

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 211 / 2021
Alongwith
Interim Application No. 2015 / 2021
in
Appeal from Order No. 211 / 2021

Asha Chandrakant Nerurkar **... Appellant**

Versus

Sanjeev Kumar A. Rapolu **... Respondent**

Alongwith
Interim Application No. 2017 / 2021
in
Appeal from Order No. 211 / 2021

State Bank of India **... Appellant**

Versus

Asha Chandrakant Nerurkar **... Respondent**

Mr. Brian Dilma, Advocate for the Appellant.

Mr. V.A. Thorat Senior Advocate i/by Sandeep Sharma, Advocate for Respondent No.1 in AO/211/2021 and IA/2015/2021.

Mr. Akbar Rizvi i/by M/s AKS Legal Consultants, Advocate for Intervener in I.A. 2017/2021 – SBI.

Mr. Shadab Peerzade a/w Munir Merchant, Advocate for Respondent No.4.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 27th JANUARY, 2022.
PRONOUNCED ON : 31st JANUARY, 2022.
[Through Video Conference]

P.C.

1. This Appeal under Order-43 Rule-1 (r) read with Section 104 of the Code of Civil Procedure, challenges the order dated 21st June, 2021 in Notice of Motion No. 1303/2021 in S.C. Suit No. 1086/2021 passed by the Judge, City Civil Court, Greater Mumbai, by which Defendants and their Servants have been restrained by temporary injunction from obstructing and or disturbing and or evicting Plaintiff from two cabins in suit premises i.e. Office No. 115, T.V. Industrial Estate, S.K. Ahire Marg, beside National Cycle Company, Worli, Mumbai – 400 030, without following due process of law.

2. Facts in Brief leading to this Appeal are as under;

Mr. Sanjeev Kumar A. Rapolu, a Lawyer by profession, instituted S.C. Suit No. 1086/2021 seeking decree of perpetual injunction against the Appellant (Defendant No.2) and others, from interfering and or obstructing his peaceful possession in the suit premises.

3. Plaintiff would plead and claim that the Respondent No.1 is Owner-Landlord, of the suit premises. The Respondent No.3 –

Jagdish Punjabi, acquired tenancy rights of the suit premises from the Landlord, under tenancy agreement dated 26th August, 1996 and deed of confirmation dated 22nd October, 2015.

4. Plaintiff would plead and assert that under sub-tenancy agreement dated 28th January, 2016, the Respondent No.3 – Jagdish Punjabi, inducted him in the suit premises as his sub-tenant and since then he is in possession of it. Plaintiff was apprehending dispossession from the suit premises at the hands of Defendant No.2 – Appellant without following due process of law. He therefore instituted the suit.

5. The suit premises as described in Paragraph No.1 of the plaint is; Office No. 115, T.V. Industrial Estate, S.K. Ahire Marg, beside National Cycle Company, Worli, Mumbai – 400 030.

6. Pending appeal, State Bank of India moved interim application no. 2017/2021, seeking impleadment as party Respondent in this appeal. The application divulge / disclosed following facts;

- (i) That Owner-Landlord of the suit premises had taken loan from the State Bank of India.
- (ii) Loan was secured by equitable mortgages of three properties.
- (iii) Suit premises was one of those three properties.
- (iv) In proceedings before DRT in Original Application No. 0441/2021 for recovery of Rs. 3,10,94,849/-, Recovery Officer, DRT issued recovery certificate no. 629/2004 against the Landlord.

. These facts were not within the knowledge, nor were brought to the notice of the trial Court, either by Plaintiff or by Defendant No. 1, 2 and 3.

7. In my view, the aforesaid facts has bearing over the issue in the suit and in application moved by the Plaintiff.

8. The primary evaluation of the pleadings, decree in R.A.D. Suit No. 915/2009 passed by the Small Causes Court, Mumbai in favour of Appellant-Defendant No.2, show that all possible efforts were made

by the Landlord, himself or through the Defendants to frustrate the execution of recovery certificate, issued by DRT against him to save the suit premises in execution of the recovery certificate. In essence, the State Bank of India has been kept away from the suit proceedings. Had the Bank been impleaded as Defendant, the application moved by the Plaintiff could not have been decided in the manner, in which it has been decided.

9. Be that as it may, in consideration of the facts of the case, I think it appropriate to issue following directions and clarifications to the trial Court.

(i) On a formal application being moved by the State Bank of India, the trial Court shall implead the Bank as party Defendant.

(ii) If the Bank moves an application for appropriate relief including that of modifying, vacating the order dated 21st June, 2021 passed in Notice of Motion No. 1303/2021, the learned Judge shall decide the same on its own merits without being influenced by order dated 21st June, 2021 and or the orders passed by this Court in this appeal.

(iii) The order dated 25th August, 2021 passed by this Court pending

appeal being in nature of interim arrangement, it shall not bind the trial Court, while deciding the application moved by the State Bank of India for appropriate relief. However the Clause No. 3 of the Order dated 25th August, 2021, reproduced hereinunder, shall continue to operate till the application of the Bank is decided.

“3. The interim arrangement for occupying the suit premises made by Order dated 5th July, 2021 is hereby modified and the following arrangement is brought into effect from 26th August, 2021-

The Respondent No.1 is permitted to use and occupy the cabin No.2 from 10.00 to 11.00 in the morning and from 5.00 to 7.00 in the evening.

The said cabin No.2 is demarcated in the plan annexed to the Inspection Report dated 14th July, 2021 submitted by H.G. Samant and Associates.

It is made clear that, this is a *pro tem* arrangement, pending the admission of the present Appeal from Order.”

10. Appeal from order and interim applications therein, are disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)

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