

Santosh

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

**APPEAL FROM ORDER NO. 344 OF 2023
WITH
INTERIM APPLICATION NO. 4255 OF 2023**

SANTOSH
SUBHASH
KULKARNI

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Narendra Chabanrao Thorwe ...Appellant
Versus
M/s. China Town & ors. ...Respondents

Mr. Sanjeev Sawant, a/w Abhishek Matkar, Malhar Bageshwar
and Ashish Kumar i/b ADJ & Partner, for the Appellant.
Ms. Savina Crasto, for Respondent No.1.
Mr. Vishal Krishna, for Respondent No.3.
Mr. Heet Patel, for Respondent No.4.

CORAM: N. J. JAMADAR, J.

DATED : 3rd MAY, 2023

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this appeal is to an order passed by the learned Judge, City Civil Court, in Notice of Motion No.1391 of 2023 in Suit No.1028 of 2023, whereby the learned Judge declined to grant an ad-interim relief in the nature of *status quo* till the decision of the Notice of Motion. The learned Judge was persuaded to post the Notice of Motion for consideration on merits after providing an opportunity to the defendants to file reply to the Notice of Motion, on 3rd May, 2023.

3. Appellant-plaintiff claims to be the licensee of the suit premises. Respondent – defendant No. 1 is the licensor. The suit premises was in the occupation of the respondent – defendant No. 2 under a Leave and Licence Agreement dated 12th February, 2019.

4. The learned Counsel for the appellant submitted that the said Leave and Licence Agreement between defendant No. 1 and defendant No. 2 came to be terminated and, subsequently, a registered Leave and Licence Agreement has been executed in favour of the plaintiff-appellant on 11th February, 2022 and since then the plaintiff has been in possession of the suit premises. In the intervening period in a title suit, being title Suit No. 408 of 2022, instituted by the respondent- defendant No. 3 in the Court of Rosera, Samstipur, a Court Receiver in respect of the suit premises has been appointed by an order dated 18th November, 2022.

5. The learned Counsel submits that the said suit is a collusive suit between the defendant Nos. 2 and 3. Defendant No. 2 has no right, title and interest in the suit premises and a MOU was purportedly executed between defendant Nos. 2 and 3 on the very day on which the Leave and Licence Agreement was executed between the defendant No. 1 and defendant No. 2 i.e.

on 12th February, 2019, under which the suit property was sought to be conveyed in the event of failure to repay the sum of Rs.50,00,000/-, allegedly availed from defendant No. 3. On the strength of the said order, the learned Counsel submits, the plaintiff is sought to be dispossessed.

6. The learned Counsel for the respondent-defendant No. 3- plaintiff in the said suit, countered the submissions on behalf of the appellant. It was urged that the said suit in the Court of Rosera, Samstipur is based on the MOU executed by defendant No. 2 in favour of the defendant No. 3 on 13th May, 2019 and the said instrument has been suppressed.

7. Evidently, there is a serious dispute on the factual score. Notice of Motion still awaits adjudication before the City Civil Court. It may not, therefore, be appropriate to delve into the thickets of facts in an Appeal From Order declining to grant ad-interim relief.

8. It is, however, abundantly clear that the interest of the persons- defendant No. 2, who have executed the MOU in favour of the plaintiff in title suit No. 408 of 2022 – defendant No. 3 herein, emanates from the Leave and Lincence Agreement executed by the defendant No. 1 – landlord on 12th February, 2019. Defendant No. 3 has instituted a title suit purportedly on

the strength of a covenant to convey the suit property in the event of failure to refund the amount, which defendant No. 3 claimed to have advanced to defendant No. 2. Could the defendant No. 2 convey right, title and interest in the suit premises is the moot question ?.

9. In the aforesaid circumstances, till the Notice of Motion is decided by the City Civil Court the situation as it obtains today as regards the possession of the suit property deserves to be maintained.

10. Hence, the appeal stands disposed with a request to City Civil Court to decide the Notice of Motion as expeditiously as possible.

11. Till the decision of the Notice of Motion all the parties shall maintain *status quo*.

12. All contentions of all the parties are kept open for consideration before the City Civil Court.

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

[N. J. JAMADAR, J.]