

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 7165 OF 2018

Haresh Meghji Shah
And Ors.

...Petitioners

Versus

Shri. Dinkar Ramchandra Ketkar
(since deceased) through Legal Heirs
1(a) Rajaram Dinkar Ketkar
and others.

...Respondents

....

Ms. P.P. Madhwani i/b. V.T. Lulia, Advocate for the Petitioners.
Mr. Hiralal Thakkar i/b. Ms. Lema Shah i/b. Shah & Furia Asso. for
Respondents No.1(a), 1(b) and 4 to 6.

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CORAM : R. G. KETKAR, J.

DATE : 06th AUGUST, 2018

P.C.

1. Heard Ms.P.P. Madhwani, learned counsel for the petitioners
and Mr.Hiralal Thakkar, learned Senior Counsel for respondents
No.1(a), 1(b) and 4 to 6, at length.

2. By this Petition under Article 227 of the Constitution of India,
the petitioners, hereinafter referred to as the 'plaintiffs', have challenged
the judgment and order dated 19.8.2017 passed by the learned Judge,
Court Room No.36 of the Court of Small Causes at Mumbai (Bandra
Branch) below Exhibit-9 in R.A.D. & E. Suit No.587/2015 as also the

judgment and order dated 8.3.2018 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch) in Misc. Appeal No.133/2017. By order dated 19.8.2017, the learned trial Judge partly allowed the application Exhibit-9 made by the plaintiffs for (1) interim injunction to restrain the defendants from creating third party interest, (2) appointment of Court Receiver, and (3) direction to the defendants to pay the compensation. The learned trial Judge issued injunction restraining the defendants from creating third party interest in the suit premises. The plaintiffs prayer for appointment of the Court Receiver, interim licence fee and interim compensation were rejected. Aggrieved by this decision, the plaintiffs preferred Misc. Appeal which was dismissed by the Appellate Court on 8.3.2018.

3. The matter was heard at length on 9.7.2018 and notice was issued to respondents No.4 to 6 only insofar as the prayer for direction against them to pay the interim compensation is concerned.

4. As noted earlier, by the impugned orders, the Courts below have rejected the application made by the plaintiffs for (1) interim injunction to restrain the defendants from creating third party interest, (2) appointment of Court Receiver, and (3) direction to the defendants to pay the compensation. Mr. Thakkar submitted that there is no privity

of contract between the plaintiffs on one hand and defendants No.4 to 6 on the other. He invited my attention to the reply filed by defendants No.4 to 6 and in particular paragraph-5 thereof. In paragraph-5, defendants No.4 to 6 have asserted that they are regularly paying rent of the suit premises to the landlord and that they are in actual and physical possession of the suit premises since 2007. He also invited my attention to the tenancy agreement dated 11.9.2007 executed by and between Dinkar Ramchandra Ketkar, being the FIRST PARTY and Mansukh Hemraj Chheda & Shantaben Gangji Fariya, the joint tenant, being SECOND PARTY. By this agreement, the landlord agreed to recognize the joint tenancy in favour of Mansukh Hemraj Chheda and Smt. Shantaben Gangji Fariya. Ms.Madhwani submitted that this agreement dated 11.9.2007 recognizes that the plaintiffs are the tenants in respect of the suit premises.

5. Ms. Madhwani relied upon the decision in **The Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd vs. Kusumben Kantilal Shah & others, 2003(4) ALL MR 304** as also the decision in **Deepak Eknath Dhavan v Anwar Faramosh Khan and another, 2004(4) Mh.L.J. 1** to contend that as defendants No.4 to 6 are in possession, they are liable to pay interim compensation.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the record *prima facie* shows that there is no privity of contract between the plaintiffs on one hand and defendants No.4 to 6 on the other. In view thereof, the decision in **Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd.** (supra) will not be applicable. Insofar as the decision relied upon by Ms. Madhwani in **Deepak Dhavan's** case (supra) is concerned, that is also not applicable while deciding the application made by the petitioners for issuing direction to defendants No.4 to 6 to pay interim compensation. In view thereof, no case is made out for interfering with the impugned orders. Hence, the Petition fails and the same is dismissed. Liberty is reserved to the parties to apply for expeditious disposal of the suit. If such an application is made, the learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date: 2018.08.06
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