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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8590 OF 2019

Dilshad M. Ravthar & Ors. ...Petitioners
Versus
Shri. Manoj Ramchandra Chougule & Ors. ...Respondents

Mr. Chetan G. Patil, for the Petitioners.
Mr. Sugandh B. Deshmukh, for Respondent Nos.1 and 2.

**CORAM: MADHAV J. JAMDAR, J.
DATE : OCTOBER 13, 2022**

P.C.:

1. Heard Mr. Chetan Patil, learned advocate appearing for the petitioners and Mr. Sugandh Deshmukh, learned advocate for the respondents.

2. The petitioners have filed this writ petition challenging the legality and validity of the order dated 3rd July 2019 passed by learned Ad hoc District Judge-2, Kolhapur in Misc. Civil Appeal No.98 of 2019. In the Misc. Civil Appeal, the appellants i.e. the present respondent Nos.1 and 2 have challenged the order dated 8th April 2019 passed by learned 6th Jt. Civil Judge, Junior Division, Kolhapur below Exh.5 application in Regular Civil Suit No.971 of 2018. By said order dated 8th April 2019 Exh.5 application is rejected. By the impugned order dated 3rd July 2019, the said Misc. Appeal No.98 of 2019 was allowed by setting aside order dated 8th April 2019 and

thereby allowing application for temporary injunction at Exh.5 and therefore, defendant nos.1 to 3 i.e. the present petitioners are temporarily restrained from causing obstruction to the peaceful possession of the plaintiffs i.e. of the respondent nos.1 and 2 of suit shop No.A-17 till final disposal of the suit.

3. The said R.C. Suit No.971 of 2018 has been filed by the respondents seeking injunction to the effect that the defendants/petitioners be restrained from causing obstruction to their possession and the defendants be directed not to take possession of the suit property from the plaintiffs without following due process of law.

4. It is the contention of Mr. Patil, learned Advocate of the petitioners that the appellate Court has not taken into consideration the documents produced by the petitioners. He submitted that the documents produced by both the sides were considered by the trial Court and thereafter, Exh.5 application has been rejected. He pointed out certain documents including sale deed of the year 2002, property register card, assessment extract for the years 2009-2010 to 2018-2019 and the electricity bills. He submitted that all these documents show that M/s. K.A. Mohamad Sultan and Sons is the occupier. He states that M/s. K.A. Mohamad Sultan and Sons is a partnership firm. Earlier petitioners' father was the partner and presently, the

petitioners, the legal heirs of K.A. Mohamad Sultan @ Ravthar are the partners of said firm. He submitted that therefore, the impugned order is perverse and liable to be quashed and set aside. He relied on the judgment of the Supreme Court the matter between ***Wander Ltd. and Anr. vs. Antox India P Ltd.***¹ and ***Skyline Education Institute (India) Private Limited vs. S.L. Vaswani and Anr.***².

5. On the other hand, Mr. Sugand Deshmukh, learned advocate appearing for the respondents pointed out the documents viz. rent receipts executed by the petitioner no.1, particularly at pages 140 to 145. He also pointed out license issued under Maharashtra Shops and Establishment Act, 1948 and also agreement dated 1st March 2006 executed by the father of the petitioners in favour of the respondent no.1 He also pointed out another agreement dated 25th April 2006 executed by the father of the petitioners in favour of father of the respondent no.2. He also pointed out photographs and telephone bills.

6. Perusal of license issued under Maharashtra Shops and Establishment Act, 1948 dated 25th January 2007 shows that said license has been issued in favour of respondent no.1 and the same shows address of the suit premises and further shows that the said

1. 1990 (Supp) SCC 727

2. (2010) 2 SCC 142

shop has started on 26th January 2001. The above-referred agreements dated 1st March 2006 and 25th April 2006 specifically mentions that the respondents are the tenants of the suit premises. The same was executed by the father of the petitioners. Although it is the contention of Mr. Patil that the said agreements are fraudulent, the said aspect cannot be considered at the time of considering the injunction application particularly in the light of other corroborative documents. Apart from that, the monthly rent receipts executed by the petitioner no.1 from time to time clearly show that the petitioner no.1 has accepted rent continuously till September 2018 from the respondents. Thus, in this case, possible view of the matter has been taken by the lower appellate Court.

7. There is some substance in the contentions raised by Mr. Patil, learned Advocate that few documents produced by the petitioners were not considered by the Appellate Court. However, it is to be seen that Misc. Civil Appeal was filed challenging the order passed below Exh.5 i.e. injunction application. The documents executed by the father of the petitioners, rent receipts executed by the petitioner no.1 as well as the license issued under the Shops and Establishment Act have been considered by the Appellate Court. All these documents *prima facie*, establishes occupation of the suit premises by the respondents in their capacity as tenants. The judgments relied by

learned Advocate of the petitioners are regarding power of Appellate Court to interfere in the order passed by Trial Court. However, in this case, the Trial Court failed to appreciate the documents in proper perspective and therefore, learned Appellate Court has rightly interfered in the order of learned Trial Court.

8. It cannot be said that the impugned order has been passed without any evidence regarding occupation of the suit premises of the respondents. Thus, no case is made out to interfere under the discretionary jurisdiction of this Court under Article 227 of the Constitution of India.

9. However, it is to be noted that in the plaint and Exh.5 application filed by the respondents specific prayer is made that the petitioners be enjoined from dispossessing the respondents without following due process of law. Therefore, clause (a) of the impugned order dated 3rd July 2019 is required to be modified.

10. At this stage, both learned Advocates state that the issues are already framed and evidence affidavit has been filed and therefore, joint request is made to expedite the hearing of the suit.

11. In view of above discussion, following order is passed:

ORDER

- (i) The writ petition is partly allowed by modifying the order dated 8th April 2019;

- (ii) The application for a temporary injunction at Exh.5 is hereby allowed and the defendant No.1 to 3 i.e. petitioners are hereby temporarily restrained from causing obstruction to the peaceful possession of the plaintiffs i.e. Respondents of suit shop No.A-17 till final disposal of the suit i.e. R.C.S. No.971 of 2018 without following due process of law;
- (iii) It is clarified that the observations made in this order as well as the impugned order dated 3rd July 2019 and order dated 8th April 2019 are made for the purpose of deciding the injunction application. It is clarified that these observations are of *prima facie* nature and the suit will be decided uninfluenced by the observations made in this order as well as in the orders dated 3rd July 2019 and 8th April 2019;
- (iv) The learned Trial Court is requested to dispose of the suit expeditiously and in any event, on or before 31st December 2023;
- (v) Writ Petition is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)