

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 308 OF 2018
WITH
CIVIL APPLICATION NO. 403 OF 2018**

Ismail Jahangir Saudagar,
an adult Indian Inhabitant of Mumbai,
Age 56 Years, Occupation Business,
Having his address at Plot No.16,
Ground Floor, Mahim Reti Bunder,
Mahim, Mumbai – 400 016.

... Appellant
(Orig.Defendant)

Versus

Mohammed Latif Janmohammed Khan
an Adult Indian Inhabitant of Mumbai,
Age 42 Years, Occupation Business,
residing at 6/8, Mehar Manzil,
Flat No.202, Cadel Road, Mahim,
Mumbai-400 016.

... Respondent
(Orig. Plaintiff)

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Mr. Ranjit V. Thorat, Senior Advocate a/w Mr. Vishal Kanade,
Advocate i/b Manojkumar Nirmala for the Appellant.
Mr. Sanjeev Sawant, Advocate i/b Mr. A. P. Deshmukh for the
Respondent.
Mrs. M.N. Jadhav, Section Officer, Representative of Court
Receiver – present.

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CORAM : A. S. CHANDURKAR, J.

DATE : 3rd DECEMBER, 2018.

JUDGMENT :

1. This appeal has been preferred by the original defendant who is aggrieved by the order dated 12th April, 2018 passed by the trial Court directing the Court Receiver to take possession of the suit premises and thereafter to appoint the plaintiff as his agent until further orders.

2. The respondent is the original plaintiff who has filed suit initially for a declaration of his title as owner, declaration that the defendant was a trespasser and for restoration of possession of the suit premises. The same is an office premises admeasuring about 125 square feet. The owner of the suit property is the Bombay Port Trust. The same was leased out to the appellant-defendant and the respondent-plaintiff claims to be a licensee of the defendant. It is his case that the defendant herein had threatened to dispossess him in the year 2015 and therefore, he had filed R.C. Suit No.2337 of 2015. In that suit, his Notice of Motion seeking interim relief was allowed by the order dated 4th December, 2015. The defendant herein was restrained from

interfering with the plaintiff's possession. This order was challenged in Appeal From Order Stamp No.33622 of 2015. This Court on 25th July, 2016 refused to grant any stay to the order of injunction passed by the trial Court. Despite that, on 10th August, 2016, the defendant removed the locks of the plaintiff and put his own locks thereon. On the aforesaid cause of action the present suit came to be filed seeking reliefs stated hereinabove. In that suit the plaintiff moved a Notice of Motion seeking appointment of the Court Receiver for taking possession of the suit property. By the impugned order, the said application stands allowed.

3. Shri Ranjit Thorat, the learned Senior Advocate for the appellant submitted that according to the plaintiff he was dispossessed from the suit property on 12th October, 2015 as per the averments in Criminal Writ Petition No. 4543 of 2015 filed by the plaintiff in this Court, which was verified by him on 18th November, 2015. This fact was however suppressed by him in the earlier suit. There was nothing on record to indicate that the plaintiff was again put in possession thereafter by the defendant. It was further submitted that the possession of the plaintiff as on 10th August, 2016 is not indicated in any of the documents filed in

the suit. Moreover, prayer clauses (a) and (b) in the suit seeking declaration that the plaintiff was the owner of the suit property and the further declaration that the defendant was a trespasser stood deleted by amending the plaint. Thus, in absence of such reliefs being sought, there was no legal basis for the plaintiff to seek appointment of the Court Receiver. The trial Court proceeded on the basis that the suit was one filed under Section 6 of the Specific Relief Act, 1963. On this incorrect premise the impugned order came to be passed. Moreover, the documents relied upon by the plaintiff were prior to August, 2016 and despite that the impugned order came to be passed. The same indicated non-application of mind by the trial Court. It was thus submitted that the impugned order was liable to be set aside.

4. Shri. Sanjeev Sawant, the learned Counsel for the respondent supported the impugned order. According to him when this Court in the earlier appeal had refused to grant any interim stay to the order dated 4th December, 2015, the defendant was bound by the same. Without that order being modified it was not permissible for the defendant to forcibly dispossess the plaintiff. The dispossession on 10th August, 2016 was clear from

various documents on record. Reference was also made to the conduct of the defendant in refusing to comply with the order passed by the trial Court as well as by this Court in the present proceedings. He referred to the reports submitted by the Court Commissioner, wherein it was recorded that the defendant had refused to hand over possession as directed by the earlier orders. The plaintiff was required to ventilate his grievance in that regard on various occasions before this Court. Ultimately, this Court had directed possession to be taken on “*as is where is basis*”. In view of this defiant conduct of the defendant he was not entitled for any discretionary relief. It was then submitted that an amount of Rs.3,46,500/- was duly paid by the plaintiff to the defendant. It was denied that any material facts were suppressed as contended by the appellant. The relief that was sought in the criminal writ petition was against the police authorities and the defendant was not a party therein. It was thus submitted that considering the material on record as well as the conduct of the defendant, no interference with the impugned order was called for. The learned Counsel in support of his submissions placed reliance on the decisions in *AIR 1968 SC 1165 [Nair Service Society Ltd. vs.*

K.C. Alexander and others]; AIR 1970 SC 846 [Somnath Berman Vs. Dr. S.P. Raju and another] and [2016] 3 MhLJ 247 [Mohd. Ismail Gulam Shaikh Vs. Municipal Corporation of Gr. Mumbai].

5. In reply to the aforesaid submissions, it was urged on behalf of the appellant that, *prima-facie*, the suit as filed could not be said to be one under Section 6 of the Specific Relief Act, 1963. Prayer clauses (a) and (b) having been given up, the suit was barred by limitation. The alleged conduct of the defendant sought to be relied upon by the plaintiff was that after passing of the impugned order and the same was not relevant while adjudicating the present appeal.

6. I heard the learned Counsel for the parties at length and I also perused the documents placed on record. It is not in dispute that, initially, the present plaintiff had filed S.C. Suit No.2337 of 2015, in which the trial Court passed an order on 4th December, 2015 and granted interim injunction in favour of said plaintiff. Though the defendant challenged the said order before this Court, the prayer for grant of stay came to be rejected on 25th July, 2016. In the light of this adjudication it becomes apparent that the trial

Court in the earlier suit had *prima-facie* found the plaintiff to be in possession of the suit premises and had thus restrained the defendant from interfering with his possession. That position was maintained even by this Court in the defendant's appeal. In the backdrop of these orders the inference as drawn by the trial Court in the impugned order that till July 2016 the plaintiff was in possession is the only conclusion that can be so drawn from the said orders. The plaintiff has then relied upon the cause of action that arose at 10th August, 2016 and has referred to the police reports made in that regard. In the light of this material on record the trial Court was justified *prima-facie*, in observing in paragraph 10 of its order that the plaintiff's possession over the suit premises in July 2016 was established.

7. Though considerable emphasis was sought to be placed on the averments made by the present plaintiff in Criminal Writ Petition No. 4543 of 2015 and the aspect of alleged dispossession in October, 2015, said averments at this stage do not assume significance in view of the subsequent orders of injunction passed by the trial Court and the order of this Court in the appeal therefrom. In fact, at this stage, it would not be permissible to

consider the merits of the contention that the possession of the plaintiff in July 2016 is not supported by any documentary material. Undertaking that exercise at this stage would amount to going behind the order passed by this Court in the defendant's appeal on 25th July, 2016. Be that as it may, it is found that the trial Court was justified in directing appointment of the Court Receiver and the further direction to take possession from the defendant.

8. As regards the submission on the conduct of the defendant, the same is evident from the report of the Court Receiver as well as the orders passed by this Court directing possession to be taken on "*as is where is basis*". It is however urged on behalf of the appellant that the conduct as sought to be emphasised by the plaintiff was after passing of the interim order by the trial Court. In the light of the earlier order passed in the appeal preferred by the present defendant dated 25th July, 2016, I am not inclined at this stage to give much importance on the aspect of non-suiting the defendant on account of his conduct. The impugned order is found to be passed on the documentary material available on record and in the light of the adjudication referred to herein

above, said order does not call for any interference. Similarly, at this stage, the effect of deletion of prayer clauses (a) and (b) in the plaint is also not of much significance especially when the plaintiff is seeking restoration of his possession.

9. For aforesaid reasons, there is no ground made out to interfere with the impugned order and the same stands confirmed. The Appeal From Order stands dismissed with no order as to costs.

10. In view of dismissal of the appeal, pending civil application does not survive and the same also stands disposed.

11. It is clarified that the observations made in this order are only for considering the challenge to the order of the trial Court dated 12th April, 2018. Any observations as made shall not influence the trial Court when the suit is decided on merits.

12. At this stage, the appellant seeks continuation of the order of interim relief. Though the prayer for continuation of interim relief is opposed, the position as prevailing today with regard to suit premises shall be maintained for a period of six weeks.

(A. S. CHANDURKAR, J.)