

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.244 OF 2017
IN
NOTICE OF MOTION NO.2247 OF 2016
WITH
CIVIL APPLICATION NO.325 OF 2017

Vijendra Kumar Rai	...Appellant
<i>Versus</i>	
MK Patil	...Respondent

Mr Vijendra Rai, *Appellant in person present.*

CORAM: G.S. PATEL, J
DATED: 5th June 2017

PC:-

1. The Appeal is directed against the order dated 20th October 2016 refusing the Plaintiff ad-interim reliefs. The learned Judge held that the Plaintiff had not made out a *prima facie* case for ad-interim relief in a Suit for specific performance of an oral agreement.

2. The Plaintiff's case is that he is a licensee of premises beaing Flat No.14, 6th Floor, Shree Samarth CHS, Natwar Nagar, Road No.5, Jogeshwari (E), Mumbai 400 060. The Plaintiff claims to have

been a licensee since 2009. He was put in possession and issued receipts from 2009 onwards. In paragraph 8 of the Complaint, the Plaintiff claims that the Leave and Licence Agreement was merely a mutual understanding, and that there was in fact an oral agreement by which the Defendant agreed to sell the premises to the Plaintiff. In paragraph 11 the Plaintiff describes the Leave and Licence as a 'formality' and denies that there ever was any relationship of licensor and licensee between the parties. In paragraphs 12, 14 and 17 there are specific averments about the Defendant being unwilling to perform his obligations under the alleged oral agreement. According to the Plaintiff, he paid an amount of Rs.25,00,000/- in cash to the Defendant.

3. Prayer (a) of the Suit seeks an order directing the Defendant to enter into an Agreement for Sale. The Plaintiff on this basis argued before the learned Single Judge that his Suit was for an injunction *simpliciter* and not for specific performance. If the Plaintiff's submission is to be accepted, then the suit is fatally defective, absent a prayer seeking specific performance of the very agreement that is the subject matter of prayer clause (a). The learned Single Judge quite rightly therefore read the prayer to be one for specific performance, i.e., for execution of an Agreement for Sale and then for its enforcement. This is of consequence because the Plaintiff paid a Court fee of only Rs.200/- on this Complaint, and sought interim relief for protecting his alleged possession, restraining any attempted dispossession and preventing third party alienation.

4. In the impugned order of 20th October 2016, the learned Single Judge noted some of these facts. He also noted that the

Defendant had filed a reply and the matter was posted to 16th November 2016 for final hearing. The learned Single Judge held that it would be improper to pass an order of ad-interim relief in the absence of the Defendant on that day, and further that it was necessary that the suit be valued correctly. The application for ad-interim relief came to be made, it seems, without proper notice. Even if there had been adequate notice, I do not think this would have made the slightest difference, given the nature of the application, the pleadings in the plaint, the ripening of the Notice of Motion itself and the stage at which the matter then stood.

5. The order of the learned Single Judge cannot be faulted. The Motion is even now pending hearing and final disposal. The learned Single Judge will take it up at his earliest convenience. It is, however, made clear that the Plaintiff is required to value the Suit correctly showing the consideration as alleged in the Plaint and to pay the appropriate Court fee accordingly. The learned Single Judge is not to hear the Motion unless the Court fee is paid in full. This is a pre-condition to hearing the Motion. If the Court Fee is not paid by the date fixed for final hearing of the Motion, the learned single Judge will be at liberty to dismiss the Motion on that ground alone. The learned single Judge will also pass directions in the suit itself for payment of Court Fee and make a self-operative order providing for dismissal in default without further reference to the Court if the Court Fee is not paid by the stipulated date.

6. The Appeal is dismissed with these observations, and with no order as to costs. In view of dismissal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

7. If the Court Fee is paid as directed, the Motion and Suit will be decided on their merits, uninfluenced by the order under appeal or the present order. All contentions will then remain open.

(G. S. PATEL, J.)