

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9106 OF 2017

Surender Parasram Sukhramani	..	Petitioner
vs.		
Deepak Ashoklal Motwani & Ors.	..	Respondents

Mr. N. R. Bubna for Petitioner.
Mr. Pravin Gala i/b. Mr. Nilesh Bharule and Mr. Niten Bharule for
Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE: 31 AUGUST 2017

P.C :

1] Mr. Bubna, learned counsel for the petitioner makes a statement that service, in terms of this court's order dated 9th August 2017 has been affected on all the respondents. In the order dated 9th August 2017, it was made clear that the matter may be heard and disposed of finally at the stage of admission itself.

2] In pursuance of the notice, Mr. Gole appears for the respondent nos. 1 and 2, who are really the contesting respondents.

3] Rule.

4] The petitioner, is the plaintiff in regular civil suit no. 35 of 2017. In the suit, the petitioner has claimed that he is a tenant in respect

of the suit premises and has applied for an injunction to restrain the respondent nos. 1 and 2 to remove electricity meter and to disconnect electricity supply to the suit premises or otherwise, refrain from disturbing the petitioner's possession in the suit premises.

5] The learned trial Judge and the appeal Judge have declined interim relief to the petitioner by holding that there is no *prima facie* case made out by the petitioner that he is a tenant in respect of the suit premises. Both the courts have held that the suit premises had been leased out to the petitioner's brother and not to the petitioner.

6] Mr. Bubna submits that a *prima facie* case of existences of landlord – tenant relationship had in fact been made out. He points out that in any case, it is not even the case of the respondent nos. 1 and 2 that the petitioner is some total stranger since it is admitted by the respondent nos. 1 and 2 that the suit premises had been leased out to the petitioner's brother. He points out notices addressed by the respondent nos. 1 and 2 to both the petitioner's brother and the petitioner in relation to the suit premises alleging defaults in payment of rents. He submits that since possession is clearly admitted, a *prima facie* case was made out. Refusal of interim relief would virtually amount to a license to the respondent nos. 1 and 2 to take law in their own hands. On these grounds, Mr.

Bubna submits that temporary injunction was due and ought to have been granted by the two courts.

7] Mr. Gole, learned counsel for the respondent nos. 1 and 2 submits that there is absolutely no material on record to establish landlord-tenant relationship between the petitioner and the respondent nos. 1 and 2. The petitioner, though, is the brother of the tenant, is not the tenant of the respondent nos. 1 and 2 and therefore, in that sense, he is a stranger to the suit premises. Mr. Gole points out that even in the notices addressed, it is clarified that the brother of the petitioner was a tenant and not the petitioner. Mr. Gole points out that even otherwise arrears of rent have mounted to about Rs.4.50 lakhs or thereabouts. In such circumstances, Mr. Gole submits that there is no case made out to interfere with the concurrent though *prima facie* findings recorded by the two courts.

8] The issue as to whether the petitioner is a tenant of the suit premises or it is only his brother who is the tenant of the suit premises will have to be finally determined in the suit. However, at this stage, it cannot be said that no *prima facie* case has been made out by the petitioner to seek a limited interim relief of protecting his possession and restraining the respondent no. 3 from disconnecting electricity supply. There does not seem to be much dispute as regards the factum of possession. The respondent nos. 1

and 2 have admitted that it is the brother of the petitioner who is a tenant of the suit premises. The issue as to whether the suit premises exclusively let out to the petitioner's brother or to both the petitioner and his brother, is one, which will have to be decided in the course of the suit. At this stage, however, it will not be appropriate if the respondent nos. 1 and 2 are permitted to disturb the petitioner's possession otherwise than by due process of law.

9] Since the petitioner states that he is in possession of the suit premises, the relief of temporary injunction cannot be granted unconditionally. Mr. Bubna states that rent amount has been paid by the petitioner in cash and there are no significant arrears. This position is disputed by Mr. Gole, who points out that no less than two notices have been addressed of alleging default and demanding arrears. Again, these issues are required to be finally decided in the course of the suit if at all any issues arise in this regard. However, in order to avail the benefit of interim reliefs, it will be only proper that the petitioner deposits before the learned trial Judge a sum of Rs.4.50 lakhs within a period of eight weeks from today. Such deposit shall obviously be without prejudice to the rights and contentions of either parties. From out of this amount, the respondent nos. 1 and 2 shall be at liberty to withdraw a sum of Rs.2.25 lakhs again, without prejudice to the rights and contentions

of either parties. Further, the petitioner to also deposit before the trial court a sum of Rs.5,000/- per month, again, without prejudice to the rights and contentions of both the parties and continue to deposit the same until further orders to be made by the learned trial Judge. All these deposits and withdrawals should not influence the learned trial Judge in deciding the issue as to whether the petitioner is indeed a tenant of the suit premises or not. This issue will have to be decided on its own merits and in accordance with law.

10] Until disposal of the suit, there shall be temporary injunction restraining the respondent nos. 1 and 2 from interfering with the petitioner's possession. Similarly, the respondent no. 3 is directed to reconnect and restore the electricity supply to the suit premises within a period of ten days from today.

11] This order shall not preclude or come in the way of the respondent nos. 1 and 2 from taking out appropriate proceedings for securing the eviction of the petitioner. Such proceedings, if instituted, to be decided on their own merits and in accordance with law. This is because the relief applied for by the petitioner in the suit, in effect, is to seek a permanent injunction restraining respondent nos. 1 and 2 from disturbing the petitioner's possession otherwise than by due process of law. This means that there can never be any restraint upon respondent nos. 1 and 2 seeking due

process of law.

12] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

13] It is once again clarified that nothing contained in this order or for that matter the directions for deposit or withdrawal need influence the learned trial Judge in deciding the suit on its own merits and in accordance with law.

14] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka