

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1748 OF 2022

Surekha w/o Vijay Petkar
(Surekha d/o Shivajirao Naikwade)
Age- 40 years, Occu- Business,
R/o. Opp. Gujrati High School,
Vazirabad, Nanded.

...PETITIONER

VERSUS

Sunita w/o Sanjay Kshirsagar
Age- 56 years, Occ- Household,
R/o. Kankavya Compound,
Gurudwara, Gate No. 2, Nanded.

...RESPONDENT

ALONG WITH

WRIT PETITION NO. 1484 OF 2022

Sunita w/o Sanjay Kshirsagar
Age- 56 years, Occ- Household,
R/o. Kankavya Compound,
Gurudwara, Gate No. 2, Nanded.

...PETITIONER

VERSUS

Surekha w/o Vijay Petkar
(Surekha d/o Shivajirao Naikwade)
Age- 40 years, Occu- Business,
R/o. Opp. Gujrati High School,
Vazirabad, Nanded.

...RESPONDENT

Advocate for Petitioner in Writ Petition No. 1748/2022 and
Respondent in Writ Petition No. 1484/2022 : Mr. Shahaji Ghatol Patil
Advocate for Petitioner in Writ Petition No. 1484 of 2022 and
Respondent in Writ Petition No. 1748/2022 : Mr. G.R. Syed

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard with the consent of the parties.
2. Since common question of law and facts is involved in these petitions, they were heard together and are being disposed of by this common judgment.
3. In Writ Petition No. 1748/2022, the petitioner/tenant has challenged the order passed by the learned Ad-hoc District Judge-1, Nanded in M.C.A. No. 04/2021 thereby dismissing the application Exhibit-5 granted by the trial Court.
4. In Writ Petition No. 1484/2022, the defendant/landlord has challenged the order of stay granted by the appellate Court after allowing her appeal for a period of 90 days.

5. The tenant was inducted in the suit premises in the year 2009 by rent agreement of 11 months. The agreement was renewed time to time and the last renewal was on 01.11.2019 till 30.10.2020. It is the case of the tenant that on 25.05.2020, the defendant/landlord is forcibly trying to evict the tenant. The tenant therefore, filed Regular Civil Suit No. 330/2020 seeking injunction, restraining the landlord or anybody claiming on behalf of her from disturbing the peaceful possession of the suit shops taken on rent by the tenant and also seeking injunction from dispossession of said shops.

6. In the said suit the trial Court after hearing the parties allowed the Exhibit-5 filed by the tenant holding that the tenancy agreement of the tenant expired on 30.10.2020 and the suit is filed to protect the possession over the suit shop. The landlord has issued legal notice to the tenant for recovery of rent and asking the tenant to vacate the suit shops. The trial Court therefore, was of the view that the landlord has to follow due process of law before evicting the tenant. Therefore, the trial Court granted injunction in favour of the tenant.

7. Being aggrieved by the order passed by the trial Court the landlord filed M.C.A. No. 04/2021 which is allowed by the appellate Court holding that, after lapse of last date of the agreement i.e. 30.10.2020, the possession of the tenant become wrongful possession against the true owner. The tenant is defaulter in payment of rent and therefore, the tenant has committed wrong and she cannot take benefit of her own wrong. Hence, the tenant has failed to make out a prima facie case in her favour. The tenant is aggrieved by this order.

8. Admittedly, the suit shops are in possession of the tenant since 2009 till 30.10.2020 on the basis of rent agreements of 11 months. Now the landlord has asked the tenant to vacate the said suit shops vide notice dated 03.10.2020 and also has sought rent from the tenant. It is a settled legal position that even the trespasser cannot be evicted without following due process of law. This aspect is ignored by the appellate Court while passing the impugned order. The impugned order passed by the appellate Court is based on erroneous reasoning and this Court is of the considered view that the appellate Court has erred in upsetting the reasoned order passed by the trial Court. May be,

that the tenant is defaulter in payment of rent, but that by itself cannot be a ground to refuse her interim protection. At the most, the appellate Court could have directed the tenant to pay the arrears of rent and subject to that condition the interim protection ought to have been granted.

9. The learned advocate for the landlord by placing reliance on Premji Ratansey Shah and others Vs. Union of India and others (1995) AIR SCW 2425, Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others (AIR 2004 SC 1801), Vyankati Raghobaji Parbat & Anr. Vs. Sau. Varsha w/o. Vinod Deshpande & Anr (2005 (2) ALL MR 157), submits that there cannot be injunction against true owner and trespasser or person gaining unlawful possession is not entitled to injunction against the true owner.

10. There cannot be any dispute about the aforesaid legal position, however, in the present case, the dispute is between the landlord and tenant and the landlord is trying to evict the tenant which she can do after following due process of law.

11. In Sopan Sukhdeo Sable and others (supra), it is held that *“there are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that if any person is dispossession without his consent from immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. That a person without title but in “settled” possession- as against mere fugitive possession- can get back possession ‘if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Yashwant Singh v. Jagdish Singh (AIR 1968 SC 620), Krishna Ram Mohate v. Mrs. Shobha Venkata Rao (1989 (4) SCC 131 at p. 136); Ram Rattan v. State of U.P. (1977 (1) SCC 188), and State of U.P. v. Maharaja Dharmender Prasad Singh (1989 (2) SCC 505).*

The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma vs. Union of India (AIR 1954 Bom 358)."

These observations support the case of the petitioner.

12. In that view of the matter, this Court is of the considered view that the impugned order passed by the appellate Court in the facts of the present case cannot be sustained and same is quashed and set aside. The trial Court, however, is directed to decide the Regular Civil Suit No. 330/2020 within a period of six months from today.

13. It is made clear that the regular civil suit shall be decided on its own merits on the basis of evidence led before the trial Court and trial Court shall not be influenced by the observations made by this Court in the present order.

14. It is further made clear that the tenant shall continue to deposit rent regularly till the disposal of civil suit.

15. Since the order passed by the appellate Court is set aside in Writ Petition No. 1748/2022, nothing survives for consideration in Writ Petition No. 1484/2022. The writ petition is therefore, dismissed.

[NITIN B. SURYAWANSHI]
JUDGE