaintiff landlord seeks directions from this court to appoint a Court Receiver in respect of the suit premises i.e. open garage at gala No.4, behind Udyog Bhavan, Bulsroy Colony, Vakola Pipeline, Santacruz (E), Mumbai – 400 055.

2. In the present proceedings, the petitioner filed RAE Suit No.612/2006 against the respondent for eviction from the suit premises which was dismissed by the Trial Court and thereafter the petitioner preferred an appeal. The appellate bench allowed the appeal directing the respondent to vacate and handover the peaceful possession of the suit premises to the petitioner. Thereafter the petitioner made Civil

Revision Application No.716/2013 in this court which was dismissed by order dated 03.12.2013 and directed the respondent to hand over vacant and peaceful possession of the suit premises within 16 weeks on usual undertaking. At that time the respondent Damodar Babu Patil, proprietor of M/s. Damodar Tin Works filed an undertaking dated 19.12.2013 before this court stating, he is in possession of the suit premises and nobody else. The respondent has stated in the said undertaking that if he fails to obtain the suitable orders from the higher courts, he would handover vacant and peaceful possession to the petitioner. The respondent had preferred SLP which was dismissed on 15.04.2014. Thereafter the advocate for the petitioner, by his letter dated 06.05.2014 called upon the respondent's advocate to hand over vacant and peaceful possession of the suit premises. As the respondent failed and neglected to do so, the petitioner filed Contempt Petition No.323/2014.

3. The petitioner made the Civil Application for appointment of a Court Receiver to take forcible possession of the suit premises and hand over the same to the petitioner. In this petition, the respondent filed his Affidavit-in-Reply dated 15.03.2016. In paragraph 5 of the said Affidavit-in-Reply, the respondent stated that he handed over the possession of the suit premises to the petitioner's constituted attorney Mr. Sandeep Jain. It is also stated in paragraph 5 of the Affidavit-in-Reply that said Mr. Jain informed the respondent that they do not want to recover the arrears of rent. In this way, the respondent complied with the order passed by this court as well as the undertaking given by him. paragraph 5 reads thus:

“5. With reference to para 2, deny in spite of the order of the Hon'ble Supreme Court, I had willfully failed and neglected to handover the vacant and peaceful possession of the suit premises. I say that after the passing of dismissal order dated 01.04.2014 of my Special Leave Petition by the Supreme Court, in the last week of the April 2014, I had asked petitioner's constituted attorney Mr. Sandeep Jain to come and take the possession of the suit premises, then he replied that he will come in first week of May 2014. I further say that Mr. Jain came to suit premises on 4th day of May 2014 in the evening and I had already loaded my articles which was in the suit premises, in a tempo and I orally offered Mr. Jain to accept the arrears of rent but Mr. Jain told me that you are not required to pay the same and we will not claim the said arrears and thereafter I orally informed to Mr. Jain I had vacated the suit premises and now I am going and now you take care of the suit premises, thereafter, I left the suit premises and gone to my native place as mentioned above (Alibaug).”

4. The learned counsel for the petitioner submits that neither the respondent handed over possession to the petitioner nor to Mr. Sandeep Jain. He submits that the respondent is intentionally avoiding to hand over possession of the suit premises. Hence, in the interest of justice, this Hon'ble Court be pleased to appoint Court Receiver for taking forcible possession of the suit premises from whoever in possession and handover the possession to the petitioner.

5. At the time of arguments, the learned counsel for the respondent makes a statement that they have no objection if the Civil Application is allowed in terms of prayer clause (a).

6. Considering the submissions made by the learned counsel for the petitioner, Affidavit-in-Reply filed by the respondent and the statement

made by the learned counsel for the respondent before this court, I am satisfied that the petitioner has made out a case for allowing the civil application in terms of prayer clause (a).

7. Hence, following order is passed:

(a) Civil application is allowed in terms of prayer clause (a) which reads thus:

“(a) This Hon'ble Court be pleased to appoint Court Receiver under order XL Rule 1 of the Code of Civil Procedure, 1908 to take possession of the suit premises from the respondents herein and/or any other person found to be in possession of the suit premises, then further powers to break open the lock with the assistance of the police authority, after taking the possession, the vacant and peaceful possession of the suit premises to the petitioner herein.”

(b) Civil application stands disposed off accordingly.

(c) Parties to act on an authenticated copy of this order.

(K.K. TATED, J.)