



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8361 OF 2023

Parul Jitendra Mehta

... Petitioner.

Versus

Tejash H Mehta and Anr.

... Respondents.

Mr. Amrut Joshi i/by Mr. Sameer Solanki, Advocate for the Petitioner.
Mr. A.Y. Sakhare, Senior Advocate a/w Mr.Piyush Thakkar, Advocate
for the Respondent no.1.

Mr. Mayur Khandeparkar i/by Mr.Sanket Mungale, Advocate for the
Respondent No.2.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : NOVEMBER 30, 2023.

P. C. :

1. By this petition filed under Article 227 of the Constitution of India, exception is taken to the order dated 15th February, 2023 passed by the Appellate Court, reversing the order of the Trial Court rejecting the Respondent No.1's application for temporary injunction against dispossession.

2. Respondent No.1 - original plaintiff, in RAD Suit No.584 of 2022 sought declaration of tenancy in respect of suit premises described as shop No.6, Hakim Building, 138, P.B.Marg, Opposite Daulat Complex, Grant Road, Mumbai.

3. It was the case of the Respondent No.1 that M/s.Sadhana Agarbatti Works -the partnership firm constituted by virtue of partnership deed dated 6th June, 1997 with two partners being Ananthrai Jagjivan Vora and Tarachand Mehta was the tenant of the suit premises.. The reconstitution of the firm over the years by reason of retirement, death and incoming partners was pleaded and that ultimately Jitendra Mehta and Plaintiff remained as partners of the firm.

4. It is pleaded that the monthly rent was paid to the Respondent No.2-landlord by the partnership firm by cheque signed by both the partners and rent receipts were issued in name of the firm. That, in April-2009, the landlord in collusion with Jitendra Mehta and without knowledge of the Respondent No.1 transferred the rent receipt in the name of Jitendra Mehta although the monthly rent was continued to paid from the bank account of the firm. It is pleaded that Jitendra Mehta expired on 19th February, 2022 and the Respondent No.1 is deemed to have become the sole proprietor and entitled to claim the tenancy and other rights in the suit premises.

5. It was further pleaded that after the demise of Jitendra Mehta, his wife i.e. the Petitioner herein in collusion with the

landlord illegally got the rent receipt transferred in her name without the knowledge and consent of the Respondent No.1 and subsequent thereto had tried to take forcible possession of the suit premises. That the late Jitendra Mehta and the Petitioner created third party rights in the suit premises in favour of one Milan Seth, who committed an act of trespass and housebreaking by breaking the lock of the suit premises for which a complaint was made by the Respondent No.1 and the physical and the legal possession was restored to the Respondent No.1 in the evening of 4th February, 2022. Alongwith the plaint various documents were annexed to support the pleadings

6. An application below Exh.10 came to be filed by the Respondent No.1 seeking the relief of temporary injunction against dispossession from the suit premises without due process of law.

7. The Petitioner opposed the application by filing her affidavit-in-reply dated 7th July, 2022 pleading that the tenancy was transferred in the name of her husband Jitendra Mehta from April 2009 and from January, 2022 the rent receipt is issued in the joint name of the Petitioner and her husband and after the death of her husband, the landlord is issuing rent receipt in the name of the Petitioner. It was pleaded that by communication dated 20th June, 2005 duly signed by

the Respondent No.1 as well as Jitendra Mehta, it was declared that the Respondent No.1 has no right whatsoever in respect of the tenancy rights.

8. It was further pleaded that as the Petitioner was facing financial constraints, with the permission of the landlord, the suit premises was given on leave and license basis on 3rd February, 2022 during the lifetime of her husband to one Milan Seth and since then the suit premises is being used and is in the occupation of said Milan Seth.

9. The Respondent No.2-landlord filed his reply and supported the case of the Petitioner. It was pleaded that the firm was paying rent through its account for income tax purpose. That, the landlord had received a letter in March, 2009 on the letterhead of the partnership firm signed by Jitendra Mehta for transfer of tenancy and accordingly the tenancy was transferred. That, Jitendra Mehta and Petitioner had not created third party rights in the suit premises in favour of Milan Seth and that Milan Seth had not committed an act of trespass and housebreaking.

10. In the affidavit-in-rejoinder of the Respondent No.1, the statement of Respondent No.2-landlord given to the police during

investigation into the act of trespass by Milan Seth is annexed. In sur-rejoinder, the landlord contended that Jitendra Mehta had submitted letter dated 19th March, 2009 annexing the deed of partnership required by MHADA and for transfer of tenancy in name of Jitendra Mehta. That, Jitendra Mehta has submitted his irrevocable consent and even in the record of MHADA the occupancy shown in the name of Jitendra Mehta. That, after April, 2009, the Respondent No.1 was never seen occupying the premises and after the death of Jitendra Mehta, the Petitioner is occupying the suit premises. That, the Respondent No.1 has broke open the lock of the suit premises and obtained the possession of the suit premises. Thereafter, by way of sur-sur-rejoinder the Respondent No.1 denied the contentions raised in the sur-rejoinder.

11. The trial Court by its order dated 28th November, 2022 rejected the application as against which in the Appeal filed, the Appellate Court by order dated 15th February, 2023, allowed the appeal restraining the Petitioner and Respondent No.2 from dispossessing the Respondent No.1 from the suit premises without due process of law.

12. Heard Mr. Joshi, learned Counsel for the Petitioner,

Mr.Sakhare, learned Senior Advocate for the Respondent no.1 and Mr.Khandeparkar, learned Counsel for the Respondent No.2.

13. Mr.Joshi, learned counsel appearing for the Petitioner has taken this Court minutely through the findings of the Trial Court and the Appellate Court and would urge that the trial Court has rightly appreciated the material on record and had come to a finding that no *prima facie* case is made out. He has further invited the attention of this Court to the document of irrevocable consent given to MHADA Authority as well as transfer of tenancy in the joint names of the Petitioner and her husband and would submit that the documents reveal the transfer of tenancy rights in name of the Petitioner. He submits that the Appellate Court gave undue weightage to the Respondent No.1's documents while disregarding the Petitioner's documents. He submits that contrary to the settled position in law the Appellate Court has substituted its own view for that of the trial Court. He draws support from the decisions in the case of ***Abidbhai son of Ibrahimbhai and Ant. vs. Mohammed Ejaz son of Mohd. Bashir and Anr.*** reported in ***2018 SCC OnLine Bom 3360*** and in the case of ***Wandar Ltd. and Antoher Vs. Antox India P. Ltd.*** reported in ***1990 (Supp) SCC 727.***

14. *Per contra*, Mr. Sakhare, learned Senior Advocate for the plaintiff-respondent no.1 submits that the tenancy rights were transferred without the consent and knowledge of the Respondent No.1. He submits that the partnership firm was the tenant of the premises and was paying the rent and the rent receipts were issued in name of the firm. He submits that the contentions of the Respondent No.2-landlord in the present proceedings is contrary to his statement given to the police. He submits that more than adequate material was produced in the form of the cheques issued from the account of the partnership firm as well as rent receipts issued in the name of the partnership firm to demonstrate that the tenancy stood in the name of the partnership firm and that the Respondent No.1 was in possession of the suit premises. He submits that on 4th February, 2022 there was an act of trespass by Milan Seth and as such the apprehension of the Respondent No.1 was well founded. He submits that for the purpose of grant of injunction the aspect of possession has to be taken into consideration which the Appellate Court has rightly considered.

15. Considered the submissions and perused the records.

16. Rival contentions of possession as well as tenancy rights are

raised by the parties. The admitted position is that the suit premises is a commercial premises from where the business of M/s.Sadhana Agarbatti Works was being carried out since the year 1977. It is also admitted that the rent was paid by the partnership firm and the rent receipts was issued in the name of the firm. The submission canvassed by the learned counsel for the Petitioner is that there was transfer of tenancy in the year 2005 in name of Shashikant Mehta with consent of Respondent No.1 and, in the year 2009 in the name of Jitendra Mehta and thereafter in the joint names of Petitioner and Jitendra Mehta and then in the sole name of the Petitioner.

17. There are voluminous documents placed on record by both the parties. As regards the Respondent No.1, he has placed rent receipts, electricity bills, telephone bills, MCGM inspection report to indicate that firm was the tenant and Respondent No.1 was in possession. On the other hand, Petitioner has placed documents pertaining to transfer of tenancy rights in her favour and documents of MHADA which show Jitendra Mehta as occupant of suit premises and rent receipts of year 2021. In so far as Respondent No.1's documents are concerned, the rent receipts annexed from Page 124 to 138 of the Petition indicates that the rent receipts were issued in the

name of M/s.Sadhana Agarbatti Works till the year 2009. The electricity bills annexed from Page 139 to 156 of the Petition reveals that till 2022, the electricity bills were issued in the name of M/s.Sadhana Agarbatti Works. The telephone bills annexed from Page 157 to 193 of the Petition shows that till 2022 the bills were issued in name of M/s.Sadhana Agarbatti Works. The photocopy of rent cheque annexed at Page 197 to 199 shows that the Respondent No.2- landlord was issued rent cheque for the year 2020 and 2021 through the account of the firm which was signed by the Respondent No.1. The bank statements of the firm are annexed to evidence the payment made to the Respondent No.2-landlord. The communication pertaining to the process of redevelopment dated 24th December, 2016 issued by the landlord shows M/s.Sadhana Agarbatti Works as the tenant of the suit premises. The inspection report of MCGM states that on 18th February, 2022, the Respondent No.1 was in present in the suit premises at the time of inspection.

18. On the other hand the Annexure-II issued by MHADA shows the name of Jitendra Mehta Proprietor Sadhana Agarbatti Works as occupant of the suit premises, the irrevocable consent is given by Jitendra Mehta for the re-development, communications of 20th June,

2005 and 19th April, 2009 are pertaining to transfer of tenancy and rent receipts of the year 2021 are issued in name of Jitendra Mehta.

19. It is trite for the purpose of the grant of interim relief seeking protection of possession, it is necessary for the Respondent No.1 to make out a *prima facie* case of possession. It is settled that even the possession of the trespasser is required to be protected till he is lawfully evicted by fiat of the Court. In the present case, the trial Court has taken into consideration the rent receipts of the year 2021 which are in the name of Jitendra Mehta, the letter dated 20th June, 2005, letter dated 19th March, 2009 and the cheques towards the amount of rent paid by the Petitioner. On the basis of the said documentary evidence, the trial Court held that the partnership firm was the tenant and that after the death of Shashikant Mehta, the business of the firm was being run by Jitendra Mehta and the Respondent No.1.

20. The trial Court considered the legal position as to whether upon the death of one of the partners, the surviving partner can become the proprietor of the partnership firm and by relying upon Section 42 of the Indian Partnership Act, 1932, held that the plaintiff will have to prove the status of the firm by adducing the evidence.

The trial Court upon a comparative analysis of the transfer of tenancy as well as the initial rent receipts issued in the name of the firm held that the material question as to the tenancy rights will have to be decided during the trial after considering the evidence.

21. Despite observing that the issue of tenancy rights will have to be considered after trial, the trial Court held that the suit has been filed in the month of June-2022 alongwith the application for temporary injunction apprehending dispossession and as such object in granting the temporary injunction would be defeated by delay. Without any finding on the aspect of possession, only on the basis of delay the trial Court held that the plaintiff has failed to make out a *prima facie* case. The order of the trial Court does not indicate any reason as to why the aspect of balance of convenience as well as the irreparable loss is not in favour of the plaintiff. By very cryptic reasoning and on the solitary ground of delay the application came to be rejected. The trial Court has rightly held that the issue as regards whether after the death of one of the partners, the surviving partner could claim the tenancy rights in respect of the suit premises and as to whether there has been a valid transfer of tenancy are matters which are required to be taken into consideration after the trial.

However, the trial Court failed to consider that the issue which was presented for consideration was one of protection of possession and as such, it was necessary for the trial Court to render a finding on the aspect of the possession. The trial Court disbelieved the apprehension of dispossession of the plaintiff on the ground of delay and rejected the application.

22. The Appellate Court observed that there is no rent receipt or tenancy agreement to show that since inception the individual partner was the tenant. The Appellate Court also considered the communication dated 20th June, 2005 relied by the Petitioner to contend that the rights were transferred in the name of Jitendra Mehta and observed that there are no rent receipts and bills produced subsequent to 2005 in the name of Jitendra Mehta. The Appellate Court took into consideration the documents produced by the Respondent No.1 in the form of the rent receipts, cheques and accounts book which *prima facie* show that even after alleged transfer, rent has been paid by the partnership firm and the letter and the rent bill was disputed as forged.

23. The appellate Court rightly considered the rent receipts, telephone bills, business license and inspection report of MCGM

which *prima facie*, indicate that the partnership firm was the tenant and in possession of the suit premises, whereas the documents of the Petitioner as regards the transfer of the tenancy as well as the communication of 2005 is disputed and matter of evidence. In light of the findings of the Appellate Court, it cannot be said that the Petitioner's documents were not considered. The Appellate Court held that immediately upon the act of trespass is being committed the complaint was made to the police and that the Respondent No.1 with the help of police have removed the lock of Milan Seth and regained the lost possession.

24. The Appellate Court observed that the trial Court had ignored the documentary evidence on record and that the finding are not proper and legal. The Appellate Court held that once the Respondent No.1 has proved his lawful interim possession, merely because the suit is filed belatedly after obstruction cannot be a reason to negate the *prima facie* case and as such allowed the appeal.

25. The specific case of the Respondent No.1 was that in the month of February, 2022, there was an an attempt to forcibly dispossess the Respondent No.1 by Milan Seth for which police complaint was filed and that in March, 2022 the Respondent No.1

acquired knowledge about the transfer of tenancy in name of the Petitioner in collusion with the Respondent No.2-landlord. It appears that although the incident of trespass had taken place, the Respondent No.1 was secure in the knowledge that the tenancy rights was in name of the partnership firm and only upon acquiring knowledge about transfer of tenancy, the situation changed and there was apprehension of dispossession and creation of third party rights which cannot be stated to be unfounded. As such it was necessary for the Respondent No.1 to institute declaratory suit for claiming tenancy and for protection of his possession and the apprehension expressed could not be said to be unfounded as one attempt of trespass was already made. Without rendering a finding on the necessity of protecting the status-quo-ante the application could not have been rejected summarily on the ground of delay.

26. The de-facto possession of the suit premises has been *prima facie* proved by the Respondent No.1 on the basis of documentary evidence. The tenancy receipts till the year 2009 is in the name of the partnership firm. The rent cheques issued by the Respondent No.1 in the year 2021 are drawn on the account of the firm and signed by the Respondent No.1. The documents therefore *prima facie* lend

credence to the submission of the Respondent No.1 that he was unaware of the transfer of tenancy and that the tenancy was transferred in collusion as there was no reason for him to continue to issue rent cheques from the account of firm, if he was aware of transfer of tenancy rights. There is no document produced by the Petitioner or Respondent No.2 intimating the Respondent No.1 about transfer of tenancy. The suit premises is commercial premises and it is nobody's case that the partnership firm was dissolved and Jitendra Mehta was in sole possession of the suit premises. The inspection report of MGCM of the year 2022 indicates that the business of M/s. Sadhana Agarbatii Works was still being carried out from the suit premises and the Petitioner has not claimed that the business was being continued by her. There is no pleading in the affidavit filed by the Petitioner claiming to be at any time in possession of the suit premises. All that the Petitioner claims through out is the tenancy rights in the suit premises on the basis of the transfer of tenancy agreement and the rent receipts issued in her favour.

27. Pertinently, the landlord in the statement before the police had submitted that due to the illness of Jitendra Mehta, he was not attending the business and in fact, it was the Respondent No.1, who

was carrying on the business from the suit premises. Notably the submission of the counsel for the Petitioner before the Appellate Court was that the Respondent No.1 with the help of the police had obtained the illegal possession and that the Petitioner is entitled to restoration.

28. The Petitioner places reliance on the the communication dated 20th June, 2005 regarding transfer of tenancy in name of Shashikant Mehta annexed to Page 433 to contend that the tenancy was in name of individual partner. However, there is no document to show that after 2005 the rent receipt was issued in name of Shashikant Mehta. On the contrary the rent receipt of the year 2008-2009 show that the same was issued in name of the partnership firm. Pertinently the Respondent No.1 has disputed the document of 2005 as forged. The other document dated 19th March, 2009 on which reliance is placed by the Petitioner to claim tenancy is annexed at Page 434 of the Petition. Perusal of the same would indicate that it is an unilateral communication addressed by Jitendra Mehta to the landlord requesting the landlord to issue rent receipt in name of Jitendra Mehta-Proprietor Sadhana Agarbatti Works. In my view, *prima facie* this documents strongly supports the contention of the

Respondent No.1 of collusion between the Jitendra Mehta, the Petitioner and the landlord as M/s.Sadhana Agarbatti Works was admittedly a partnership firm till the death of Jitendra Mehta. Considering the documents produced it is matter of trial whether the tenancy stood validly transferred in name of Jitendra Mehta and the Petitioner.

29. Another aspect which is required to be noted is that the suit premises are commercial premises from where the business of the partnership firm was being carried out. Even if the material on record *prima facie*, demonstrate that there was a transfer of tenancy in the joint name of the Petitioner and her husband, what is required to be seen is whether at any point of time, the possession of the suit premises was parted with by the Respondent No.1 who was also a partner in the partnership firm.

30. The Appellate Court has reversed the findings of the trial Court by observing that the findings are perverse inasmuch as the trial Court has not taken into consideration the documentary evidence produced by the Respondent No.1 and has summarily dismissed the application on the ground of delay.

31. Reliance placed by the learned counsel for the Petitioner on the decision in the case of *Wandar Ltd. and Antoher (supra)*, is

misplaced in the facts of the present case. There is no dispute with the proposition of law laid down in the said decision, that the Appellate Court will not reassess the material and reach a conclusion different from the one reached by the Court below, if the one reached by the trial Court is reasonably possible on the material. What the decision lays down is that the Appellate Court should not substitute its view for that of the trial Court if the view is taken by the trial Court was reasonably possible on the basis of material produced on record.

32. In the present case, what can be found from the order of the trial Court is that the trial Court has summarily rejected the application on the ground of delay without rendering any finding on the documentary evidence produced by the Respondent No.1 in support of his case of possession. In that view of the matter, the Appellate Court has rightly held that the findings are not legal and proper. It cannot be said that by the impugned order of the Appellate Court had substituted its own view for that of the trial Court for the simple reason that the trial Court had refused to exercise discretion on the ground of delay.

33. At the interim stage, what is only required to be seen is whether the *status-quo-ante* is required to be protected and whether a

prima facie case is made out by the party seeking protection. In the present case, the material which produced on record is adequate to come a *prima facie* finding that it was a partnership firm who was the tenant of the premise and from whose account the rent was being paid to the landlord and further that the business was being carried out from the suit premises by the Respondent No.1. There is no whisper in the affidavit filed by the Petitioner that alongwith her husband or even after his demise she was carrying on the business in the suit premises and as such was in occupation/possession thereof.

34. To the affidavit-in-rejoinder, the statement of the Respondent No.2-landlord dated 10th March, 2022 given to the police is annexed. In this statement, the landlord has stated that in the shop premises, Jitendra Mehta as well as Respondent No.1 were carrying on the business and as Jitendra Mehta was suffering from cancer for the past one year he had not been in the shop premises and the entire business was conducted by Respondent No.1. He has further stated that in January, 2022, a registered leave and license agreement was executed in favour of Milan Seth for which the permission was given by him. He has further stated that as the shop was being given to Milan Seth, Jitendra Mehta and Parul Mehta asked the Respondent No.1 to

conduct his business from some other premises. He has further stated that the Respondent No.1 refused to handover possession of the suit premises and Milan Seth on 4th February, 2022, changed the lock of the premises and on the same day in the afternoon, the Respondent No.1 had taken the possession of the premises. It appears that to support his project of re-development, the landlord has adopted changing stands in the matter.

35. From the documentary evidence produced on record, it is *prima facie* evident that it is the Respondent No.1 who is in possession of the suit premises from where the business of the firm is being carried out and as such, it is necessary to protect his possession especially in view of the attempt made by Milan Seth to break open the lock. It is also admitted by the Petitioner that leave and license agreement has been executed in favour of Milan Seth and as such, the apprehension that third party rights would be created by the Petitioner cannot be said to be ill-founded. By the impugned order, the Appellate Court has restrained the Petitioner and Respondent No.2 from dispossessing the Respondent No.1 without following due process of law which cannot be faulted with considering the more than adequate material has been produced on record to *prima facie*

demonstrate the possession of the Respondent No.1 in the suit premises.

36. In view of the above, there is no infirmity in the impugned order. Petition is devoid of merits and stands dismissed.

(Sharmila U. Deshmukh, J.)