

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 634 OF 2017
IN
SUIT NO. 517 OF 1966

The Trustees of Port Trust of Bombay ...Plaintiffs
Versus
Safiza Begum AB Kadri & Ors ...Defendants
And
Associate Corporation of Industries (I) Pvt Ltd &
Ors ...Respondents/
Applicants

Ms Radha Bhandari, *i/b M/s. MV Kini & Co, for Plaintiffs.*
Mr Denzil D'Mello, *a/w Ms Geeta Sonawane, for the Applicants.*
Mrs Kavita Ambekar, *Ist Assistant to Court Receiver, present.*

CORAM: G.S. PATEL, J
DATED: 20th April 2017

PC:-

1. The Applicant, Associate Corporation of Industries (I) Pvt Ltd (“ACI”), is not a party to the suit. Its prayer is that the Court Receiver be directed to deliver to it the possession of three cabins in certain premises on the 1st floor, Commerce House, Currimbhoy Road, Ballard Estate, Mumbai 400 038. It also prays that the Court Receiver pay it the accumulated monthly compensation deposited by the 3rd and 4th Defendants, aggregating to Rs.36,14,200/- and Rs. 3,00,000/- respectively.

2. I am inclined to allow the application in the following circumstances, and with some clarifications. ACI is or was the tenant of one SM Kadri (since deceased). The present Defendants are Kadri's heir. Kadri was a lessee of the Plaintiff, the Mumbai Port Trust, of the land and the structure at Ballard Estate. ACI's tenanted premises are about 4,000 square feet.

3. The MBPT filed this suit against Kadri for possession and for arrears of rent and compensation. It obtained a decree on 15th November 1967. It filed Execution Application No. 121 of 1974 and on an application made in those execution proceedings, a Receiver came to be appointed in execution on 6th September 1976.

4. ACI was by then already in possession of its tenanted premises of 4,000 square feet on the 1st floor, Commerce House, Currimbhoy Road, Ballard Estate, Mumbai 400 038. In 1988, ACI entered into an Agreement with one Concord Barges Pvt Ltd, the 4th Respondent ("**Concord**"), allowing Concord to use three cabins in these tenanted office premises on certain terms and conditions. This arrangement was renewed periodically. Concord filed a declaratory RAD. Suit No. 781 of 1996 against ACI claiming protection under the Rent Act. Concord's suit failed on 31st July 2001, with the finding that there was no relationship of landlord and tenant between ACI and Concord. ACI's Advocates wrote to Concord on 25th September 2001 demanding that Concord vacate and stop using the office facilities with effect from 1st October 2001. Concord did not comply and ACI had to file Suit No. 1891 of 2002 in the City Civil Court against Concord for possession.

5. In parallel, ACI had allowed the 3rd Respondent, the Seafarer's Welfare Fund Society ("SWFS"), to use another portion of the tenanted premises.

6. In the meantime, the MBPT moved this Court alleging that ACI had parted with possession of the premises in question. It obtained an order of 16th October 2002 directing Concord and SWFS to deposit with the Court Receiver the monthly compensation that each was paying to ACI. In its order of 16th October 2002, the Court said that since the Receiver was appointed, SWFS and Concord should pay the full amount of compensation to the Court Receiver including all arrears, and this should be done within six weeks. In default, the Court Receiver was directed to take forcible possession. The question of whether ACI had or had not unlawfully parted with possession was left undecided.

7. Concord did not comply with this order. The Court Receiver, therefore, on 14th January 2003 took possession of the three sealed cabins till then occupied by Concord. These three cabins continue under the Receiver's seal to this day. Concord filed Chamber Summons No. 76 of 2003 asking that the Court accept an amount of Rs. 3 lakhs as part of the accumulated compensation due from it, and asked for an additional time of six months to deposit the remaining Rs. 2.47 lakhs. That Chamber Summons was disposed of on 17th April 2003. On 26th September 2006, this Court passed an order on the Court Receiver's Report No. 59 of 2006 directing the Court Receiver to return possession to "the party from whom the Receiver took possession.". By a later order dated 10th October 2006 the Court Receiver was directed not to act pursuant to this order for a further period of six weeks.

8. MBPT filed Chamber Summons No. 1465 of 2006. This was disposed of by an order of 12th December 2006 directing the Prothonotary & Senior Master to issue a warrant of possession in respect of the suit plot but excluding the built up structure so that the decree in favour of the Plaintiff, MBPT, could be executed. This did not, of course, affect the rights of the occupants of Commerce House.

9. The Plaintiffs did nothing for the next seven years. It was only 2013 that they filed a Special Leave Petition No. 21857 of 2013 in the Supreme Court against this Court's order dated 12th December 2006 directing the Prothonotary & Senior Master to issue a warrant of possession. It seems that the SLP is still pending.

10. In the meantime, ACI's Suit No. 1981 of 2002 against Concord came up before the City Civil Court and was decreed on 24th March 2007. The decree restrained Concord from entering into, remaining upon or using the three cabins, i.e., the part of the office premises that are the subject matter of this application.

11. By a letter dated 22nd December 2016 from the Chief Administrator and Accounts Officer of SWFS to the Court Receiver, the SWFS said that it no longer wished to continue using the portion of ACI's tenanted premises that it had till then, and desired to surrender these premises to the Court Receiver.

12. Mr D'Mello for the Applicant, ACI, submits that in this background, the Court Receiver cannot deliver possession of ACI's tenanted premises to anyone except ACI. The Court Receiver has been directed to return possession to the persons from whom he

took it. As far as Concord is concerned, there is no question of returning possession to it: Concord has suffered a decree from the City Civil Court, and that decree has attained finality. To allow Concord to receive possession would be to set the clock back and effectively nullify a final decree passed by the City Civil Court. I agree; the Court Receiver should not, in execution of a decree in a suit filed by the MBPT for the larger property (the plot and the building) against Kadri's heirs, adversely affect a decree passed in respect of a portion of the building, i.e., ACI's tenanted premises. As regards SWFS, it on its own said that it did not wish to continue using the portion of the ACI's tenanted premises that it had occupied till then, and in those circumstances surrendered possession to the Court Receiver. That surrender to the Court Receiver was inevitable since the Court Receiver stood appointed in execution. But that surrender cannot operate, as Mr D'Mello says, as a decree of possession in favour of the MBPT and against ACI.

13. There was more recently some confusion in regard to the keys to these premises. When the matter came before me on 24th January 2017, the Court Receiver said that he did not have keys to any of the premises. This was clarified on the next date, 24th February 2017, with the Court Receiver saying he did in fact have keys. This was before Mr D'Mello was heard and I directed that the Court Receiver would return the keys to various persons who voluntarily gave him the keys. This evidently cannot apply to ACI's tenanted premises. The reason is plain. ACI has a decree against Concord, which failed in its attempt to be declared ACI's tenant. Concord has no right, title or interest in these three cabins. As far as SWFS is concerned, it voluntarily surrendered those premises. That surrender could only be to ACI because it took its premises from

ACI. Thus, possession of the office premises on the 1st floor and of which ACI is the tenant must be returned to ACI. Till MBPT has initiated no proceedings at all against ACI.

14. This then leaves the question of payment of arrears. I have already set out the circumstances in which Concord was required to make a deposit with the Court Receiver, and how it deposited an amount of Rs 3 lakhs. That was the only amount paid in by Concord. Although it took time to deposit the remaining amount of Rs. 2.74 lakhs, it never did so. SWFS, on the other hand, which was paying a monthly compensation of Rs. 21,260/- from October 2002 and had continue to do so for the 170 months till November 2016, aggregating to Rs.36,14,200/- deposited the whole of this amount with the Court Receiver.

15. It is in these circumstances that I am inclined to make the present Notice of Motion absolute in terms of prayer clauses (a) and (b), subject to a caveat to protect the interest of the Plaintiffs.

16. The Court Receiver will deliver possession of ACI's tenanted premises, namely, the portion occupied by Concord Barges, Respondent No. 4, being three cabins on the 1st floor, Commerce House, Currimbhoy Road, Ballard Estate, Mumbai 400 038, as also the premises occupied by Respondent No. 3 Seafarer's Welfare Fund to the 1st Respondent, ACI. The total amount of Rs. 39,14,200/- with all accretions is also to be paid to the 1st Respondent.

17. This is of course without prejudice to all the rights and contentions of the MBPT. I need only note that till date the MBPT

has not initiated any proceedings whatsoever against ACI, the 1st Respondent, either for eviction on the ground of unlawful subletting or for recovery of any amount whether by way of rent, compensation or damages. The only decree that the Plaintiff holds is against the head lessor or tenant, Mr Kadri, who has since passed away and whose heirs are now on record. Any possessory decree that the Plaintiff seeks to execute must also necessarily be subject to the rights of ACI, Respondent No. 4, because as between the Plaintiff and ACI, the Plaintiff has obtained no orders or any decree and has in fact not initiated any proceedings at all.

18. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)