

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9827 OF 2024

Raj Builders }**Petitioner**

: Versus :

Shoukat Suleman Thadadra & Ors. }**Respondents**

Mr. G.S. Godbole, Senior Advocate *a/w. Mr. G.S. Bhat and Mr. C.N. Kumar, for the Petitioner.*

Mr. Ajinkya Sarvade *i/by. Mr. P.D. Purvay, for Respondent No.1.*

Mr. Zubin Behramkamdin, Senior Advocate *with Mr. Uzair Kazi and Ms. Dhanashree Hublikar i/by. YMK Legal, for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 September 2024.

P.C. :

1) The Writ Petition is filed challenging the order dated 2 July 2024 passed by the Appellate Bench of the Small Causes Court dismissing Misc. Appeal No.33 of 2024 and confirming the order dated 19 January 2024 passed by the learned Judge of the Small Causes Court rejecting Petitioner's/Plaintiff's application for temporary injunction.

2) Petitioner/Plaintiff has instituted T.E. & R. Suit No.58/2020 against Shoukat Suleman Thadadra as Defendant No.1 and M/s. Raj

Oil Mills Ltd. as Defendant No.2 in addition to two other Defendants seeking recovery of possession of the suit premises from all the Defendants. The suit is filed under the provisions of Section 41 of the Presidency Small Causes Court Act, 1888. The suit proceeds on an assumption that the First Defendant is the tenant of the Plaintiff in respect of the suit premises, whereas the Second Defendant has been inducted as a sub-tenant by virtue of Agreement dated 1 October 2007, with the consent of the Plaintiff. According to the Plaintiff, since paid-up share capital of the Second Defendant exceeds Rs.1 crores, protection of Maharashtra Rent Control Act, 1999 is no longer available in respect of the suit premises by virtue of provisions of Section 3(1)(b) of the Act. Plaintiff claims that the Second Defendant is in possession of the suit premises.

3) It appears that Defendant No.1 is not firm on his status in respect of the suit premises. In his Written Statement, Defendant No.1 has taken a stand that the suit property initially belonged to Khadijabai Maternity Home of Sidhpur (Gujarat) which was sold to H.H. Sayedana Mohammed Burhanuddin Saheb. That the suit property was thereafter purchased by the First Defendant vide Conveyance dated 6 November 1985. That the First Defendant thereafter conveyed the suit property on 27 July 1992 to M/s. Meridia Associates. That on 25 May 2006, a partnership firm was formed with the name M/s. Raj Builders (Plaintiff) between the First Defendant, Dinesh D. Chandra, Mr. Mahesh Shamji Patel and Govind Gopal Patel. That the said partnership firm, M/s. Raj Builders purchased the property vide Conveyance dated 30 November 2006 from M/s. Meridia Associates. It is the case of the First Defendant in the Written

Statement that under the Conveyance dated 30 November 2006, the partners agreed that the First Defendant shall have 50% undivided right, title and interest in the property including the suit premises. Thus, the Written Statement of the First Defendant is premised on First Defendant's claim as 50% owner of the entire property including the suit premises. However, the said stand of the First Defendant appears to be directly contradictory to the contents of notice dated 7 October 2019 addressed on his behalf, in which the First Defendant stated that M/s. Raj Builders (Plaintiff) are landlords and owners of the entire property, including the suit premises and the First Defendant was a tenant in respect of the suit premises admeasuring 8950 sq.ft carpet area. The First Defendant further stated in the said notice dated 7 October 2019 that he sublet the suit premises to the Second Defendant-M/s. Raj Oil Mills Ltd. vide Tenancy Agreement dated 1 October 2007. This is how the First Defendant appears to have contradicted himself with respect to his status and while the Written Statement claims 50% ownership, the contents of the Notice dated 7 October 2019 seem to match the claim of the Plaintiff that the First Defendant is a tenant and that the Second Defendant is inducted as a sub-tenant.

4) So far as the Second Defendant is concerned, Mr. Behramkamdin, the learned Senior advocate appearing for Defendant No.2 would submit that the entire suit filed by the Plaintiff is based on fallacious pleadings and fabricated documents. He would submit that the Second Defendant was a direct tenant in respect of the suit premises when the Conveyance dated 30 November 2006 was executed in favour of M/s. Raj Builders. Mr. Behramkamdin would submit that

the claim of the Plaintiff that Defendant No.2 is a sub-tenant is totally false and that Defendant No.2 is actually the direct tenant in respect of the suit premises. He would submit that the so called agreement for sub tenancy dated 1 October 2007 is a fabricated document. Thus, the defence of the Second Defendant appears to be that he is a direct tenant in respect of the suit premises. If the effect of conveyance dated 30 November 2006 is taken into consideration, coupled with the fact that the Second Defendant does not claim any ownership in respect of the suit premises, the Second Defendant, in that sense, would be the direct tenant of the Plaintiff, if the defence of the Second Defendant canvassed across the bar is to be believed. Here, Mr. Behramkamdin would clarify that the Second Defendant does not admit the current composition of the Plaintiff partnership firm. In my view, it is not necessary to go into the issue of current composition of the Plaintiff-partnership firm. What bothers me more are the contents of the Consent Terms dated 28 February 2023 entered into by the Second Defendant in Suit (Lodg.) No.14167/2021 with the First Defendant and other parties, in pursuance of which the said suit has been disposed of. In the said Consent Terms, the Second Defendant has admitted the position that it has been inducted as a tenant in respect of the suit premises by Defendant No.1 without payment of any rent and/or compensation since 6 October 2015. This statement in the Consent Terms is contradictory to Mr. Behramkamdin's contention that the Second Defendant was a standing tenant in respect of the suit premises when the Conveyance dated 30 November 2006 was executed. The Consent Terms further records that the Second Defendant would be treated as a protected tenant by the First Defendant under the Maharashtra Rent Control Act.

5) The above self contradictory defences taken by the First and the Second Defendants clearly creates confusion about their exact status in respect of the suit premises.

6) Plaintiff has applied for grant of temporary injunction to restrain the Defendants from creating third party rights in respect of the suit premises possibly on account of attempt being made by the First Defendant to alienate his alleged share in the suit premises in favour of one M/s. Blue Sky Structures LLP. This is evidenced by the Consent Terms dated 20 February 2023 in Suit (Lodg.) No.14167 of 2021. Therefore, there is every reason to believe that the First Defendant is likely to create third party rights in respect of the suit premises.

7) In my view therefore a perfect case is made out by the Plaintiff for grant of temporary injunction by restraining the Defendants from creating any third party rights in respect of the suit premises. The other two tests of irreparable loss and balance of convenience are also in favour of the Plaintiff. The learned Judge of the Small Causes Court as well as its Appellate Bench have grossly erred in refusing injunction in favour of the Plaintiff.

8) The Writ Petition accordingly succeeds. The order dated 2 July 2024 passed by the Appellate Bench of the Small Causes Court in Misc. Application No.33/2024 and order dated 19 January 2024 passed by the Learned Judge of the Small Causes Court on application at Exhibit-39 are set aside. During the pendency of T.E.& R. Suit No.58

of 2020, there shall be injunction against Defendant Nos.1 to 4 from creating any third party rights and/or parting with possession in respect of the suit premises. The Writ Petition is accordingly **allowed and disposed of.**

9) Needless to observe that nothing observed in the order shall affect the rights and contentions of the parties while deciding the suit finally.

NEETA
SHAILESH
SAWANT

[SANDEEP V. MARNE, J.]

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NEETA SHAILESH
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