

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.3200 OF 2008

Sakhi Fashions Private LimitedPlaintiff

V/s.

Nainraj Enterprises Pvt. Ltd. & Ors.Defendants

Mr. A.A. Pande i/b. A.R. Pande for the plaintiff.

Mr. Jitendra Jain a/w. Mr. Durgaprasad Poojari i/b. PDS Legal for the defendant nos.1 and 2.

CORAM : K.R.SHRIRAM,J

DATE : 14th JUNE, 2016

P.C.:-

1 This suit is filed under Section 6 of the Specific Relief Act.

Prayer clauses – (a) and (b) of the suit read as under :-

“(a) that it be declared that the action of the defendant no.1 in taking forcible possession of the suit shops, i.e., shop nos.003-103, situated on the ground floor and the first floor of the building known as Prime Plaza, S.V. Road, Near Asha Parikh Hospital, Mumbai alongwith car parking space, on 12.10.2008 in morning at 4.00 a.m. is bad, illegal, forcible and without the consent of the plaintiff and without due process of law;

(b) that the defendants be directed by the mandatory order of this Honourable Court to handover the vacant and peaceful possession of the suit shops being shop nos.003-103, situated on the ground floor and the first floor of the building known as Prime Plaza, S.V. Road, Near Asha Parikh Hospital, Mumbai alongwith car parking space to the plaintiffs.”

2 The plaintiff and the defendant no.1 had entered into a leave and license agreement dated 4th April, 2006 whereby the defendants gave on license to the plaintiff shop no.003 and 103

(connected internally) on the ground floor and first floor of the building known as Prime Plaza, S.V. Road, Near Asha Parikh Hospital, Mumbai – 400 054 alongwith 6 nos. of car parking places in the open ground adjoining the showroom (hereinafter referred to as “the suit premises”). The license was for a period of 32 months and compensation payable was Rs.10.56 lakhs per month. The plaintiff also gave a refundable security deposit of Rs.1.20 crores. As per clause 2(b) of the leave and license agreement the plaintiff was to bear and pay the municipal taxes. Clause 5(g) of the leave and license agreement provides that the possession of the property would always be with the defendant no.1.

3 On 28th March, 2007 the Bombay Municipal Corporation (BMC) called upon the plaintiff for payment of property tax for the period of 2006-2007. The amount that was claimed by BMC was Rs.57,28,674/-. The plaintiff objected to BMC for high property tax being claimed.

4 As the business of the plaintiff did not do as well as the plaintiff was expecting it to, the plaintiff to cut short his losses decided to close down the business and by a letter dated 20th May, 2008

terminated the leave and license agreement and requested the defendant no.1 for refund of deposit. The defendant no.2 is only a formal party and the counsel for the plaintiff states that the defendant no.2 was added as a defendant only because their name board was found on the date the plaintiff was allegedly dispossessed. On 31st May, 2008 the defendant no.1 accepted the termination and informed the plaintiff that unless the BMC taxes are paid the defendant no.1 cannot give refund of the security deposit. The BMC taxes over the period increased to more than Rs.81 lakhs.

5 On 8th September, 2008 (32 months period was to expire some time in the first week of December, 2008) the plaintiff informed the defendant no.1 that they were vacating the suit premises but wanted the security deposit. It is the case of the plaintiff that on 12th October, 2008 the director of the defendant no.1 one Rajesh Parekh with his 10 persons came to the suit shops at about 4.00 a.m. and forcibly broke open the lock of the suit shops and forcibly entered into the suit shops and took forcible possession of the suit shops. The plaintiff thereafter went to the Santacruz Police Station and lodged the F.I.R. being F.I.R. No.467 of 2008 and charges were under section 461, 448, 427 and 34 of the Indian Penal Code. The plaintiff

thereafter has filed this suit under Section 6 of the Specific Relief Act

6 The defendants have denied all the allegations. According to the defendants this court has no jurisdiction and as it is a dispute between a Licensor and Licensee only the Court of Small Causes has exclusive jurisdiction. It is also submitted by the counsel for the defendants that the plaintiff never had possession of the suit premises because the leave and license agreement itself provided that the possession will always be with the defendant no.1. It is also stated that though the plaintiff, legally was liable to pay the municipal taxes, did not pay the municipal taxes and was illegally occupying the suit premises. It is also stated that the defendant no.1 was ready and willing to refund the security deposit provided the plaintiff made the payment of taxes as levied by the BMC.

7 During the pendency of the suit, pursuant to interim orders passed, the defendant no.1 deposited the amount of Rs.1.20 crores with the Prothonotary and Senior Master, High Court, Bombay. There is no dispute on this. Out of this Rs. 1.20 crores, the BMC was paid Rs.81,35,851/- and the balance amount was paid over to the plaintiff. Therefore, there is no dispute whatsoever on the return of security deposit.

8 I had enquired with the counsel for the plaintiff on the last occasion as well that in view of the facts of the case whether the plaintiff still insists on prosecuting the suit because nothing remains in the suit. The counsel for the plaintiff took time and today on instructions, stated that the plaintiff does not wish to withdraw the suit and was adamant to prosecute the suit.

9 Heard the counsels. Without going into the merits of the case in detail or the rival contentions in detail or the issue of jurisdiction raised, let us proceed on the basis that this court has jurisdiction and further assume, for a moment that we declare as per prayer clause -(a) quoted above that defendant no.1 had taken forcible possession illegally and without due process of law. What next? The plaintiff will want to be put back in possession of the suit premises. Whether it is practically possible today or not, is a different issue.

10 The original contract was only upto 30th November, 2008. The plaintiff themselves have terminated the agreement. After termination the plaintiff wanted the security deposit to be returned. The entire case of the plaintiff is that they were entitled to retain possession or bound to handover possession only after defendant no.1

returned the security deposit. Even that security deposit has now been returned. Therefore, the question of putting the plaintiff back in possession does not arise at all. The entire contract has worked out. Any order passed would be purely of academic interest only.

11 In my view, judicial time is far too precious to be spent on such egoistic plaintiff, who just for their pride wish to prosecute the matter absolutely unconcerned with the pressure on judicial time. Such attempt should be dealt with very strong hand. In my view, nothing survives in the suit and the suit requires to be dismissed.

12 The counsel for the defendants states that he is not pressing for cost. But certainly the plaintiff who for his ego and pride, without bothering for the precious judicial time, insisted on prosecuting the suit in which nothing remains needs to be saddled with cost.

13 The suit accordingly stands dismissed with cost. The plaintiff is directed to pay a sum of Rs.50,000/- as donation to Maharashtra Legal Aid Services Authority as cost. This amount to be paid within four weeks from today.

(K.R.SHRIRAM,J)