

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

**APPEAL FROM ORDER NO. 826 OF 2017
IN
NOTICE OF MOTION NO. 1243 OF 2016
IN
B.C.C.C. SUIT NO. 1219 OF 2015
WITH
CIVIL APPLICATION NO. 1093 OF 2017**

Mr.Dudhnath Shivnath Pasi ...Appellant/Orig.Plaintiff
Vs.
Mr.Shivnath Samu Pasi & Ors. ...Respondents/Orig.Defendants

Mr.Rajendra R. Mishra for Appellant.
Mr.Omprakash Pandey for Respondent Nos.1 and 2.
Mr.Shankar P. Thorat for Respondent No.4-MHADA.

CORAM : S.C. GUPTE, J.

DATE : 19 AUGUST 2019

P.C. :

Heard learned Counsel for the parties.

2 The appeal from order challenges an interlocutory order passed by the trial court, namely, City Civil Court at Dindoshi, on a notice of motion taken out by the Respondents (original Defendants). The prayers in the notice of motion, which have been granted by the trial court, are for directing the Plaintiff to forthwith allow the Defendants and their family members to use the toilets, and not to deprive them of water and supply of electricity for the premises occupied by them.

3 The Plaintiff has filed the present suit against the Defendants, Defendant No.1 being the Plaintiff's father, whilst Defendant No.2 being his brother, for a declaration of his lawful use, occupation and possession of

the suit premises, being Room No.206 in Chawl No.28 in Majaswadi Sarvodaya Nagar, Sai Darshan Co-op. Housing Society Ltd., MHB Colony, Meghwadi, Jogeshwari (East), Mumbai, and an order seeking to restrain the Defendants from forcibly dispossessing him from the suit premises without following due process of law. On his motion, interim relief was granted to the Plaintiff by the court. Simultaneously, the Defendants had taken out their own notice of motion, being Notice of Motion No.1243 of 2016, on the basis that whilst they were residing jointly in the suit premises with the Plaintiff, due to *inter se* disputes between the parties, separate portions of the suit premises were occupied by the Plaintiff, on the one hand, and Defendant Nos.1 and 2 and their family, on the other. It was the grievance of the Defendants that the Plaintiff had stopped supply of water and electricity to the Defendants and was also not allowing them to use the toilets. The court granted the relief prayed for by the Defendants in their notice of motion. The court observed that the rights of the parties concerning the title or ownership or other reliefs qua the suit property could be considered after hearing the parties but, in the meanwhile, the Plaintiff could not be allowed to stop the supply of water and electricity in the premises in possession of the Defendants.

4 There is no infirmity to be found in the impugned order of the trial court. The trial court has rightly observed that the use of water, electricity as well as the toilets is essential for occupation of the preemies. It is not in dispute that presently Defendant Nos.1 and 2 and their family are in occupation of a portion of the suit premises. Merely on the ground that the Defendants are not contributing to the charges for supply of electricity and water, their use of electricity or water or toilets cannot be stopped. As the court rightly observed, the Plaintiff may well take

appropriate steps for recovery of proportionate charges; he, however, could not stop supply of electricity and water or for that matter, the use of the toilets by the Defendants.

5 There is, accordingly, no merit in the appeal. The appeal from order is dismissed.

6 Learned Counsel for the Appellant (original Plaintiff) applies for stay of this order. The application is rejected.

7 In view of the disposal of the appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)