

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 20 OF 2016

Mr. Harkesh Motilal Pal .. Appellant
vs.
The Municipal Corporation of
Greater Mumbai & Ors. .. Respondents

Mr. V. S. Bhadkamkar for Appellant.
Ms M. M. More for Respondent Nos. 1 and 2.
Mr. U. V. Singh for Respondent No. 3.
Mr. Abir P. i/b. Wadia Gandhi & Co. for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 06 JANUARY 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] This appeal is directed against the order dated 15 September 2015, by which, the learned trial Court has rejected notice of motion no. 1674 of 2012 taken out by the appellant / plaintiff. In the notice of motion no. 1674 of 2012, the appellant had applied for following reliefs :

“(a) That this Hon'ble Court may be pleased to restrain the Defendant No.1 their servants, agents and the persons working under them by an Order of permanent / temporary injunction from transferring the tenancy in respect of the Suit premises i.e. BMC Chawl No. 1, House – 5, Sion-Koliwada, Mumbai 400022, in favour of Defendant No.3 or any other person claiming through him.

(b) That this Hon'ble Court may be pleased to restrain the Defendant No. 3 and 4 and their Heirs, servants, agents and other persons working under them by an order

of permanent injunction from selling, alienating or disposing or in any manner dealing with Suit premises i.e. BMC Chawl No. 1, House – 5, Sion- Koliwada, Mumbai 400022.

(c) That this Hon'ble Court may be pleased to direct the Defendant No. 4 to allot the room in subsequent developed property to the Plaintiff and his family members against the present Suit premises along with Defendant No. 3 as being co-Tenant.

(d) That this Hon'ble Court may be pleased to direct the Defendant No. 4 to give Plaintiff as equal benefits like Defendant No. 3 against the Suit premises.

(e) Pending the hearing and final disposal the Defendants be restrained by dispossessing the Plaintiff and his family members from the Suit premises.

(f) Interim and ad-interim reliefs in terms of prayer clause (a) to (e) be granted.

(g) Cost of the Suit be provided with.

(h) Any such other and further relief as the nature and circumstances of the case may require be granted in favour of the Plaintiff."

3] In so far as prayer clauses (a) and (b) are concerned, at least at this stage, and so also, at the stage when the impugned order was made, there was no dispute that the suit premises i.e. BMC Chawl No. 1, House No. 5, Sion – Koliwada, Mumbai 400022 (old premises) had already been demolished. To that extent therefore, relief in terms of prayer clauses (a) and (b) did not survive.

4] Presently, in lieu of the old premises, the respondent no. 3 herein, has been placed in possession of new premises. Prayer clauses (c) and (d) therefore, have to be construed in the context of claim of rights in respect of such new premises. In terms of such prayer clauses, the appellant seeks equal benefits, on the basis that he is a co-tenant of the new premises. In effect therefore, these two prayer clauses are in nature of interim mandatory reliefs. These two prayer clauses are also in the nature of final relief which is applied for in the suit.

5] This Court, in its detailed *order dated 15 July 2014 in Appeal from Order No. 1354 of 2012 (Hiralal Surajdin Pal vs. Mr. Harkesh Motilal Pal & Ors.* has already restrained the respondent no.3 from creating any third party interest or parting with possession of the suit premises. It is also stated that the respondent no. 3 shall not claim any equities in case the appellant herein succeeds in the suit. It is clarified that this restraint is now in the context of new premises. Once again it is made clear that the respondent no. 3 shall not part with possession or create any third party interest in so far as these new premises are concerned.

6] In so far as relief in terms of prayer clauses (c) and (d) of the notice of motion is concerned, there is no reason to fault the impugned order when it states that such reliefs cannot be granted at the interim stage. Ultimately, evidence will have to be led in the suit

and depending upon the evidence, such relief, which is virtually in the nature of final relief can be granted. However, at this stage, reliefs in the nature of interim mandatory injunction cannot be granted in the facts and circumstances of the present case.

7] Learned counsel for the appellant however submits that respondent no. 3 has at every stage taken law in his own hands. He submits that even the orders favourable to the appellant have been frustrated on account of actions of the respondent no. 3. Learned counsel for the appellant points out that on account of this, the appellant and his family members are virtually out on the streets, even though, they had equal rights in the old premises and have equal rights in the new premises. In such circumstances, learned counsel for the appellant submits that some interim relief is warranted.

8] In the impugned order, the learned trial Judge has made certain *prima facie* observations. In the light of such observations, as well as the material on record, whatever the case of the appellant on merits, at least as of now, the case of the degree which warrants grant of interim mandatory injunction cannot be said to have been made out. In order to make out a case for grant of interim mandatory injunction, it is not sufficient for the plaintiff to merely make out a *prima facie* case but the plaintiff is required to make out case of a much higher degree.

9] Accordingly, there is no case made out to interfere with the impugned order. However, taking into consideration the submissions made by learned counsel for the appellant, this is a fit case for ordering expedition of the suit. Accordingly, the learned trial Judge is directed to dispose of suit no. 2891 of 2011 as expeditiously as possible and in any case within a period of one year from today.

10] All contentions of all parties are kept open. It is made clear that the observations made in the impugned order or for that matter observations made in the present order shall not influence the learned trial Judge in disposing of the suit on merits and in an expeditious manner.

11] The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

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

(M. S. SONAK, J.)