

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13900 OF 2024

Tejas Kashinath Redkar

... Petitioner

vs.

Kiran Kashinath Redkar and Anr.

... Respondents

Ms. Shraddha Khandhadia :-	Advocate for Petitioner.
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CORAM : S. M. MODAK, J.

DATE : 10th DECEMBER 2024

ORAL ORDER :-

1. Matter is mentioned out of turn. It is submitted that his Writ Petition will become infructuous if she is not heard because now proceedings for drawing final decree are going on before City Civil Court. Considering urgency stated I have heard learned Advocate for Petitioner who is Plaintiff in the Suit and Applicant in the Notice of Motion.

2. The present respondents are duly served. The respondent No.1 is served personally whereas respondent No.2 was not found on the

address at the time of service of the notice and the notice of this Petition is served on his son. I am assuming this as valid service. It is recorded in the order dated 9th December 2024. No one has appeared on behalf of Respondent in this Petition.

3. The issue involved in this Petition is about entitlement of the Plaintiff/ petitioner to seek compensation at the rate of Rs.15,000/- (Rupees Fifteen Thousand) from the Defendant No.2. This amount is asked from the date of 29th March 2022. This is one of the prayers made by the Petitioner in the Notice of Motion No.394 of 2023. This Motion was filed in S. C. Suit No.1278 of 2020. The Plaint is on Page No.69.

4. **In the said Notice of Motion the petitioner made following prayers :-**

- (i) Allowing the Plaintiff to enter the suit premises
- (ii) Directing the Defendant No.2 to pay monthly compensation of Rs.15,000/- (Rupees Fifteen Thousand).

5. The Notice of Motion and the Affidavit is on Page No.491 onwards. Learned Advocate for petitioner has invited my attention to the following documents/ evidence :-

(i) **The copy of plaint on Page No.69.**

Initially there was only prayer for injuncting Defendant from dispossessing Plaintiff from suit premises i.e. the flat. There are further prays for interim injunction. By way of amendment the Plaintiff has sought for partition of the suit premises.

(ii) The City Civil Court decreed the Suit partly on 25th January 2023. It is on Page No.344.

With assistance of learned Advocate for plaintiff I have read it. The trial Court declared the share of the Plaintiff as 1/3rd and Defendants were directed to handover possession of 1/3rd share to the Plaintiff. It is seen that the decree was passed on admission that is recorded in paragraph No.3. For deciding the controversy in this Petition it is necessary to refer the contents of paragraphs No.5 and 6 of that Judgment which are as follows :-

“5. So far as the other injunction reliefs are concerned, the plaintiff has filed another Notice of Motion No.212/2021, claiming that the defendant No.2 has dispossessed him from the suit property, removing all the belongings of the plaintiff. Same type of submission were made on 21/01/2021 and it was taken in the *roznama* on that day and the defendant Nos.1 and 2 has denied the allegations. However, as per the submission of the plaintiff itself, he is claiming dispossession at the hands of

defendant No.2, therefore, the relief of injunction does not survive. With regard to the relief of restraining the defendants from alienating the suit property is concerned, as the defendants have admitted 1/3rd share of the plaintiff in the suit property, it will be apposite to direct them not to create third party interest to the extent of share of plaintiff till the partition has effected by metes and bounds.

6. The plaintiff has also filed Notice of Motion No.2784/2021 and 1583/2020 for interim injunction and for restraining the defendants from dispossessing the plaintiff from the suit property, these motion deserves to be disposed off in terms of final order.”

In paragraph No.5 the trial Court has recorded the submission made on behalf of the Plaintiff that the Plaintiff was dispossessed at the hands of Defendant No.2 however, he has denied that allegation. Paragraph No.6 records pending Notice of Motion No.2784 of 2021 and Notice of Motion No.1583 of 2020 for injunction were disposed of.

(iii) There is a submission recorded by the trial Court on 4th November 2020 (Page No.122) wherein Defendants No.1 and 2 have undertaken that they will not dispossess the plaintiff or create third party interest.

- (iv) The reply given by the Defendant No.2 to present Notice of Motion is on Page No.564.

In the said reply Defendant Kiran in paragraph No.4 has averred that the Plaintiff has left from the suit premises on his own and that is why he has objected for granting of the prayer by way of Notice of Motion in pending execution proceeding.

6. The learned Advocate for Petitioner has also invited my attention to the averments in paragraph No.8 of the said reply. Defendant - Kiran has averred that the suit premises are in exclusive possession and the Plaintiff has admitted this fact in the original Plaint and in the present Notice of Motion.

7. The contention is trial Court while deciding Notice of Motion has rejected the prayer by assigning the following reasons :-

- (i) The petitioner has not produced any document to substantiate claim for interim compensation of Rs.15,000/-. (Contention is there was a Report of Court Commissioner on the point of valuation of suit flat and it also contains valuation of the suit flat but it is not considered by the trial Court. One more contention is

fresh valuation report is obtained and it is filed in the present proceeding).

- (ii) The trial Court further observed the possession of Defendant cannot be treated as unlawful because their rights extends to entire joint family property unless the flat is divided by metes and bounds.
- (iii) That is why Court opined that possession does not become unlawful.
- (iv) Whether the Plaintiff is entitled for compensation or not is to be adjudicated on merits but at the time of final decree and that is why the prayer was rejected.

8. This order is challenged by way of this Writ Petition. After hearing submissions I do not find any illegality in the findings by the trial Court while rejecting the prayer for interim compensation. Best course available to the petitioner is to place all the materials to show about valuation, to prove he was dispossessed. The reason is while decreeing the Suit on admission, the trial Court has not given any opinion on the issue of possession. In view of that now the City Civil Court is required to decide this issue. The trial Court may decide the claim about interim compensation by considering the pleas of the parties about the joint possession as to suit flat.

9. In view of that, I find no merit in the Petition. Hence I pass following order :

ORDER

- (i) The Writ Petition is disposed of.
- (ii) There shall be no order as to costs.

[S. M. MODAK, J.]

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