

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 242 OF 2014

Mrs. Soma B. Laha .. Appellant
vs.
Mrs. Pooja R. Arora .. Respondent

Mr. Shailendra S. Kanetkar for the Appellant.
None for the Respondent.

CORAM : M. S. SONAK, J.
DATE : 20 JANUARY 2017.

P.C. :-

1] Mr. Kanetkar, learned counsel appears for the appellant.
Neither the respondent nor her advocate are present.

2] This appeal was admitted on 2 July 2015. On the same date, this court restrained the respondent from dispossessing the appellant or taking forcible possession of the suit premises from the appellant, without following the due process of law during pendency of final disposal of the appeal from order.

3] The order dated 2 July 2015 in Civil Application No. 284 of 2014 in this appeal from order reads thus:

1. Heard. This appeal is preferred by the Plaintiff challenging the order dated 30/10/2013 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.1725/2013 in S.C.Suit No.1949/2013 declining to grant ad-interim relief in favour of the Plaintiff.

2. It is the case of the Plaintiff that he agreed to purchase the suit shop No.A/2 admeasuring 116 sq.ft. situated at ground floor, Midas Enclave, Dadi Sheth Road, Off. S. V. Road, Malad (West), Mumbai-400064 from Respondent Defendant by

registered agreement for sale dated 08/03/2013 for Rs.18,85,000/-. The Plaintiff paid Rs.10,85,000/- to the Defendant. Thereafter the Plaintiff filed S.C.Suit No.1949/2013 in Bombay City Civil Court, Mumbai for an order of injunction restraining the Respondent Defendant from disturbing the Plaintiff's peaceful possession over the suit shop without following due process of law and also allow the Plaintiff to deposit balance consideration of Rs.8,50,000/- in court towards agreement for sale. In that proceeding, the Plaintiff preferred Notice of Motion No.1725/2013 which was dismissed by the Trial Court. Hence, the present Appeal from Order.

3. The learned counsel for the Plaintiff submits that the Plaintiff is in possession of the suit premises. He further submits that the Defendant executed agreement for sale dated 08/3/2013. Out of consideration of Rs.18,85,000/- they paid Rs.10,85,000/- to the Defendant. He submits that subsequently, the Defendant filed L.E.Suit No.82/115/2013 in Small Causes Court at Bombay for directions to the Plaintiff and other Defendants to hand over vacant and peaceful possession of the suit premises. Prayer clause (a) of the said suit reads thus:

“(a) That the Defendant Nos.1 and 2 be ordered and decreed to quit, vacate and handover quite, vacant and peaceful possession of suit premises i.e. Shop No.A/2, ad-measuring 116 sq.ft. situated at Ground Floor, Midas Enclave Building, Dadi Sethi Road, Off. S.V.Road, Malad (W), Mumbai – 400064, to the Plaintiff.”

4. The learned counsel for the Plaintiff submits that before the Small Causes Court, the Defendant preferred Application below Exhibit-14 seeking directions against Defendant No.1 in that suit to pay arrears of monthly compensation and to deposit the damages, which was decided by the Small Causes Court by order dated 19/11/2014 holding that Defendant No.2 in that suit i.e. the Plaintiff in the present suit is in possession of the suit premises. He relies on paragraph 8 of the order dated 19/11/2014 which reads thus:

“8. More so, as per the pleadings of the Plaintiff in the plaint, the Defendant No.2 is in illegal possession of the suit premises. Therefore, it cannot be said that, the Defendant No.1 is in possession of the suit premises. When the Defendant No.2 is in possession of the suit

premises, then the Defendant No.1 cannot be directed to pay compensation of damages for use and occupation of the suit premises. Therefore, in view of the above discussion when the leave and license agreement appears to be terminated on 07/03/2013, then the question of directing the Defendant No.1 to pay damages does not arise. So, I found no substance in the Application. Hence, pass the following order:

ORDER

The Application is rejected.”

5. The learned counsel for the Appellant submits that, the Defendant, in his suit before the Small Causes Court, has admitted that the Appellant/Plaintiff is in possession of the suit premises. He further submits that if the Defendant dispossess the Plaintiff without following due process of law, irreparable loss and injury will be caused to him. Hence, pending the hearing and final disposal of the Appeal from Order, this Hon'ble Court be pleased to restrain the Defendant from disturbing the Plaintiff's possession over the suit premises without following due process of law.

6. On the other hand, the learned counsel for the Defendant vehemently opposed the present Civil Application. They filed Affidavit-in-Reply dated 23/08/2014. The learned counsel for the Defendant submits that the Plaintiff Applicant is not in possession of the suit premises at all. He submits that, in fact, the suit premises was given on leave and license basis to Krishna Rito Singh and even as on today, he is in possession. He further submits that the Defendant was in need of some money. Hence, he requested the Plaintiff to lend some amount for temporary period. In that transaction, the agreement for sale dated 08/03/2013 was executed. He further submits that in Small Causes Court suit, the Bailiff report shows that the Defendant No.1 in that suit i.e. Krishna Rito Singh was in possession of the suit premises. Hence, the Plaintiff is not entitled to any relief from this court and Civil Application be dismissed with costs.

7. Heard both sides at length. In the present proceedings, it is to be noted that the Defendant filed L.E.suit No.82/115/2013 in the court of Small Causes at Bandra against Krishna Rito Singh and the Plaintiff, wherein the Defendant prayed for decree of eviction against the Plaintiff also. This itself shows that the

Plaintiff is in possession of the suit premises. Therefore, whatever stated by the bailiff in the service report and/or other documents cannot be considered at this stage. When the Defendant, in a pleading before the Small Causes Court admitted that the Plaintiff is in possession of the suit premises, same required to be protected till hearing and final disposal of the present Appeal from Order. Hence, the following order:

A. Civil Application is made absolute in terms of prayer clause (a) which reads thus:

“(a) Pending hearing and final disposal of the Appeal from Order, the Respondent, his agents, servants, representatives or anybody claiming through him be restrained by an order of injunction from dispossessing the Applicant and/or taking forcible possession of the Applicant and/or disturbing the peaceful possession of the Applicant in the suit premises, viz. Shop No.2 situated on the ground floor, “A” Wing in the building known as Midas Enclave, Dadi Sheth Road, Off S.V.Road, Malad (West), Mumbai, without following due process of law.”

B. The Plaintiff is restrained by an order of injunction from creating any third party right, title and interest in respect of the suit property till hearing and final disposal of the Appeal from Order.

C. Civil Application stands disposed off accordingly.

4] There is merit in the contention of Mr. Kanetkar that since the respondent has instituted L.E. Suit No. 82/115/2013 in the Small Cause Court at Mumbai, seeking restoration of possession of the suit premises from the appellant and another (defendant No.2 in the said suit), the appellant was entitled to be protected by an injunction at least to the extent that her possession is not disturbed otherwise than by adopting the due process of law. There is some controversy as to whether the appellant is in actual possession of the suit premises or whether she has licensed the same to defendant No.2 in the suit instituted by the respondent. However, since, it is the case of

respondent that it is the appellant, who has licensed the suit premises to the said party, nothing much really turns on that score. Accordingly, there shall be an injunction pending the final disposal of the S.C. Suit No. 1949 of 2013, restraining the respondent herein from dispossessing or attempting to dispossess the appellant or any person claiming through the appellant from the suit premises, otherwise than by due process of law. However, even the appellant is restrained from creating any third party rights in the suit premises. Further, since, in Notice of Motion No. 1725 of 2013, the appellant had herself prayed for permission to deposit Rs.8.50 lakhs before the trial court, there is no harm if such permission is granted to the appellant to deposit the amount of Rs.8.5 lakhs in the trial court within a period of six weeks from today. In fact, the appellant is directed to deposit this amount within a period of six weeks from today as a condition for enjoying benefit of temporary injunction now granted. In case of failure to deposit the said amount, this injunction shall stand vacated.

5] It is clarified that deposit of Rs.8.50 lakhs before the trial court, shall obviously be without prejudice to the rights and contentions of all parties. This direction for deposit does not mean that this court has accepted the case of the appellant as regards the existence of any agreement or as regards the existence of payment of any amounts in pursuance of any such agreement, in respect of suit premises. All contentions of all parties are specifically kept open and will be decided by the trial court in the suit on its own merits and in accordance with law.

6] It is further clarified that this injunction shall not come in the way of adjudication of L.E. Suit No. 82/115/2013 instituted by the respondent in the Small Causes Court at Mumbai seeking the eviction of the appellant and another from the suit premises. This is because the institution of such a suit is nothing but adopting the due process of law. Therefore, neither the injunction granted by this court nor pendency of the suit instituted by the appellant, shall come in the way of Small Causes Court deciding L.E Suit No. 82/115/2013. No doubt, such suit shall have to be decided on its own merits and in accordance with law. Again, all contentions of all parties in this suit are also kept open .

7] The observations in both the impugned order, order dated 2 July 2015 as also this order are only *prima facie* and the trial court or the court taking up L.E. Suit No. 82/115/2013 need not to be influenced by them whilst deciding the respective suits pending before them.

8] This appeal is allowed to the aforesaid extent. The impugned order is modified accordingly. There shall, however, be no order as to costs.

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

(M. S. SONAK, J.)