

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 763 OF 2024**

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Jasbir Singh Vijan.)
Aged 77 years, Indian Inhabitant,)
Occupation : Business, having his)
address at 14/3, Union Park,)
Chembur, Mumbai 400 071 and at)
Jani Estate, Ghatla Village,)
Chembur, Mumbai 400 071,)
Mobile : 98200 312280)
Email ID : jasbirsinghvijan@gmail.com)

..... Petitioner
(Org. Plaintiff)

VERSUS

1. Tushar Himatlal Jani,)
Age 61 years, Indian Inhabitant,)
Occupation : Business, having his)
Address at C/o. Jani Estate,)
Ghatla Village, Chembur,)
Mumbai 400 071)
2. Silver Chem (India),)
a partnership firm, registered under)
the provisions of Indian Partnership)
Act, 1932 and having its office at)
311, Anant Deep Chamber,)
Narsi Natha Street (Bhat Bazar),)
Mumbai 400 009 and at Jani Estate)
Ghatla Village, Chembur,)
Mumbai 400 071)
3. Sunder Singh Vijan,)
Partner – Silver Chem (India))
Age 80 years, Indian Inhabitant,)

Occupation : Business, having his)
Address at Jani Estate, Ghatla Village)
Chembur, Mumbai 400 071)

4. Baldev Singh Vijan,)
Partner – Silver Chem (India))
Age 68 years, Indian Inhabitant,)
Occupation : Business, having his)
Address at Jani Estate, Ghatla Village)
Chembur, Mumbai 400 071)

5. Jagjit Singh Vijan,)
Partner – Silver Chem (India))
Age 68 years, Indian Inhabitant,)
Occupation : Business, having his)
Address at Jani Estate, Ghatla Village)
Chembur, Mumbai 400 071)

6. Silver Chem Industries (Bombay))
Pvt. Ltd. A company incorporated)
under the Companies Act, 1956)
and existing under the Companies)
Act, 2013 and having its office at)
406, Faiz-E-Qutb, 375 Narsi Natha)
St., Mumbai 400 009 and at)
Jani Estate, Ghatla Village, Chembur)
Mumbai 400 071)

..... Respondents
(Org. Respondents)

Mr.Mayur Khandeparkar a/w. Mr.Aniesh Jadhav, Mr.Medhavin Bhatt, Mr.Christopher D'souza i/b. MV Law Partners for the Petitioner.

Mr.Atul Damle, Senior Advocate a/w. Mr.Kunal Damle for the Respondents.

CORAM: RAJESH S. PATIL, J.

RESERVED ON : 5 MARCH, 2024

PRONOUNCED ON : 30 JULY, 2024

JUDGMENT :-

RULE. Rule is made returnable forthwith and with consent of parties, the matter is taken up for final hearing.

2. This writ petition is filed under Article 227 of the Constitution of India by the petitioner, who is the original plaintiff in R.A.D.Suit, challenging the judgment and order dated 20 December, 2023 passed by the Appellate Bench of the Court of Small Causes, Mumbai in Misc. Appeal No. 54 of 2023, thereby allowing the Miscellaneous Appeal which was filed by the original defendant no.1. The impugned judgment and order dated 20 December, 2023 set aside the judgment and order dated 10 May, 2023 passed by the Single Judge of the Court of Small Causes on order below Ex.'10', in R.A.D.Suit No. 519 of 2023.

FACTS :-

3. The premises admeasuring 550 sq.ft., undivided area out of

total area of 2,200 sq.ft. (for short 'the suit premises') is the suit premises situated at land bearing C.T.S. Nos. 443 (Part), 451 (Part), 452 (Part) at Vittalwadi, Ghatala, Chembur, Mumbai – 400 071, being larger area admeasuring 22,000 sq.ft. The parties are hereafter referred to as per their nomenclature before the Trial Court for convenience.

4. The plaintiff had filed a suit for declaration of his tenancy rights in respect of the suit premises, being an undivided area of partnership firm M/s. Silverchem (India) – defendant no.2. The said R.A.D. Suit No. 519 of 2023 was filed on 25 April, 2023. Along with the plaint, the plaintiff also filed application Ex.'10', praying therein to restrain defendant no.1 (landlord) from disposing the plaintiff forcefully from the suit premises and also further restraining the plaintiff from entering upon or demolishing the suit premises without following due process of law.

5. On 27 April, 2023, an *ad-interim* order was passed in

favour of the plaintiff on Exh. '10', thereby restraining the landlord from forcefully disposing the plaintiff from the suit premises, without following due process of law. After reply and rejoinder were filed by the parties, the Trial Court, heard parties on Exh. '10', and by its order dated 10 May, 2023, confirmed the *ad-interim* relief granted earlier.

6. Being dissatisfied, the landlord filed Misc. Appeal No. 54 of 2023, before the Division Bench of the Small Causes Court, challenging the order dated 10 May, 2023, passed below Exh.'10'. The Appellate Bench, heard both the sides, and by their order dated 20 December, 2023, set aside the order passed by the Trial Court. The present writ petition is filed by the original plaintiff, challenging the order passed by the Appellate Bench of the Small Causes Court.

SUBMISSIONS :

7. Mr. Mayur Khandeparkar on behalf of the petitioner made his submissions :-

(i) He submitted that the petitioner is in de jure possession of the suit premises.

(ii) He submitted that the Supreme Court has recognized the right of the petitioner in the suit premises, pursuant to the family settlement agreement, in its order dated 29 October, 2021.

(iii) Mr. Khandeparkar submitted that the petitioner had also signed as a licensor in the leave and license agreement dated 15 October, 2021 executed in favour of KMG Global as licensee. He submitted that without the knowledge of the petitioner, the rest of the signatures of the Agreement (brothers of the petitioner) surrendered their right in the suit premises. He submitted that a right of a licensor does not come to an end just because other licensors have surrendered their rights in the tenanted premises to the superior landlord. He submitted that hence, the right of the petitioner

requires to be protected. Therefore, a fresh Leave and Licence Agreement dated 11 April, 2023, could not have been entered into between superior landlord as licensor and KMG Global as licensee.

8. Mr. Atul Damle, learned Senior Advocate appearing on behalf of the respondent-landlord made his submissions :-

(i) Mr. Damle submitted that the petitioner is not in possession of the suit premises as according to the petitioner KMG Global is carrying on business in the suit premises, pursuant to the leave and license agreement 11th April 2023.

(ii) Mr. Damle submitted that since the tenant M/s. Silverchem (India), surrendered their tenancy of a larger property including the suit premises in the year 2022, the landlord applied for withdrawal of the eviction suit filed by them. The petitioner had filed second application, joining him as party in the

Landlord's eviction suit, based on Supreme Court's order and the family settlement agreement. The Trial Court by its order rejected the submission of the petitioner relying upon the earlier order passed by the Revisional Court on 3rd May, 2019 on an earlier application for joining as party in landlord's eviction suit which was rejected.

ANALYSIS AND CONCLUSION :-

9. I have heard counsel for both the sides and with their help, I have gone through the documents on record.

10. The petitioner herein is the original plaintiff who had filed the R.A.D. suit (for declaration of tenancy) against the landlord, in which an interim application Ex.10 was filed seeking injunction to restrain the landlord from entering, remaining or demolishing the premises without following the due process of law.

11. Admittedly, the landlord has not filed as of today any eviction suit against the petitioner, either in the Small Causes Court under the Rent Act or under the Presidency Small Causes Act. Neither the landlord has filed a eviction suit in the Civil Court terming the petitioner as a trespasser. Earlier in the year 2008 the landlord had filed T. E. suit against the partnership firm, in which the petitioner claims to be a partner. The said T. E. suit for eviction filed by the landlord was withdrawn by the landlord being the plaintiff of the said suit on 13th January, 2023. The day when the landlord withdrew the said suit, the intervention application of the petitioner, for impleading him as a party to the said suit was pending. The said intervention application was filed taking into consideration the order dated 29 October, 2021, passed by the Supreme Court, recording the Family Settlement being entered into between the petitioner and his brothers as the partners of a partnership firm, which was recognized as the tenant of the suit premises by the landlord.

12. The Family Settlement Agreement dated 9 June, 2021, was

entered into between the petitioner and his brothers pursuant to a mediation process which was successful before the mediator, Retired Chief Justice Shri S.J.Vazifdar. The said family settlement recognized the right of the petitioner, in clause no.4.2(b) as being entitled for an area of 550 sq.ft. out of the total area of 2,200 sq.ft. The said clause no.4.2(b) of the settlement agreement, reads as under:-

4.2(b) Silver Chem Industries (Bombay) Pvt. Ltd: Out of the total area of 22,000 sq. ft the following shall be in manner in which the division and bifurcation shall take place:

It is hereby agreed that out of the total area of 22,000 sq. ft., Harvinder will keep an area of 16,300 sq. ft and Surjit will keep an area of 3,500 sq. ft. Thus, Harvinder and Surjit shall be entitled to receive right, title, interest, free of any encumbrances in the land and property of Silver Chem Industries (Bombay) Pvi. Lid equivalent to 16,500 sq. ft & 3,500 sq. ft respectively out of the total area of 22,000 sq. ft. Surjit is currently a recalcitrant family member and accordingly the executing parties have agreed that the area of 3,500 sq. ft. will be held in the joint names of Avinder, Jagjit and Jasbir in trust for Surjit (who is the beneficiary of the said area of 3,500 sq.ft.) pending her consent and adherence with the terms and conditions hereof.

It is hereby agreed that Surinder will keep an area of 550 sq. ft, Jasbir will keep an area of 550 sq.ft.,

Avinder will keep an area of 550 sq. ft. and Baldev will-keep an area of 550 sq. ft. out of the total area of 22,000 sq.ft. i.e. Surinder, Avinder, Jasbir and Baldev shall be entitled to receive right, title, interest, free of any encumbrances in the land and property of Silver Chem Industries (Bombay) Pvt. Ltd (also known as Courier Centre) equivalent to 2,200 sq. ft. out of the total area of 22,000 sq. ft.

[Emphasis supplied]

13. Though the landlord has come with a case that the tenants of the suit premises have handed over peaceful possession of the suit premises, however the fact remains that the petitioner and his brothers together entered into an leave and licence agreement dated 15th October, 2021 with one Mr.Vineet Ajit Gandhi, as a proprietor of KMG Global. Thereafter, it appears that the brothers of the petitioner by a letter dated 19th October, 2022 surrendered the tenancy right to the superior landlord.

14. The surrender letter of tenancy by the brothers of the petitioner, does not mention or carve-out any area describing the property which they have surrendered. By an e-mail dated 28th December, 2022 and letter dated 4th April, 2023 the landlord

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accepted that the petitioner is in possession of the suit premises as a trespasser. A scanned copy of the e-mail dated 28th December, 2022 is reproduced hereinbelow :-

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From: Mitesh Parekh <advmiteshparekh@gmail.com>
Date: 2 May 2023 at 5:35:54 PM IST
To: Parvinder <psvilan@gmail.com>
Subject: Fwd: Need MTC and SilverChem docs in Word format

Dear Mr Jasbir Singh,

As requested, please find below for your information and record the communication as received from Pandya Juris LLP representing Tushar Jani & Ors.

Regards
Mitesh Parekh

Sent from my iPhone

Begin forwarded message:

From: Hanish Talsania <hanish.talsania@pandyajuris.com>
Date: 28 December 2022 at 12:08:50 PM IST
To: advmiteshparekh@gmail.com
Cc: Nimish Pandya <nimish.pandya@pandyajuris.com>
Subject: Re: Need MTC and SilverChem docs in Word format

Hi Mitesh,

In light of you having informed me that your client Jasbir would not like to handover possession till CC is received, please let me know if the changes in documents we discussed yesterday are required to be carried out at this stage.

Best regards,
Hanish Talsania
Pandya Juris LLP
(T): +91 22 67088720
+91 22 67088721

Map Location: <https://goo.gl/maps/XE5jNHPS6Wv>

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15. The letter dated 4 April, 2023, relevant paragraph reads as under:-

2. With respect to paragraph No.2, your client is not entitled to inspect any records of our client with respect to the suit property as he is a rank trespasser and against whom our client has already filed a police complaint. Further, our client has not relied upon the said surrender deed(s) and/or such other agreement(s) with respect to the suit property in the said suit and hence the same cannot be called upon in inspection by your client. If your client is interested in inspecting any documents with respect to his other brothers, he is free to seek the same from them directly.

[Emphasis supplied]

16. So also the affidavit of the landlord dated 6 March, 2023 in paragraph no. (2) and paragraph no.(4) admits that the petitioner along with M/s.Asset Motors are in possession of the suit premises as a trespasser. Paragraph no. (2) and paragraph no. (4) of the affidavit dated 6 March, 2023 reads as under :-

2. I say that it has been amply clarified hereinbelow that this Hon'ble Court in its order dated 3rd May 2019 has clearly held that the Defendant No. 1 is not a partner of the firm M/s Silver Chem (India) who were my tenants. I say that the contention of Defendant No.1 that he was in possession of any part of the suit premises in the Suit filed by me being Suit No. 119/148/2008 has also been rejected as set out hereinafter. I say that all my submissions made hereinafter are on the basis that the Defendant No.1 was never part of the firm M/s Silver Chem (India)

who were vested with tenancy rights in the suit property.

I say that the Defendant No.1 as set out hereinafter had no authority or right in law to execute a Leave and License Agreement in favour of his own company in which his wife and son are Directors. In my submission, the Defendant No. 1 and the Plaintiff are rank trespassers on my suit property and have committed criminal trespass by entering upon my property.

4. *I say that it is pertinent to note that the Plaintiff and Defendant No. 1 have colluded and are contemptuously taking the Hon'ble Court for a ride and are inducing this court to be party to endorsing a fraudulent consent terms on record so that it can be misused later by fraudulently trying to establish illegal possession and non-existent right when in essence the Defendant No.1 and the Plaintiff are both trespassers on the suit property. The Plaintiff is a company constituted by the wife and son of Defendant No. 1 i.e. Parwinder Singh. It is important to note that the registered address of the Plaintiff Company is the residential address of Defendant No. 1 and in the latest electricity bill as on month of 07.01.2023 stands in the name of Jasbir Singh Vijan as Assets Motors Private Limited. This fact is fraudulently suppressed from this Hon'ble Court. It is preposterous to believe the allegation in the suit that the wife and son who are directors of the Plaintiff are alleging that the Defendant No. 1 who is the husband and father of the only directors of the Plaintiff is colluding with me i.e., Defendant No. 2 to oust the wife and the son from the suit premises. I crave leave to refer to and rely upon the relevant document of the Plaintiff Company when produced.*

[Emphasis supplied]

17. The Trial Court while deciding the application Ex.10 of the petition, had allowed the application of the petitioner and had directed the landlord to follow due process of law. However, the Appellate Court has reversed the order passed by the Trial Court.

18. Once the landlord admits that the petitioner is in possession of suit premises, though according to the landlord he is a trespasser, and according to the petitioner he is a tenant/joint tenant of the suit premises, the only way possession can be taken away from the petitioner is by filing an suit to vacate the petitioner, by the landlord of the suit premises. The said suit can be a suit for eviction under the Rent Act/Presidency Small Causes Court Act, or a civil suit before the Civil Court terming the petitioner as a trespasser. However, in the present proceeding, an eviction suit admittedly is not filed. In such a situation, according to me the Trial Court was right in protecting the right of the petitioner with regard to the suit premises and granting him an injunction during the pendency of declaratory suit. However, the Appellate Court did not take into

consideration the said fact.

19. The leave and license agreement in favour of KMG Global was signed as licensors by four persons/brothers including the petitioner. However, except the petitioner, rest of the persons/brothers have surrendered the tenancy by letter dated 19 October, 2022. Therefore, the right of the petitioner in the suit premises remains. KMG Global, who came in possession of 2,200 sq.ft. of the premises (which included 550 sq.ft. of suit premises), via Leave and Licence Agreement dated 15 October, 2021, could not have entered into fresh Leave and License Agreement dated 11 April, 2023 with superior landlord.

20. In my view taking into consideration various statements made by the landlord that the petitioner is in possession of the suit premises as a trespasser, is an admission on the part of the landlord, that the petitioner is in possession of the suit premises. There is no document on record neither it is anybody's case that there was a partition between the brothers as to which part of the premises would come in the share of the petitioner of the suit

premises. In such a situation, I am of the view that the judgment and order dated 20 December, 2023 passed by the Appellate Bench of the Court of the Small Causes requires to be quashed and set aside and the judgment and the order dated 27 April, 2023 passed by the Trial Court requires to be confirmed.

21. The landlord – respondent no.1, is hereby restrained from demolishing/dispossessing the petitioner or creating any kind of third party interest in the suit premises i.e. 550 sq.ft. undivided share of the petitioner, out of total area of 2,200 sq.ft. till the hearing and final disposal of the R.A.D. Suit No. 519 of 2023, without following due process of law.

22. The hearing of the R.A.D. Suit No. 519 of 2023 is hereby expedited. The parties are directed to co-operate in the hearing of the R.A.D. Suit and not to take unnecessary adjournments.

23. Rule is made absolute in terms of prayer clause (c) of the writ petition. Writ petition is accordingly disposed of.

[RAJESH S. PATIL, J.]