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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3810 OF 2018**

Dayaram Dulichand Ahir
and anr

... Petitioners

V/s.

Mohammad Gulam Roshan

... Respondent

Mr. P. S. Dani, Senior Counsel, for the Petitioner.

Mr. Milind Sathye, a/w Ms. Aditi Naikare i/by Pradeep J.
Thorat, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 28th MARCH, 2018.

P.C. :

1] Heard learned Senior Counsel for the petitioners and learned counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 9.3.2018, passed by City Civil Court, Mumbai, thereby making the Notice of Motion No.3267 of 2017 in Suit No.1885 of 2017, absolute in terms of prayer clauses (a) and (c), thereby appointing the Court Receiver to take physical possession of the suit premises and hand over the same to the respondent-plaintiff as the agent of the Court Receiver and further directing the relief of injunction restraining the present petitioners from creating third party interest in the suit premises.

3] The petitioners are the landlords whereas respondent is tenant. Respondent has filed R.A.D. No.1289 of 2009 before the Small Causes Court at Bombay, for declaration that he and his wife are tenants of the suit premises. The reason for filing the suit was threat of dispossession by petitioner No.1. During the pendency of that suit, the petitioner changed the lock of the suit premises. Therefore, respondent had filed application for restoration of the possession of the suit premises. The application was allowed by the Small Causes Court on 21.11.2009 and the order came to be executed by the bailiff on 27.1.2010 and the possession was handed over to the respondent.

4] R.A.D. Suit No.1289 of 2009 came to be decreed with costs and the respondent was declared as tenant of the suit premises. Against the said judgment and decree, petitioners preferred Appeal No.26 of 2011 which came to be dismissed on 7.5.2014. The Petitioners, thereafter have preferred Civil Revision Application in this Court and same is pending. However, no interim relief is granted in the said C.R.A.

5] It is the case of respondent that, meanwhile on 4.8.2017, the petitioner again changed the lock of the suit premises and dispossessed the respondent illegally and therefore, respondent was constrained to file Suit No.1885 of 2017 before the trial Court under Section 6 of the Specific Relief Act for restoration of possession of the

suit premises.

6] Alongwith the suit, respondent filed the present Notice of Motion No.3267 of 2017 for appointment of the Court Receiver, for restoration of the possession of the suit premises and for injunction restraining the petitioners from creating third party interest in the suit premises.

7] This Notice of Motion came to be resisted by the present petitioners contending inter alia that one Ritesh Bafna and Vikram Bafna, were put in possession of the suit premises by the respondent and they have surrendered the possession of the suit premises to the petitioners. Since then the petitioners are in possession of the suit premises. Therefore, there is no question of petitioners forcibly or illegally dispossessing the respondent from the suit premises.

8] The trial Court has, after considering the submissions advanced at Bar, found that there is ample material on record produced by the respondents to show that they are in actual possession of the premises till July 2017 and they were dispossessed without following due process of law. The trial Court has, therefore, allowed the Notice of Motion and appointed the Court Receiver to take over the possession of the suit premises and to hand over the same to the respondent as agent of the Court.

9] While challenging this order of trial Court, the submission

of learned counsel for the petitioners is that by this order, the trial Court has granted final relief sought in the suit for restoration of possession under Section 6 of the Specific Relief Act. It is urged that the only reason given by the trial Court is that there was material showing that respondent was in possession of the suit premises till July, 2017. According to learned counsel for the petitioners, on the basis of this sole reason, it was not at all proper on the part of the trial Court to grant such relief of appointment of Court Receiver, to take over possession of the suit premises.

10] In my considered opinion, even a cursory glance to the facts of the present litigation, which are stated herein above, is more than sufficient to justify the impugned order passed by the trial Court. It is pertinent to note that even during the pendency of the earlier suit No.1289 of 2009, on 10.09.2009, petitioners had forcibly dispossessed the respondent from the suit premises by putting a lock on the suit premises. At that time also, the Small Cause Court was constrained to pass the order directing the petitioners to remove their lock on the suit premises and deliver the possession of the suit premises to the respondent.

11] The bailiff report of the execution of the said order dated 27.1.2010, goes to show that at that time the petitioners had not easily handed over the possession of the suit premises and the bailiff

had to break open the lock of the suit premises and deliver the possession to the respondent.

12] Yet again the petitioners have succeeded in dispossessing the respondent from suit premises and that too on the basis of some surrender deed alleged to be executed by Ritesh Bafna and Vikram Bafna. There is absolutely no evidence or material produced on record to show that at any time, they were put in possession of the suit premises.

13] The trial Court has considered the various documents like electricity bills, registration certificate of the suit shop under the Shop and Establishment Act, evidencing that till July, 2017 respondent was in possession till he was dispossessed on 4.8.2017. In such situation, if the petitioners keep on dispossessing the respondent from the suit premises by one way or the other, there was no option for the trial Court, but to appoint Court Receiver as agent of Court to deliver possession of the suit premises to the respondent.

14] The impugned order passed by the trial Court, therefore, being perfectly justified on facts, no interference is warranted therein in writ jurisdiction.

15] The writ petition therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]