

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.246 of 2000
AGAINST
FIRST APPEAL NO.284 of 1986

Sadashiv Shenoy and ors

.. Appellants

Versus

Jagannath Seena Shetty

.. Respondent

...

Mr. Raj Patel with Ms.Nupur Awasthi I/b M/s Consulta Juris for
the appellant.

Mr. Pankaj R. Thatte for the respondent.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 18th DECEMBER, 2019

P.C:-

1 Late Kamalaksha @ Madhav Shenoy and the
respondent Jagannath Seena Shetty, had entered into a jural
relationship when an agreement dated 15th January 1958 was
executed. The said indenture refers to Madhav Shenoy as the
'Owner' and Jagannath Seena Shetty as the 'Hirer'. The
indenture records that Madhav Shenoy was in possession of the
immovable property referred to in the indenture wherefrom he

was carrying on business in the name and style 'Bharat Vijay Hindu Hotel'. It was a tea shop. The indenture envisaged Jagannath Seena Shetty to take possession of the immovable property referred to in the indenture and carry on business in the name and style 'Bharat Vijay Hindu Hotel'.

2 The agreement was extended from time to time.

3 Madhav Shenoy having died and his legacy having devolved upon his wife and sons, they instituted a Suit for ejectment and the principal issue which arose for consideration in said Suit was whether the indenture amounted to a conducting business licence or otherwise. The same would have impacted the possessory rights of Jagannath Seena Shetty, for if it was a conducting business license he would not have been entitled to any protective umbrella of the Rent Control Legislation. If his right was as a licensee the protective umbrella under the Rent Control Legislation would have been available to him.

4 The suit was decreed.

5 Round No.2 fought in the First Appeal resulted in Jagannath Seena Shetty succeeding. Round No.3 is being fought in the above captioned Letters Patent Appeal.

6 We need not decide the issues raised in the Appeal for the reason the parties have entered into a settlement as per which in abandonment or satisfaction of their claim in the property which forms the subject property of the above noted agreement, appellants have agreed to their claim being satisfied on the condition Jagannath Seena Shetty pays to them ₹ 1.5 crores. The payment is as per a schedule agreed, warranting ₹ Five lakhs to be paid today and for which a bank draft in sum of ₹ Five lakhs payable in the name of Appellant No.3 Shri Ramesh Shenoy has been handed over. The same has been received by counsel for the appellants.

7 As per the consent agreement between the parties, three cheques drawn on Syndicate Bank issued by Jagannath Seena Shetty bearing Nos. 436626, 436627 and 436629 dated 31/1/2020, 31/5/2020 and 30/9/2020 in the name of Ramesh Shenoy have been handed over to learned counsel for the appellants. The cheques are issued on Account No. 50222010034958 maintained by Syndicate Bank, Juhu, Andheri (West), Mumbai. As per the agreement, three cheques would be issued from a joint account to be opened by Jagannath Seena Shetty with his grandson Omkar Girish Shetty with instructions to the Bank that the said joint account could be operated either jointly or individually by either joint account holder. The three cheques would be in the sum of ₹ 25 lakhs each and would be

dated 31/1/2021, 31/5/2021, 30/6/2021. The agreement between the parties is that upon all the cheques issued in the name of Ramesh Shenoy being honored, i.e. ₹ 1.5 crores reaching the coffers of Ramesh Shenoy, the claim of all the appellants would be satisfied, meaning thereby, Ramesh Shenoy is acting under the authorization of the remaining appellants. In the said eventuality, instant appeal would be dismissed. The decree dated 11/12th February 1986 passed in Special Civil Suit No.4040 of 1975 by the Addl. Principal Judge, City Civil Court, Mumbai shall be treated as non-executable.

8 If there are two consecutive defaults i.e. the post dated cheques issued are dishonored, then the Appeal would be treated as having been allowed. The impugned First Appellate judgment and decree dated 16th June 2000 shall be deemed to have been set aside and the decree passed in the suit revived. In said eventuality, the appellants would be entitled to execute the decree, but upon the condition that such amount they have received from Jagannath Seena Shetty are deposited with the executing Court. Further agreement is that if last payment tendered in sum of ₹ 25 lakhs vide cheque dated 30/6/2021 is the only amount outstanding, the decree would be executable and the agreement in the preceding part of this paragraph would be applicable in the said situation also.

9 A further direction by way of declaration concerning Syndicate Bank needs to be issued for the reason Shri Jagannath Seena Shetty is an aged person and as a result his signatures are not steady. They are prone to variation. There may be a possibility that the signatures on the three post dated cheques referred to in para 7 above drawn in the name of Ramesh Shenoy may not be honored by the Bank on which they are drawn on account of discrepancy in the specimen signatures in the record of the bank and as they appear on the three cheques. Thus, qua cheques referred to in para No.7 of our order, we direct Syndicate Bank that as and when the cheques are presented, subject to availability of funds in the account the cheques would be honored. The cheques would not be returned on the ground that signatures do not tally. The present order would be sufficient protective umbrella for the officers of Syndicate Bank, Juhu Branch, Andheri (West), Mumbai to honor the three cheques.

10 As per judgment and decree dated 11/12th February, 1986, passed by the Bombay City Civil Court in Suit No.4040 of 1975, the Respondents herein was ordered to pay to the Appellant a sum of ₹ 1,500/- per month as mesne profit from 17th June, 1975 till handing over of possession. By order dated 24th March, 1986 passed in Civil Application No.1092 of 1986 in First Appeal No.284 of 1986, this Hon'ble Court granted liberty

to the Appellants to withdraw the amount already deposited at the rate of ₹ 1,500/- per month. The Appellants were further granted liberty under the said order to withdraw a sum of ₹ 740/- per month out of ₹ 1,500/- per month without furnishing any security and for the balance of ₹ 760 per month to be withdrawn after giving security. Accordingly, the Appellants have been furnishing the Bank Guarantees from time to time and as on date Bank Guarantee bearing No.5042IFING220013 issued by Vijaya Bank, Chunabhatti Branch is valid and subsisting which is till 27th June, 2020. The said Bank Guarantee is deposited with the Registrar, Bombay City Civil Court. The said Bank Guarantee shall be deemed to have been discharged/cancelled and the Registrar, Bombay City Civil Court is directed to do the needful.

11 Registrar Judicial – I is directed to do the needful. The said amount shall be received by Ramesh Shenoy for the benefit of all the appellants and would not be refundable in case there is default by the respondent of the terms of the agreement requiring the original decree to be executed.

12 No costs.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE