

Pallavi

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

WRIT PETITION NO.2744 OF 2023

Mrs. Beena Sureshchandra Tendulkar
alias Ms. Maitrey Dinesh Rane and Anr. ... Petitioners

Versus
Mr. Atul Ramesh Prabhu ... Respondent

- Mr. Shriram S. Redij, for the Petitioners.

**CORAM: MADHAV J. JAMDAR, J.
DATE : 3rd MARCH 2023**

P.C.:

1. Heard Mr. Redij, learned counsel appearing for the Petitioners. The Petitioners by the present Petition filed under section 227 of the Constitution of India is challenging the legality and validity of the judgment and order dated 21st February 2023 passed by the learned Appellate Bench of Small Causes Court in Misc. Appeal No.248 of 2022 as well as order dated 21st September 2022 passed by the learned Judge, Small Causes Court, Mumbai below Exh.59 in R.A.E. Suit No.423 of 2017.

2. The factual position on record clearly shows that the said R.A.E. Suit No.423 of 2017 was filed by the present Petitioners who are landlords. It appears that during the pendency of the said suit, the Petitioners i.e. the plaintiffs took possession of the suit premises on 19th June 2022. Therefore, the defendants filed an application

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below Exh.59 for mandatory injunction directing the plaintiffs to remove themselves from the said premises and restore the position of the suit premises, as it was on 19th June 2022 before the plaintiff took possession of the said premises. The learned Judge, Small Causes Court allowed the said Exh.59 application and directed the plaintiffs to restore the possession to the defendants. The said order has been confirmed by the learned Appellate Court and said Misc. Appeal No.248 of 2022 was dismissed by impugned judgment and order dated 21st February 2022. It is significant to note the observations of the learned Appellate Court as found in paragraphs 12 and 13 of the impugned order dated 21st February 2023, which read as under :

“12. It is a cardinal principle of law that once parties approach the Court for resolving of their disputes they should maintain the status of the subject matter until decision of the Court. The provisions of Order 39 of Code of Civil Procedure Code regarding Temporary injunction and Interlocutory Orders are in aid of said principle. Order 39 Rule 7 further provides for detention, preservation, inspection etc. of the subject matter of the suit. If at all the plaintiff landlord was of the opinion that the suit property is being damaged due to non user, he could have preferred an application under Order 39 Rule 7 of Code of Civil Procedure. The plaintiff under rent Act also have right of inspection of suit premises and to carry repairs to the suit premises. However, plaintiff did not prefer any

such application. It was wrongful on the part of the plaintiff to take possession on own without the sanction of the court. It amounts to eviction of the tenant. The status of defendant would be decided ultimately. The plaintiffs have pleaded and accepted defendant as tenant. Now taking disadvantage of defence case they cannot retain the possession which is obtained illegally, contending defendant is not the tenant.

13. The Ld. Trial Court has rightly held that if application is rejected it would mean that defendant is evicted even before the decision of the suit and it would cause irreparable loss. It is rightly observed that an injunction not to create third party right is in force, the plaintiff was not in possession of the suit premises, as such if application is allowed plaintiff would not suffer any injury. It is proved that defendant will suffer irreparable loss if status ante is not restored. To prevent the deterioration of suit premises plaintiffs have a remedy under the law. We therefore answer point no.2 in the Affirmative.”

3. Mr. Redij, learned counsel appearing for the Petitioners could not point out any illegality or irregularity in the orders passed by both the Courts. This is not the case where interference of this Court is required under discretionary jurisdiction of this Court under Article 227 of the Constitution of India. Therefore, Writ Petition is dismissed.

4. At this stage, Mr. Redij states that the premises is in dilapidated condition and therefore, some repairs are required to be carried out. However, as it has been found that the Respondent has been illegally dispossessed, the Petitioners should hand over the possession of the suit premises to the Respondent within a period of 7 days from today and thereafter, only they are permitted to file appropriate application before the learned Trial Court. The learned Trial Court to decide such application, if filed by the Petitioners, after handing over possession of the suit premises to the Respondent in accordance with law.

5. Writ Petition is rejected subject to above.

(MADHAV J. JAMDAR, J.)