

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 164 OF 2019  
WITH  
CIVIL APPLICATION NO. 196 OF 2019

Ramyash Mahavir Dubey and Ors. ...Appellants  
Versus  
Smt. Rajkumari Santosh Gupta and Anr. ...Respondents

...  
Mr. Pradeep J. Thorat, for Appellants.  
Mr. Rajendra Bhandari, for Respondents.  
...

CORAM : SANDEEP V. MARNE, J.  
DATE : SEPTEMBER 27, 2023.

P.C.:

1. Admit. With the consent of the learned counsels for the parties, the Appeal is taken up for final disposal.
2. By this Appeal, Appellants challenge order dated 3 December 2018 passed by the City Civil Court making Notice of Motion No.3844 of 2017 absolute in terms of prayer clause (a), which reads thus,

“(a) Pending the hearing and final disposal of the suit, this Hon’ble Court will be pleased to direct the defendants to remove their lock forthwith from the suit premises and not to disturb and interfere in any manner or obstruct and prevent in any manner from using the suit premises to plaintiffs their agents and servants from carrying on business in the suit premises viz. shop premises first floor area admeasuring about 15X10 bearing No.A-2 (A-C) Naik Nagar, Opp. Sion Railway Station, L.B.S. Marg, Sion West, Mumbai 400 022.”

3. I have heard Mr. Thorat, the learned counsel appearing for the Appellant and Mr. Bhandari, the learned counsel appearing for the Respondents.

4. Plaintiffs have instituted S.C. Suit No.863 of 2015 seeking injunction against the defendants from dispossessing them in respect of the suit premises being a Shop situated on the first floor of the building. In the suit, Plaintiffs filed Notice of Motion No.1437 of 2015 seeking temporary injunction against defendants from dispossessing them from the Shop. By order dated 15 April 2015, the City Civil Court dismissed Notice of Motion No.1437 of 2015 *inter alia* observing that, the Plaintiffs claiming to be partners, cannot be in exclusive possession of the suit Shop. Appeal from Order (St.) No.14325 of 2015 filed by Plaintiffs challenging order dated 15 April 2015 was rejected by this Court by order dated 29 June 2015.

5. In the above backdrop, Plaintiffs filed Notice of Motion No. 3844 of 2017 seeking further interim orders complaining that the Defendants had put a lock at the suit Shop and were preventing the entry of the Plaintiffs therein. Plaintiffs sought appointment of Court Commissioner and the City Civil Court appointed Court Commissioner for inspection of the suit Shop. The Court Commissioner paid a visit to the suit Shop on 8 July 2018, when

both Plaintiff No.2 as well Defendants produced keys of the locks put on the shutter of the suit Shop. The report of the Court Commissioner would indicate that Mr. Santoshkumar J. Gupta, Plaintiff No.2 was also in possession of keys of the lock put on one of the shutters of the Suit shop. It is therefore difficult to believe that the entry of Plaintiffs to the suit Shop was in any manner prevented by the Defendants. It also appears that after rejection of Notice of Motion No.1437 of 2015 on 15 April 2015 and after dismissal of the Appeal from Order on 29 June 2015, Plaintiffs executed Leave and License Agreement dated 21 September 2015 in favour of one Mr. Pankaj Kailash Candra Shrivastava for grant of license in respect of the suit shop for a period of five years for license fees of Rs.20,000/-per month. Thus, though the prayer of Plaintiffs for exclusive possession of the suit Shop was rejected by order dated 15 April 2015, Plaintiffs attempted to give the suit shop on Leave and License on 21 September 2015.

6. Plaintiffs filed Notice of Motion No.3844 of 2017 by painting a picture as if their entry to the suit Shop was prevented by the defendants. Even this allegation got disapproved when the Court Commissioner paid a visit to the suit Shop on 8 July 2018 and Plaintiff No.2 handed over keys of the lock to the Court Commissioner.

7. The City Civil Court, without taking into consideration the fact Plaintiff No.2 had keys of the lock, recorded a finding that the Defendants misused the order dated 15 April 2015 as confirmed by this Court and put a lock on the suit premises. The City Civil Court has not taken into consideration the fact that Plaintiff No.2 also had keys of the said lock. Therefore, the order passed by the City Civil Court for removal of that lock clearly suffers from the vice of perversity. Far from Defendants preventing entry of Plaintiffs in the suit shop, it appears that the Plaintiffs have attempted to claim exclusive possession of the suit shop by executing Leave and License agreement dated 21 September 2015 despite rejection of Notice of Motion No.1437 of 2015 on 15 April 2015.

8. In such circumstances, no case was made out by the Plaintiffs for grant of any equitable relief of temporary injunction in Notice of Motion No.3844 of 2017. The order passed by the City Civil Court on 3 December 2018 is thus indefensible.

9. The Appeal is accordingly allowed. The Order dated 3 December 2018 passed by the City Civil Court in Notice of Motion No.3844 of 2017 is set aside.

10. In view of disposal of Appeal, Civil Application No.196 of 2019 does not survive and stands disposed of.

**(SANDEEP V. MARNE, J.)**