

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2074 OF 2017
IN
APPEAL (L) NO.385 OF 2017**

Nafees Ahmed Siddique

..Applicant

Vs.

V. Nandlal & Co. & Ors

..Respondents

Mr. A V. Anturkar Senior Advocate a/w Mr. Rahul Singh a/w Mr. Chetan Agrawal i/b Legal Catalyst for the Applicant / Appellant

Mr. S. U. Kamdar Senior Advocate a/w Mr. Trushar Bhavsar a/w Mr. Ankit Rajput, Mr. Ruturaj Bhatt i/b Mr. Manoj Bhatt for the Respondent Nos.1 to 6

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 11th OCTOBER, 2017**

P.C.

1 The above Appeal takes exception to the grant of ad-interim reliefs by the impugned order dated 26-9-2017 passed by a Learned Single Judge of this Court. The ad-interim relief granted is by way of prayer clauses (a), (c), (d) and (e). The Learned Senior Counsel appearing on behalf of the Applicant / Appellant fairly stated that the Appeal is directed mainly against the grant of ad-interim relief by way of prayer clause (e). In so far as the grant of the said prayer is concerned, two fold submissions are sought to be advanced by the Learned Senior Counsel. Firstly that having regard to the main relief sought in the Suit which is by way of asking for possession, the prayer injunctioning the Defendant No.1 from entering the suit property could not

be granted. The second submission is that the said order is based on an erroneous premise that the Defendant No.2 has nothing to do with the property.

2 In the context of the said submissions, a few facts which have been mentioned in the impugned order would have to be noted. The Plaintiff No.1 which is a partnership firm is a lessee in respect of property situate at Kurla which are two plots of land admeasuring about 1483.28 sq.mts. and 1175.75 sq. yards totally tantamount to 16545.39 sq.ft. The said plots are adjacent plots in which certain semi pacca structures are existing which are used as godown. The Plaintiff Nos.2 to 7 are the partners of the Plaintiff No.1/legal heirs of the deceased partners of the firm. Likewise the Defendant Nos.2, 3 and 4 are the legal heirs of the erstwhile partners of Plaintiff No.1 firm. It is the case of the Plaintiffs that on or about 20-7-2017, the brother of the Plaintiff No.6 left the suit property after giving instructions to the workers who were inside the property. About 7 to 9 persons along with 2 to 3 lady members wrongfully and illegally barged into the suit property and forcibly entered the suit property. It is the case of the Plaintiffs that it was later on revealed that the Defendant No.2 and the Defendant No.1 have entered into a Tenancy Agreement dated 19-12-2016 whereby the said plot of land have been given by the Defendant No.2 on tenancy basis to the Defendant No.1 on payment of Rs.1 lac as deposited and Rs.40,000/- as monthly rent . The

Defendant No.2 thereafter on or about 23-1-2017 terminated the tenancy of the Defendant No.1 on the ground of there being certain family disputes which resulted in the Defendant No.1 filing RAD Suit No.456 of 2017 in the Small Causes Court, Mumbai for a declaration as regards the Tenancy Agreement being valid, subsisting and binding and for injunction against the Defendant No.2. In the said Suit the Defendant No.1 as the Plaintiff filed an application for interim reliefs. The Learned judge of the Small Causes Court by order dated 5-5-2017 passed an order of injunction in the said application. The factum of the agreement being terminated by the Defendant No.2 and the Suit filed by the Defendant No.1 against the Defendant No.2 have been questioned by the Plaintiffs on the ground of the same being collusive.

3 In so far as the aspect of the Defendant No.1 forcibly taking possession of the suit plot of land is concerned, the footage of the same was obtained from cameras which are installed in a school adjacent to the plot and which footage was seen by the Learned Single Judge of this Court on an I-Pad and after the said footage was seen, the Learned Single Judge reached a conclusion that the Defendant No.1 was not in a possession on or before 20-7-2017 and that it is on the said day he has taken forcible possession of the said property. The Learned Judge whilst considering the application for ad-interim relief has also commented adversely as regards the terms on which the property was given on tenancy basis considering the fact that the said property

is in Kurla as also the manner in which the Plaintiffs were dispossessed. Having regard to the aforesaid facts, the grant of the ad-interim relief by way of prayer clause (e) cannot be taken exception to. We therefore do not find any merit in the first submission which was urged on behalf of the Appellant by the Learned Senior Counsel that interim relief which is granted, is not in furtherance of the final reliefs.

5 In so far as the second submission is concerned, it is required to be noted that in the Partnership Deed, the Defendant No.2 has virtually no interest as on dissolution of the partnership, he has to be given nothing out of the assets of the firm, hence the second submission is also bereft of any merit. It is also required to be noted that the Notice of Motion is kept for hearing on 16-11-2017. In that view of the matter, no case for interference with the ad-interim relief is made out, the Appeal is accordingly dismissed.

6 In view of the dismissal of the above Appeal, the Notice of Motion (L) No.2074 of 2017 does not survive and to accordingly stand disposed of as such.

7 Needless to state that the observations made in the impugned order as well as in the instant order are tentative and would not come in the way of the parties at the hearing of the Notice of Motion.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]