

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

**APPEAL FROM ORDER NO.1161 OF 2014
WITH
CAA/1400/2014**

Shree Laxmi Vijay Printing Press ... Appellant

Vs.

Shri Popatlal Babulalji Sanghvi ... Respondent

Mr.S.M. Gorwadkar, Senior Advocate with Vaibhav Mehta i/b
Viabhav Mehta & Asso. for the Appellant
Mr.R.B. Jain i/b Legal Juris for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 22, 2018**

P.C. :

1. This Appeal from Order is directed against the order dated 17.10.2013 passed in Notice of Motion by the learned Judge of the City Civil Court, Greater Bombay in Notice of Motion No.3297 of 2013 in Suit No.3271 of 2013. The appellant is the original defendant. The respondent/plaintiff had filed the suit seeking various reliefs like injunction and declaration in respect of the tenanted area. Whether the passage and the open space is a tenanted area or a common passage and common open space is the issue in the suit.

2. The plaintiff sought relief in Notice of Motion that the appellant/defendant should remove their material, debris from common passage and chowk/open space of the ground floor of the suit building and not to cause obstruction to the plaintiff and the other tenants and occupants to have ingress and egress. He also sought injunction in Motion that the defendant shall not interfere in repair work which the plaintiff intends to carry out i.e., plastering, tiling and flooring works so also the repairs to two toilet blocks. The learned trial Judge allowed the Motion and granted all the three reliefs against which this Appeal from Order is filed.

3. Heard the learned Counsel for both sides. It was contended by the learned Senior Counsel for the appellant i.e., the tenant that the consent terms were filed in R.A.E. Suit No.4608 of 1971 which was filed by the predecessor in title and successors of the appellant / defendant. It was argued by the learned Senior Counsel that as per those consent terms dated 9.8.1978 filed in RAE Suit No.4608 of 1971, the plaintiff – landlord was to construct a lift in one portion of the common passage and two side cabins on the other side of the common passage. After completion of this work, the predecessor in title of the appellant/defendant was

supposed to waive off his right of tenancy over the common passage and the open space. However, this work was not done till today and therefore the appellant – tenant claimed tenancy rights over the passage and the open space.

4. Per contra, the learned Counsel for the respondent/landlord submits that the passage should be open for access to all the tenants and the occupants in the building so also it being an open passage and open space, the tenants have no right over the premises. He has further submitted that the terms and conditions of the consent terms were not at all acted upon by either of the parties and, therefore, they cannot be relied as on today. He produced photographs and showed that one big stone is lying in the open space and that is required to be removed.

5. I am informed that the respondent/plaintiff has refused to acknowledge the defendant as tenant and, therefore, the appellant/defendant has filed RAD suit No.1176 of 2015 for declaration of their tenancy before the Small Causes Court which is pending. After hearing the submissions, the consent terms, the impugned order as also the plan of the premises, I am of the view that the interpretation of the consent terms and whether the

consent terms are still in force or not is a matter of evidence and it is to be decided finally by the competent court. However, the fact remains that the predecessor in title of both the parties have not acted upon the consent terms. In the circumstances, as no construction has taken place, a workable arrangement can be made, without prejudice to the rights and contentions as follows:

- i) The appellant/tenant undertakes to carry out the tiling of the floor of the passage, the two common toilets and open space so also the plastering of the walls of the passage, the toilet blocks and painting of these premises, on or before 30.4.2018 and shall not claim any expenses from the landlord;
- ii) The respondent/landlord undertakes to remove the big stone lying in the open space within a week from today;
- iii) The access to the two toilets on the ground floor should be free to the tenants and other occupants of the building and the landlord;

iv) The undertakings are accepted and the order dated 17.10.2013 passed by the City Civil Court is hereby set aside and substituted by this order.

v) The learned Judge of the City Civil Court may endeavour to expedite the suit.

6. Appeal from Order is disposed of accordingly.

7. In view of the disposal of the Appeal, Civil application also stands disposed of.

(MRIDULA BHATKAR, J.)