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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1050 OF 2022

WITH

INTERIM APPLICATION NO. 19843 OF 2022

IN

APPEAL FROM ORDER NO. 1050 OF 2022

Shree Babulnath Mandir Charities and othersAppellants

Versus

Lal Bahadur Tripathi and others ...Respondents

**Mr Pradeep Thorat, a/w Mr. Aniesh Jadhav i/b Ms. Aditi S.Naikare
for the Appellants.**

Ms Ridhima Margaonkar, i/b Mr. Vikas Pandey for Respondents.

**CORAM G.S. KULKARNI, J.
DATED: 9 FEBRUARY 2023**

PC:-

1. This appeal has been filed assailing the order dated 2 November 2022 passed by the learned Judge, City Civil Court at Mumbai on Notice of Motion No. 3991/2022 whereby interim relief of a temporary injunction in the following terms has been granted in the suit filed by respondent No. 1.

“ORDER

1. Notice of Motion No.3991/2022 in Suit No.2412/2022, stands allowed in following terms :

a. The plaintiff is permitted to retain the possession of Room No.2 of Pujari Chawl, allotted by the defendant Trust for a period of six months from the date of termination notice/letter i.e. 11/10/2022.

b. In the event of disposal of suit against the plaintiff, he shall pay the compensation/charges as mentioned in clause (7) of his Undertaking.

c. The plaintiff shall vacate the Room No.2 of Pujari Chawl after six months from 11/10/2022.

2. Notice of Motion is disposed off accordingly.”

2. Appellants are original defendant Nos. 1, 2 & 3 in the suit in question and are concerned for managing the affairs of a temple in South Mumbai known as ‘Babulnath Mandir’. Respondent No. 1 was appointed as a priest (Pujari) sometime in 2002 and as a service facility to enable him to perform his duties at the temple, he was allotted room No. 2 on 19 April 2004 in a chawl, described as the ‘Pujari Chawl’. For reasons which need not be gone into, appellant-Trust by its letter dated 11 October 2022 addressed to respondent No. 1, terminated his services. As a consequence of termination of the services, respondent No. 1 was required to handover vacant and peaceful possession of the service tenement which was permitted to be occupied by respondent No. 1 under the

terms and conditions of an undertaking furnished by respondent No. 1 dated 21 October 2004, copy of which is annexed at page 55 of the paper-book. The relevant paragraphs of the undertaking as furnished by respondent No. 1 are required to be noted which read thus:

“a) I confirm that the said room has been allotted to me to enable me to perform my duties efficiently and with sanctity attributable to my function as Pujari. The said room will be occupied by me as an employee of the Trust.

b) I have no right to use or occupy the said premises otherwise than as stated above and I confirm that I have no right, title interest; claim, lien, lease, tenancy licence or any other right to use or occupy the said premises or any other premises of the trust. The Trust shall always be deemed to be in possession of the said premises and in case of any breach of this Undertaking, the Trust shall be entitled to remove me or my belongings on the said premises and to retrain me and my family members from entering upon the said premises.

d) I and my family shall vacate the said premises, simultaneously with cessation of my employment with your Trust whether by retirement, resignation, termination of service, death, becoming unfit or handicapped to perform my duties or for any other reason whatsoever. I am aware that pujas have to be regularly and diligently performed from morning to evening and that these can be done efficiently only by a Pujari who is staying near the Temple. Accordingly, I understand that the dire need to vacate the said premises simultaneously with the cessation of my employment with your Trust. If for any reason in case I contend that my employment with your Trust has not ceased, this will not entitle me to continue to occupy the said premises. In case, in the opinion of the Trust, I should not occupy the said

premises because of any change in my duties, I shall immediately without raising any contention, vacate the said premises and handover the vacant possession thereafter to the Trust.”

3. The case of the appellant is that despite the services of respondent No. 1 being terminated on 11 October 2022, respondent No. 1 was not vacating the service tenement and when he was called upon to vacate the same, he filed the suit in question before the City Civil Court on which the impugned has been passed against the appellants.

4. Mr. Thorat, learned counsel for the appellants has drawn the attention of this Court to the impugned order wherein the Court has categorically recorded respondent No. 1’s contention that respondent No. 1 would not be pressing for any reliefs in regard to the respondent performing any duties as head Pujari arising from the termination and he would confine reliefs in the suit only to the extent of his possession of the suit tenement and that too for a period of six months.

5. Mr. Thorat has also drawn the Court’s attention to paragraph 8 of the impugned order whereby appellants statement that despite

an undertaking as furnished by respondent No. 1 the appellants would allow respondent No. 1 to retain a room for a period of three months was recorded. Such statement was made on the date of impugned order which came to be passed on 2 November 2022. Mr. Thorat submits that such period of three months has already come to an end.

6. The grievance of the appellants is that despite the clear position in regard to the lack of legal rights of respondent No. 1, no reason whatsoever has been assigned by the learned Trial Judge in passing the impugned order. It is his submission that it is also contrary to the respondent's undertaking furnished by respondent No.1 to the appellant as a condition to occupy the tenement in question. He therefore submits that interim order for twofold reasons would be required to be held to be illegal. Firstly, that it assigns no reasons and secondly it is *ex facie* contrary to the documents on record and more particularly the undertaking of the respondent in occupying the premises. He has accordingly prayed for setting aside of the said order.

7. On the other hand, learned counsel for respondent No. 1 has submitted that respondent No. 1 now in fact intends to withdraw the Suit on the adjourned date of hearing, which is stated to be on 20 February 2023. She submits that till such time, respondent No. 1 be permitted to have the protection of the impugned order. Although the proceedings were kept back for her to take appropriate instructions and more particularly in the light of the limited legal rights which were available to respondent No. 1, she is surprisingly unable to take any instructions.

8. Mr. Thorat, learned counsel for the appellants in responding to submissions as urged on behalf of respondent No. 1 would submit that it is not in fitness of things that any further extension to vacate the tenement up to 20 February 2023 is sought for by respondent No. 1. He has pointed out that in the intervening period there is festival and there is urgent need for the priest who has now appointed in place of respondent No. 1, to occupy the tenement so as to be within the temple premises. It is his submission that respondent No. 1 not vacating the tenement would cause a serious prejudice for such reason.

9. Having heard learned counsel for the parties and having perused the impugned order, in my opinion, there is much substance in the contention of Mr. Thorat. At the outset it is required to be observed that respondent No. 1 was allotted the tenement in question only as a service benefit for discharge of his duties as the priest. His occupation of his tenement was co-terminus with his appointment as seen from the undertaking as furnished by respondent No. 1. The terms and conditions of the undertaking as submitted by Respondent No. 1 in that regard are absolutely clear that respondent No. 1 would not have any legal right to continue to be in occupation and/or retain the possession of the tenement in question, after his services were terminated. There is no dispute that the services of respondent No. 1 stood terminated. It also does not appear to be in dispute that new priest has been appointed who is discharging duties in place of respondent No. 1. In such situation, what was *prima facie* required to be seen by the learned Trial Judge in passing the impugned order was to the effect that respondent No. 1 had no legal right to retain possession of the tenement. From the reading of the impugned order it appears that that the learned Trial Judge dehors the legal rights of respondent No.1, which could be the only

consideration to pass an order of a temporary injunction, has in fact, passed an order on pure equity. This was certainly not the jurisdiction of the learned Trial Judge in the facts and circumstances of the case, when the appointment of respondent No. 1 itself was contractual. It is also seen from the undertaking that respondent No. 1 has permanent address at Nalasopara, thus it is not the case that he has no premises in Mumbai. Hence, even on this ground, there is no prejudice to respondent No. 1.

10. For the aforesaid reasons, in my opinion, certainly there was no warrant whatsoever in law, much less *prima facie* case being made out by respondent No. 1 for grant of a relief as granted by the impugned order.

11. The appeal accordingly needs to succeed. The impugned order dated 2 November 2022 passed by learned Judge, City Civil Court, Mumbai is quashed and set aside. Respondent No. 1 is directed to hand over the possession of the tenement in question to the appellants by Monday i.e. 13 February 2023 by 12.30 p.m. If the premises are not vacated as directed, liberty to appellants to apply at 2.30 p.m. of 13 February 2023.

12. Advocate for respondent No. 1 is directed to communicate this order to her client-respondent No. 1 for compliance.

13. Appeal stands disposed of in the above terms. No costs.

14. In view of disposal of Appeal, Interim Application also stands disposed of.

(G.S. KULKARNI, J.)