

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10433 OF 2016

Mansur Fidahussain Pagdiwala and anr.

...Petitioners

vs.

Mansoor Tayebali Hardwarewala

...Respondent

Mr. M.A. Shamim I/by Shamim & Co. for the Petitioners.

Mr. Pradeep Thorat for Respondent No.1.

CORAM : DAMA SESHADRI NAIDU, J.
DATE : 1st October 2019.

P.C.:

The petitioners are the plaintiffs. They live in the USA. Here in India, they have property, which they let out to the respondent. The petitioners sued the respondent for eviction on the grounds of unauthorized construction, additions, alternations, *bona fide* requirement, and breach of the tenancy terms. In that suit, the petitioners applied for an injunction under Exhibit-9. They have, in fact, sought various reliefs, which are reproduced here:

a) That it is just, necessary and expedient that pending the hearing and final disposal of the suit, the defendant by himself, his servant, agents or anyone on his behalf be temporarily restrained by an order and injunction of this Honourable Court from disposing off, selling, transferring or parting with or creating in any manner whatsoever, any rights or interest of any nature whatsoever in respect of the suit premises being Flat No.14, 4th floor in the building situated at 87/89, Sarang Street, Mumbai 400003, admeasuring about 1000 sq.ft. built up area along with terrace ad-measuring about 100 sq.ft. adjacent to the flat, which is bounded on or towards the East by drainage chowk, on or towards West by Sarang Street, On or towards North partly by Common Wall of the suit property and the property of one person and partly by common chowk and partly by house gully and on or towards South by common wall of the suit property and property of one other person whose name is not known, or any part thereof;

b) That it is just, necessary and expedient that pending the hearing and final disposal of the suit, the Honourable Court be pleased to direct the defendant to give inspection of the suit premises being Flat No.14, 4th floor in the building situated at 87/89, Sarang Street, Mumbai 400003, admeasuring about 1000sq.ft. built up area along with terrace admeasuring about 100 sq. ft. adjacent to the flat, which is bounded on or towards the East by drainage chowk, on or towards West by Sarang Street, on/or towards North partly by Common Wall of the suit property and the property of one person and partly by common chowk and partly by house gully and on/or towards South by common wall of the suit property and property of one other person whose name is not known, to the plaintiffs and his Architect, Consultant, Civil Engineer, Photographer and Videographer, without any hinderance, hurdles and obstacles of any nature whatsoever under Section 28 of Maharashtra Rent Control Act;

c) That it is just, necessary and expedient that pending the hearing and final disposal of the suit, as the plaintiffs and defendant are senior citizens Honourable Court be pleased to expedite the hearing of the present suit;

d) For ad-interim and interim reliefs in terms of prayer clause (a), (b) and (c) above;

e) For such other and further reliefs as the nature and circumstances of the case may require and this Honourable Court deems just and proper;

f) For the costs of the notice.

2. The respondent/defendant resisted that application by filing his reply. In that reply, he has stated that the petitioners could establish no *prima facie* case or balance of convenience, not even hardship. He pleaded that he would, on the contrary, suffer greater hardship if an injunction was granted. Then, the trial Court and the appellate Bench have concurrently dismissed the petitioners' application. Aggrieved, the petitioners have filed this writ petition.

3. The petitioners' counsel submits that the petitioners have raised various issues. They have given up all of them except one: that the defendant should not create any third-party interest, pending the suit.

4. In response, the respondent's counsel has submitted that though

the respondent's reply is brief, he has, in fact, asserted in the written statement that he would not create any third-party interest. The respondent's counsel has taken me through the written statement and drawn my attention to Para 19. In that paragraph, the respondent did assert that he would create no third-party interest.

5. In the face of this assertion by the defendant, the courts below ought to have recorded what can be termed the defendant's undertaking and dispose of the application. Instead, they dismissed it.

6. Under these circumstances, as the respondent's undertaking is unambiguous, it is only technical whether the plaintiffs' injunction application is allowed or dismissed.

7. So I dispose of the writ petition holding that the Court's below have already recorded the defendant's undertaking and, therefore, the expression employed by the courts below that the petitioner's application was dismissed would not dilute the defendant's undertaking.

With these observations, I close the writ petition.

(DAMA SESHADRI NAIDU, J.)