

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 2515 OF 2016

IN

SUIT NO. 187 OF 1993

WITH

NOTICE OF MOTION NO. 902 OF 2017

IN

SUIT NO. 187 OF 1993

Sheela Ram Vidhani & Anr

...Plaintiffs

Versus

SK Trading Co & Ors

...Defendants

Ms Sonal, *with HN Thakore & Jyoti Ghag, Ganesh Ambekar, i/b Thakore Jarimala & Associates, for the Plaintiffs.*

Mr SU Kamdar, Senior Advocate, *with Aditya Mehta, Vedangi Tulzapurkar, i/b M/s. Wadia Ghandy & Co., for Defendants Nos. 4 to 6/Applicant.*

Ms Bhairavi Pathak, *i/b IR Joshi & Co., for Defendants Nos. 1 to 3.*

CORAM: G.S. PATEL, J

DATED: 14th January 2019

PC:-

1. The Motion is by Defendants Nos. 4, 5 and 6 under Order VII Rule 11(a) of the Code of Civil Procedure 1908 (“CPC”). The suit itself is for specific performance of an agreement dated 7th December 1985. The agreement is between Defendants Nos. 1, 2 and 3 and the Plaintiffs. Admittedly, Defendants Nos. 4, 5 and 6 are

not signatories to the agreement though Defendants Nos. 5 and 6 are relatives of the original Defendants Nos. 2 and 3. The agreement itself makes it clear that Defendant No. 4, Suniti Prints, is in occupation and possession of a portion of the property in question and that this possession is *as a tenant*. This is stated in clause 5. Now it is well settled in law that there are limited modes by which a landlord can recover possession from a tenant. It is either by a decree of a Court in ejectment and for recovery of possession or by surrender of tenancy. This agreement contemplated that Suniti Prints, not a party to it, would be compensated for surrendering possession to Defendants Nos. 1, 2 and 3 who would then sell the property in question and would give possession to the Plaintiffs. Clauses 6 and 7 of the agreement contemplated the Plaintiffs making direct payment *on behalf of Defendants Nos. 1, 2 and 3* to Suniti Prints and it is the case of Ms Sonal for the Plaintiffs that the Plaintiffs did in fact make that payment.

2. Will this entitle the Plaintiffs to a decree of specific performance of the agreement against Defendants Nos. 4, 5 and 6 and, specifically, to a decree of possession against Defendants Nos. 4, 5, and 6? The fact that the Plaintiffs made payment to Defendants Nos. 4, 5 and 6 creates no privity of contract and does not make them parties to the agreement of which specific performance was sought. That agreement was clearly made on behalf of Defendants Nos. 1, 2 and 3. It is also not in doubt that Defendants Nos. 4, 5 and 6 are tenants, and said to be statutory tenants of the premises in their occupation. There were other tenants as well and those tenants have not been similarly joined though possession would undoubtedly be sought from all. The fact that Defendants Nos. 5

and 6 are related to Defendants Nos. 2 and 3 makes no difference whatsoever. Given the provisions of the Maharashtra Rent Control Act 1999 and the Presidency Small Causes Court Act, 1882, there is no doubt that where there is a relationship of landlord and tenant and the relief sought is possession, only the Court of Small Causes has exclusive jurisdiction over such a dispute. This cannot be bypassed in the guise of seeking specific performance. The fact that payment was made by an outsider to a landlord's tenant will not give a rise to a cause of action for possession in the guise of specific performance.

3. I find Ms Sonal's reliance on a decision of a learned Single Judge of this Court in *Shivshankareppa Mahadevappa Parakanhatti vs Shivbappa Parappa Kupati & Ors*¹ to be inappropriate. The reference to the equivalent of the old Section 19(c) of the earlier Specific Relief Act will not hold good after the advent of a special statute governing landlord-tenant relations plus now containing a statutory jurisdictional bar, and in any case, in this decision, there was no question of a tenancy. The next submission, based on *Sejal Glass Ltd vs Navilan Merchants Pvt Ltd*² is once again misplaced. I am not called upon to reject the plaint *in part*, which was the question before the Supreme Court in *Sejal Glass* I am called upon to reject the plaint *as a whole* against *some* Defendants and the submission that one of several Defendants cannot seek a rejection of the entire plaint against them, but that only all Defendants can together seek rejection of the plaint is without foundation and does not commend itself. If, say, a plaintiff joins 10 defendants to a suit, and of these

1 AIR 1943 Bom 27.

2 (2018) 11 SCC 780.

seven say that the plaint, read a whole, does not disclose a cause of action against them, they can certainly seek a rejection of the entire plaint against all seven of them. What is prohibited on any correct reading of *Sejal Glass* is a rejection of bits and pieces of a plaint. This is conceptually distinct from a return of the plaint — there, the plaint is returned in its entirety *by the court* and it is returned as it stands. It is the court that divests itself of the plaint. There can be no question of a return of plaint against some and not against others. Rejection of a plaint is always party-specific; return of a plaint applies to a court and is party-agnostic. Mr Kamdar does not seek to have *parts* of the plaint rejected; he wants it wholly rejected against his clients. Indeed, it seems to me that it is he who is assisted by the decision in *Sejal Glass*, for had his application been in regard to some portions of the plaint, it would have been one for striking out those portions. This is not what he seeks at all. He says that read as a whole, the plaint in its entirety discloses no cause of action against his clients and he therefore seeks its rejection in full against his clients.

4. The decision of the Supreme Court in *Mumbai International Airport Pvt Ltd vs Regency Convention Centre & Hotels Pvt Ltd & Ors*³ is again cited on the basis that the tenant is a necessary party if the prayer for specific performance is coupled with a prayer for physical possession from the tenant in possession. But this would postulate that the tenant is bound by the agreement of which specific performance is sought in some manner or the other, which is not shown in the present case, or at the very least is not saved by an statutory ouster of jurisdiction provision from a decree of eviction. I

3 (2010) 7 SCC 417

am simply unable to see how, given that Defendant No. 4 is admittedly a tenant, this Court could ever have jurisdiction whatsoever to order its eviction and delivery of possession. Even if the Plaintiffs succeed they would come in the place of the original landlord and would then have to seek the usual remedies under the Maharashtra Rent Control Act 1999 from the Small Causes Court. They cannot get a better remedy or mode of recovery of possession simply by filing a suit for specific performance in this Court.

5. The Notice of Motion will have to be made absolute as regards Defendants Nos. 4, 5 and 6. It is made absolute in terms of prayer clause (a). There will be no order as to costs.

NOTICE OF MOTION NO. 902 OF 2017:

6. This is Plaintiffs' Motion for receiver and injunction in a suit for specific performance. It was served very recently though filed in 2017.

7. Affidavit in Reply to be filed and served on or before 8th February 2019. Affidavit in Rejoinder, if any, to be filed and served on or before 15th February 2019.

8. List the Motion for hearing and final disposal on 12th February 2019.

(G. S. PATEL, J)