

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1582 OF 2013

Smt. Hemlata Dinesh Jain

...Petitioner

Versus

M/s. Anita Enterprise & Anr.

...Respondents

Ms. Dhvani Bhatt, i/b Ms. Ranjana Parikh, for the Petitioner.

Mr. Satyajeet Mirajkar, for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : 2 February 2017

ORAL ORDER :

1. On 12 February 2014 while issuing notice, the following detailed order was passed :-

“ Heard Ms.Ranjana Parikh, learned Counsel for the petitioner at length.

2. By this petition under Article 227 of the Constitution of India, the original plaintiff has

challenged the judgment and order dated 12/07/2012 passed by the learned 3rd Joint Civil Judge, Junior Division, Vasai below Exhibit 5 in Regular Civil Suit No. 429 of 2010 as also the judgment and order dated 16/10/2012 passed by the learned Adhoc District Judge¹, Vasai in Misc. Civil Appeal No. 188 of 2012. By these orders, the Courts below dismissed the application made by the petitioner for relief of injunction. In support of this petition, Ms.Parikh invited my attention to prayer clauses (a) & (b) in the application at Exhibit 5. By prayer clause (a), the petitioner seeks injunction restraining the defendants from carrying out any work of demolition of shop No. 4, situate at ground floor, Anita Chamber, Amabadi Road, Vasai (West), District Thane. By prayer clause (b), petitioner has sought injunction against the defendants from creating third party interests in any manner whatsoever or parting with possession. She submitted that the Courts below however proceeded on the premise that the petitioner claims to be in possession of the suit premises. In particular, she invited my attention to paragraph 10 of the order passed by the learned District Judge. The learned District Judge

considered paragraph 6 of the plaint wherein the petitioner asserted that after performing Pooja in the suit premises on 14/01/2009, the keys of the suit premises were given to the defendants. The learned District Judge observed that this aspect denoted delivery of possession of the property by the petitioner to the respondents. She submitted that the learned District Judge observed in paragraph 11 that since the petitioner is not in possession of the suit premises, without seeking relief of possession, petitioner cannot seek relief of mere injunction. She submitted that this observation is factually incorrect and contradictory to the record. She invited my attention to prayer clause (f) of the plaint wherein plaintiff has sought restoration of the possession of the suit premises.

- 3. Prima facie, I find substance in the submission advanced by Ms.Parikh.*
- 4. Issue notice before admission to the respondents, returnable after 6 weeks. Humdust is permitted.*
- 5. Notice to indicate that subject to the time*

constraint and convenience of the Court, the petition may be disposed of finally at the stage of admission. Notice shall further indicate that despite service, if the respondents fail to appear, the Court will proceed to decide the petition on its own merits.”

2. Learned Counsel for the Respondents No. 1 and 2 i.e. the landlord has appeared. The Respondents have been served and the matter is placed on board today.

3. The Suit has been filed by the Petitioner-Plaintiff for declaration that the Petitioner is tenant in the said Suit. Application for temporary injunction has taken out wherein reliefs were sought to restrain the Respondents-Defendants from demolishing the suit property and to restrain the Respondents-Defendants from creating third party rights or part with the possession. Both the Courts have refused the said reliefs as noted in the order dated 12 February 2014. It is a contention of the Petitioner that this has been refused on erroneous grounds that the Petitioner is not in possession of the premises and seeks relief of mere injunction.

4. It is not necessary to delve deeper in the controversy as the learned Counsel for the Respondents-Defendants states

that the Respondents-Defendants have no intention of demolishing the suit structure neither to create any third party rights or part with possession, during pendency of the Suit.

5. The statement made by the learned Counsel for the Respondents-Defendants adequately protects the interest of the Petitioner during pendency of the Suit. Accordingly, the Writ Petition is disposed by accepting the statement made by the learned Counsel for the Respondents-Defendants, which will continued till disposal of the Suit.

6. The learned Civil Judge will decide the Suit on its own merits.

[N.M. JAMDAR, J.]