

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3867 OF 2014***

Miss. Apurva Annasaheb Mohite	...Petitioner
Versus	
Abhishekh Corporation Ltd. & Anr.	...Respondents

Mr.Amit B. Borkar, for the petitioner.
None for the respondents

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE :21st November, 2017.***

P.C. :

1. None appears for the respondents, although served.
2. Rule. Rule made returnable forthwith.
3. The petitioner herein happens to be the plaintiff in Regular Civil Suit No.228 of 2013 pending before the Civil Judge, Junior Division, Kolhapur. It is contended in the plaint that the petitioner was a minor in the year 1999. Her parents had filed a Misc. Civil Application before the District Judge at Kolhapur seeking permission to execute a lease deed in respect of the suit property on behalf of the plaintiff and her brother. By an order dated 12.5.2000, the permission was granted as follows :-

- “1) The application is allowed.
2) The father-guardian (applicant No.1) is permitted to lease out 1/6th share each of his minor son and daughter in the portion of 8 hectors out of block No. 148 of Mouje Tamgaon Taluka Karvir, District Kolhapur, to Abhishek Cot. Spin Mills Limited on total yearly rent of Rs.25,000/- for a period of 30 years.
3) On receipt of lease rent, every year, the same be deposited in any of the Nationalized Bank in the name of respective minors, till they attain majority under such a scheme that the minors can get principal and interest thereof on their attaining majority.
No order as to costs.”*

4. The learned counsel for the petitioner submits that after attaining majority, the plaintiff had realized that the lease deed was executed in contravention of the order dated 12.5.2000 and, therefore, the petitioner had filed a suit seeking a declaration that the lease deed was executed in contravention of the order dated 12.5.2000 in MCA No.242 of 1999. Similarly, there was a clause (b) in the said plaint seeking an order of restraint and perpetual injunction from disturbing “the symbolic and peaceful possession of the plaintiff”. The suit was filed on 16.2.2013.

5. On 10.8.2013, the plaintiff i.e. the petitioner filed an application under Order VI Rule 17 of the Code of Civil Procedure. It was stated in the application that due to oversight and inadvertence, it has been mentioned as “symbolic possession” instead of “actual possession”. The

learned Civil Judge, Junior Division, Kolhapur, by an order dated 11.12.2013, has rejected the said application. Hence, this Petition.

6. The learned counsel for the petitioner has vehemently contended that merely amending the prayer clause in replacing the word “symbolic” by “actual” would not change the nature of the suit and, therefore, the learned Court ought to have allowed the application seeking amendment. It is further pertinent to note that the learned Court has rightly observed that the suit property has been leased by the plaintiff in favour of the defendants. The same has been mortgaged by the defendants in favour of the Banking Institution to raise funds and it was further contended that thereafter she is in actual possession.

7. It is stated in the plaint that the Hon'ble District Judge had directed that the rent receipt from the suit property be deposited in a nationalized Bank in an account in the name of the plaintiff so that the plaintiff shall receive the principal and interest on the said amount on attaining majority. It was also contended that in violation of the order passed by the District Judge, the parents of the plaintiff had mortgaged the suit property. It is further averred in the plaint that the defendant No.2, in

whose favour the permission was granted, had leased out the said property on behalf of the plaintiff to Abhishek Cotspin Mills Ltd. The lease deed is dated 6.7.2000. It is also stated in the plaint that the lease rent was not deposited in the Nationalized Bank and, therefore, by a letter dated 17.9.2012, the plaintiff had terminated the lease granted to the lessee. It is also contended that the defendant No.1, in violation of the order, had taken possession of the suit property along with all the plant and machinery and also demanded the arrears of lease rent. It is specifically averred that since defendant No.1 did not object to the contentions of the plaintiff's letter dated 17.9.2012, it is understood that the lease stood terminated and as a natural consequence the suit property along with all the plant, machinery and buildings is in the symbolic possession of the plaintiff.

8. In spite of the said averments in the plaint, it is being vehemently contended today that the word "symbolic" in the prayer clause is not only inadvertent, but is a typographical error. The said submission does not stand to any reason. Moreover, the whole plaint is based only on presumption and, therefore, it is clear that the replacement of the word "symbolic" by "actual" possession would change the very nature of the suit.

Hence, the order dated 11.12.2013 passed by the Joint Civil Judge, Junior Division, Kolhapur, does not call for any interference. The learned Court has rightly rejected the application seeking amendment.

9. The Petition is dismissed. Rule is discharged.

(SMT. SADHANA S.JADHAV, J.)