

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7281 OF 2022

Govind S/o. Kantilal Bagdiya,
Aged about 52 years, Occ. Business,
R/o. Gajanan Nagar, Risod, Tq. Risod,
Dist. Washim.

.... **PETITIONER.**

// VERSUS //

Rahul S/o. Vijayrao Sarnaik,
aged about 37 years, Occu.Business,
R/o. Village Chinchamba-pen,
Tq. Risod, Dist. Washim.

.... **RESPONDENT.**

Shri Devendra V. Chauhan, Advocate for Petitioner.
Shri V.B.Bhise, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 10, 2023

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The interim injunction restraining the petitioner/ defendant temporarily from disturbing the peaceful possession of the respondent/ plaintiff over the suit property, granted by the trial Court and upheld by the lower appellate Court, is the subject matter of this petition. The petitioner, accordingly raised a question to the correctness and legality of the judgment and order dated 22/11/2022 passed by the District Judge-2, Washim in Misc. Civil Appeal No.34 of 2022 and Misc. Civil Appeal No.35 of 2022 confirming the order dated 05/11/2022 passed below Exh.5 by the Joint Civil Judge Junior Division, Risod in Regular Civil Suit No.72 of 2022 and Regular Civil Suit No.78 of 2022.

The brief facts, are as follows:

4. The suit property is a Marriage Hall / Mangal Karyalaya ("J.B. Bhavan"), admeasuring 65000 sq.ft. owned by the petitioner. It is the case of the respondent/ plaintiff that in the year 2016 the plaintiff and defendant entered into a rent agreement in respect of the suit property and accordingly the possession of the suit property was handed over to the plaintiff by the defendant. The rent agreement was initially for the period of five years and agreed rent was Rs.30,00,000/- for five

years, out of which Rs.15,00,000/- was to be paid in the month of August 2017 and remaining Rs.15,00,000/- in the month of March 2018. It is further stated that both the parties amicably made changes in the said agreement on 29/05/2017 and thereby the plaintiff agreed to construct the compound wall, gate, stage and also developed trees by his expenses. It was agreed that the electricity bill will be paid by both equally. The rent agreement was handwritten. It is further stated that the plaintiff accordingly constructed the compound wall and for that he borne expenses up to Rs.10,00,000/-, including tree plantation.

5. It is further the case of the plaintiff that, for the purpose of opening bank account and as the bank wanted agreement on stamp paper, therefore, on 01/11/2018 another agreement was executed in which the period was shown from 01/11/2018 up to 01/10/2022 i.e. for four years @ Rs.10,00,000/- per month. It is stated that as the plaintiff already paid Rs.30,00,000/-, therefore, only Rs.10,00,000/- was shown as balance payment till October, 2018. The said agreement is in the custody of Buldana Urban Cooperative Society Branch Risod.

6. Thereafter the plaintiff sustained huge losses due to pandemic and he therefore, requested the defendant to consider the

losses suffered by him and accordingly an agreement dated 19/11/2021 was executed and the time period of earlier agreement which was to be ended in October 2022, was extended till June 2023 and as per that agreement the plaintiff paid Rs.5,00,000/- to the defendant on 31/01/2022. It is submitted that, thereafter, again another agreement was executed as per the fresh period agreed between the defendant for the period from 31/01/2022 till June 2023 and as the plaintiff already paid Rs.5,00,000/- it was further agreed that Rs.2,75,000/- shall be paid by the plaintiff to the defendant within 12 months. However, on 31/03/2022 the plaintiff came to know that the defendant without consent of the plaintiff accepted the bookings and on the said issue a quarrel took place between them and on 02/04/2022 when the plaintiff was sitting in the office along with the staff the defendant and his brother Aatish Kantilal Bagadiya entered into the office and forcibly taken amount of Rs.1,50,000/- from the office drawer of the plaintiff and assaulted the plaintiff and his staff and driven out the plaintiff and his staff from the suit property and threatened the plaintiff with dire consequences and thereby forcibly dispossessed the plaintiff from the suit property and locked it. Thereupon, a complaint was lodged by the plaintiff with Police Station, Risod.

7. On 05/04/2022 the plaintiff was called by a police official in the Police Station for inquiry and pressurized the plaintiff to amicably settle the matter and under the said prayer a document came to be typed and kept before the plaintiff and he was insisted to make signature over it. The said document is in the custody of the defendant as the contents of the same were not allowed to read, the plaintiff is not known about the contents of the said document. Thereafter from 06/04/2022 the defendant himself regularly, is opening and closing the suit property by using his locks, though the suit property is in possession of the plaintiff.

8. On 20/06/2022 the defendant threatened the plaintiff that he has to vacate the suit property on 30/06/2022 and on resistance by the plaintiff that, as per the Agreement dated 31/01/2022 the plaintiff is entitled to remain in possession till 30/06/2023, the defendant insisted the plaintiff to vacate the suit property and if not vacated the action will be taken through police.

9. Thereupon, the suit for declaration and permanent injunction was filed along with Application Exh.5 for temporary injunction with a prayer to grant temporary injunction restraining the

defendant, his legal heirs, agents, representatives or anybody claiming through him from disturbing the peaceful possession of the plaintiff over the suit property in any mode or manner without following due process of law, till decision of the suit.

10. The defendant/ petitioner filed written statement/ reply to Exh.5 claiming that the defendant received possession on 30/06/2022 and since then he is in possession of the suit property and he placed much stress for this purpose on the agreement dated 05/04/2022.

11. On the other hand, the defendant also filed another suit for permanent injunction vide Regular Civil Suit No.78 of 2022 before Civil Judge Junior Division at Risod against the respondent praying for permanent injunction by restraining the respondent or anybody on behalf of the respondent from creating obstruction on the suit property. The petitioner also filed an application Exh.5 under order 39 Rules 1 and 2 of the C.P.C. claiming temporary injunction to which the respondent filed his written statement-cum-reply.

12. The learned trial Court heard both Exh.5 filed by the petitioner and the respondent in their respective suits and allowed the application Exh.5 filed by the respondent in Regular Civil Suit No.72 of 2022. Whereas, the application Exh.5 filed by the petitioner along with Regular Civil Suit No.78 of 2022, came to be rejected and thereby the petitioner was directed not to disturb the peaceful possession of the respondent over the suit property.

13. The petitioner, feeling aggrieved by the same, preferred appeal viz. Misc. Civil Appeal No.34 of 2022 against order below Exh.5 passed in Regular Civil Suit No.72 of 2022 and Misc. Civil Appeal No.35 of 2022, challenging the order below Exh.5 in Regular Civil suit No.78 of 2022.

14. Both the Misc. Civil Appeals were heard together and it was decided by the impugned judgment and order dated 22/11/2022, rejecting both the Miscellaneous Civil Appeals vide judgment and order dated 22/11/2022, the same is under challenge in the present writ petition.

15. I have heard the learned counsel for the respective parties.

16. Shri Chauhan, learned counsel for the petitioner submits that as in the suit as well as in the application for temporary injunction filed by the respondent it is his own stand that the defendant has taken forcible possession and since in the reply filed to the Regular Civil Suit filed by the petitioner along with application Exh.5, the respondent maintained the said stand, in absence of the possession of the respondent over the suit property, grant of injunction in favour of the respondent restraining the plaintiff from disturbing possession of the respondent over the suit property and rejecting the application Exh.5 filed by the petitioner for temporary injunction against the respondent is erroneous, illegal and bad in law.

17. It is submitted that the injunction restraining the petitioner from disturbing possession of the respondent ought not to have been granted without the respondent's case that he was in actual possession of the suit property on the date of filing of the suit. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Balkrishna Dattatraya*

Galande ..vs.. Balkrishna Rambharose Gupta, reported in (2020) 19 SCC 119.

18. On the other hand, the learned counsel for the respondent argues that there are concurrent findings recorded by both the Courts below while granting injunction in favour of the respondent. He has pointed out the findings recorded by both the Courts below holding that no document has been produced by the petitioner to show that the possession was handed over by the respondent to the petitioner contrary to the agreements entered into between them. He, therefore, submits that unless there is any miscarriage of justice or any perversity, this Court can interfere with the concurrent finding recorded while granting injunction.

19. It is submitted that as per the last agreement, the respondent is entitled to continue his possession till June 2023 and the pleadings are not to the effect that the possession was given by the respondent to the defendant but the pleadings in the suit of the respondent are to the effect that the defendant took forcible possession.

20. It is submitted that, as far as the agreement got to be executed by the appellants forcibly the contents of the same are not

known to the plaintiff. He therefore, submits that if by way of the said agreement the period of earlier agreements is curtailed, the same cannot be considered for the purpose of deciding the rights of the respondent. He, accordingly, submits that no error has been committed by both the Courts below in dismissing the application Exh.5 filed by the petitioner and allowing the application for temporary injunction filed by the respondent.

21. The learned counsel for the respondent submits that it is a settled law that when a person is in settled possession of the property even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by taking recourse to law. It is submitted that the petitioner forcibly entered into the suit property and had driven out the respondent and therefore, in the peculiar facts of the present case, both the Courts below have rightly granted injunction in favour of the respondent. In support of his submission he has placed reliance on the judgment of the Supreme Court of India in the case of *Krishna Ram Mahale ..vs.. Shobha Venkat Rao*, reported in **1989 Mh.L.J. 1130**.

22. In the light of the rival submissions of the parties advanced before this Court, I have perused the writ petition, documents filed along with it and the impugned judgment and orders.

23. Both the Courts, after going through the pleadings and the documents filed on record have held in favour of the respondent that the respondent has made out a *prima-facie* case, the balance of convenience is in favour of the respondent and if the temporary injunction is not granted, the respondent would suffer irreparable loss.

24. Both the Courts below have considered the pleadings of the petitioner whereby he admitted that on the rent basis possession was given to the respondent. Even in the Agreement dated 05/04/2022 which alleged to have been forcibly got signed by the respondent by the Police and the petitioner, language of the same also indicates that the suit premises was handed over to the respondent on a rent basis.

25. Thus, the learned lower appellate Court has reached to the conclusion that there was a relation of landlord and tenant between the petitioner and the respondent.

26. There is a document showing that on 30/06/2022 the petitioner obtained the possession from the respondent. Whereas, the respondent has filed many documents to show the bookings accepted by the respondent and also a huge amount paid by the respondent to the petitioner towards rent.

27. It is pertinent to take note of the judgment of the Hon'ble Apex Court, wherein the facts of the present case and the facts in said case namely *Krishna Ram Mahale* (supra) are similar and the Hon'ble Supreme Court of India by relying on the judgment of Privy Council in the case of *Midnapur Zamindary Co. Ltd...vs.. Naresh Narayan Roy*, reported in **AIR 1924 PC 144**, has observed that "*In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.*"

The Hon'ble Supreme Court of India further observed thus:

"9... In such circumstances, the law required that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the plaintiff entering upon the premises as a trespasser

at all, as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. ...”

28. In the present case, considering the fact that the respondent was in possession as per the rent agreement executed in his favour by the petitioner and as per the copies of the agreement which are in custody of the Buldana Urban Cooperative Bank, the date of surrender of possession is June 2023.

29. Thus, the possession taken by the petitioner without recourse to law is not permissible and thus, it is clear that the petitioner has unlawfully obtained possession of the suit premises. In the circumstances, the argument advanced by the learned counsel for the petitioner that as from the pleadings of the respondent it is clear that he is not in possession of the suit property, therefore, he is not entitled for grant of injunction, cannot be accepted and hence, it is rejected.

30. The Hon'ble Supreme Court of India in the case of *Esha Ekta Apartments CHS Ltd...vs.. Municipal Corpn. of Mumbai*, reported in (2012) 4 SCC 689, has held thus :

“19. We have considered the respective submissions and carefully scrutinized the record. The scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance has been considered by this Court in several cases. In Wander Ltd. v. Antox India (P) Ltd., the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations:

"14. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

31. From the observations of the Hon'ble Supreme Court of India and after going through the findings recorded by both the Courts

below I do not find any perversity committed by the learned both the Courts below. Thus, considering the limited scope of interference I do not find any merit in the present writ petition.

32. The judgment cited by the learned counsel for the petitioner in the above referred facts and circumstances is distinguishable and is of no help to the petitioner.

Accordingly, the Writ Petition is **dismissed**. No order as to costs.

33. At this stage, Shri Chauhan, learned counsel for the petitioner prays for continuation of interim order granted by this Court vide order dated 24/11/2022 for four weeks. He states that the suit property is a marriage hall and as the interim order was operating in favour of the petitioner, he has accepted bookings for marriage functions or other functions.

34. Shri Bhise, learned counsel for the respondent strongly opposed the prayer for continuation of interim relief.

35. Considering the fact that the agreement between the petitioner and respondent will come to an end on June, 2023, initially, I was not inclined to continue the stay, as it would amount to curtailing the rightful claim of the respondent to continue with the possession as per the agreement, however, as the petitioner agreed to follow the arrangement namely, whatever amount received by the petitioner for such bookings he shall pay it to the respondent, if the petitioner fails in Special Leave Petition before the Hon'ble Supreme Court of India.

The list of bookings accepted by the petitioner shall be filed in this Court on or before 15/02/2023.

36. In the circumstances, the stay granted by this Court vide order 24/11/2022 shall continue for four weeks, on expiry of the same, it shall automatically come to end.

The aforesaid undertaking of the petitioner is accepted. In case of any adverse order, the petitioner undertakes to make payment of the aforesaid amount within four weeks, from the date of such adverse order.

(ANIL S. KILOR, J)