

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.459 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2940 OF 2022

Padam Keshar Singh] ... Appellant

Vs.

Ashokkumar Valchand Jain] ... Respondent

...

Mr. Aparna Shinde for the appellant/applicant.

Mr. Pramod Bhosale i/b Mr. Devika Nigade for the respondent.

Mr. Ashish Dubey, Commissioner nominated by the Court.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 02ND MAY, 2022.

P.C. :-

1. The appeal is filed, being aggrieved by the order dated 21/04/2022 passed by the City Civil Court, Mumbai on a notice of motion filed by the plaintiff seeking a direction to the defendant to open the lock of the shutter and channel of the suit premises, which is a medical shop and allow him to remove the items, including furniture and fixtures lying in the suit premises along

with the stock of the medicines lying therein.

2. This notice of motion came to be moved in the backdrop of the fact that the plaintiff had taken on leave and licence basis, commercial premises belonging to the defendant viz. Shop No.12, Ground floor, Sundar Apartments, Shri Sundar Co-operative Housing Society, Trombay Road, Chembur. The plaintiff required the premises for running a Chemist and General Store in the name and style of Diamond Chemists and General Stores and the premises were taken on leave and licence for five years from 01/08/2020 to 31/07/2025.

However, some disputes arose between the parties and I need not delve deep into the same, which resulted in a special civil suit being filed by the plaintiff under Section 6 of the Specific Reliefs Act for grant of injunction and declaration.

3. The defendant contested the suit on the ground that the plaintiff has not paid the outstanding licence fee and the cheques issued by the defendant were dishonoured, resulting into the termination of the agreement by notice dated 12/05/2021 and asking him to remove the goods and even locked the premises.

4. Pendency of the above suit, a notice of motion was taken out with the relief referred to above. The relationship between the parties further worsened out on police complaints having been registered by the plaintiff against the defendant.

5. This warranted the notice of motion being moved vide Notice of Motion No.1092 of 2022. The learned Judge rejected the notice of motion by the impugned order, holding that the equitable relief cannot be granted in favour of the plaintiff, as he has not approached the court with clean hands and has conveniently suppressed material facts.

6. I have perused the impugned order and I am not inclined to go into the merits of the matter and, in my opinion, the plaintiff deserves a limited relief of permitting him to remove his stock of medicine lying in the shop along with the supporting bills as well as the computer or any other hardware, which is put to use for maintaining the stock of the medicines. The medicines lying on the said shop are lifeline for many needy patients and, in any case, it would have an expiry date and on expiry of the said period, the medicines will just go waste.

The plaintiff claim that the medicines worth Rs.60 lakhs are lying in the suit premises and this statement is denied by the learned counsel for the respondent. In any case, whatever may be the value, since they are the life saving material, with limited shelf life, they deserve to be moved out, by the plaintiff.

7. Since the plaintiff and defendants are at loggerheads, it would be advisable to have a Commissioner appointed to supervise the entire process, when the plaintiff removes the

medicines and bills lying in the store pertaining to the medicines along with computer and hardware.

8. Upon the request being made, Mr. Ashish Dubey, the learned advocate practicing in this court and who is present in the court, has agreed to act as the Commissioner and, on his consent being obtained, he is appointed as the Commissioner to supervise the exercise of the plaintiff removing the medicines along with the necessary bills and papers and, for that purpose, the Commissioner shall visit the shop premises on 07/05/2022 at 11.00 a.m. along with the plaintiff. Upon reaching the said premises, in presence of the Commissioner, the defendant shall open the lock of the premises so as to enable the plaintiff and the Commissioner to enter the premises and remove the aforesaid articles. The defendant shall, thereafter, walk out of the premises and permit the plaintiff to remove the medicines and other articles under the supervision of the Commissioner, by specifically preparing an inventory of such articles permitted to be removed and as far as the medicines are concerned, he need not highlight each and every medicine, except that he shall ensure that the medicines, which are in store shall be permitted to be moved out.

9. If the entire exercise is not over till 6.00 p.m. on 07/05/2022, the Commissioner shall once again visit the shop premises on the next day i.e. on 08/05/2022 and the similar procedure shall be repeated, by opening the shop premises and the process shall

continue till the articles as directed above, are removed.

The Commissioner shall then prepare a report along with the inventory and place it before the City Civil Court, Mumbai, where the special civil suit is pending for adjudication. A copy of his report shall also be supplied to both the parties.

10. The appellant/plaintiff shall bear the costs/expenses of the Commissioner, which are quantified at Rs.25,000/-, which shall be handed over to the Commissioner by cheque, within two days from today.

Needless to state that I have not deliberated upon the merits of the matter and all contentions of the rival parties are kept open.

11. The appeal from order stands disposed off in the above terms.

In view of the disposal of the appeal, the interim application does not survive and stands disposed off.

[SMT. BHARATI DANGRE, J.]