

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7440 OF 2025

Jabir Singh Vijaj ...Petitioner

Versus

Tushar Himatlal Jani and ors. ...Respondents

Mr. Saket Mone, a/w Raghav Taneja, i/b Vidhii Parnters, for the Petitioner.

Mr. Prasad Dhakephalkar, Senior Advocate, through VC, i/b Niranjana Vaghela, for Respondent No.1.

Ms. Tejal Patil, i/b Sagar Shahani, for Respondent Nos.2 and 3.

CORAM: N. J. JAMADAR, J.

DATED: 19th JUNE, 2025

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order passed by the Appellate Bench of the Court of Small Causes in Misc. Appeal No.22/2025, whereby the Appellate Bench was persuaded to allow the appeal and set aside the *ex parte* ad-interim injunction granted against defendant No.1, landlord.
3. The petitioner instituted the suit seeking a declaration that the petitioner has tenancy rights in the capacity of a partner of M/s. Manjeet Transport Company, defendant No.2, a partnership firm, in the suit premises. The genesis of the

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plaintiffs claim is in the Family Settlement Agreement executed between the petitioner and other family members. While instituting the suit the petitioner had not, initially, prayed an interim injunction. Alleging that on 25th January, 2025, the defendant, by employing hirelings, tried to dispossess the petitioner from the suit premises, an application for temporary injunction was filed on 27th January, 2025.

4. The learned Judge, Court of Small Causes, was persuaded to grant *ex parte* ad-interim injunction observing that the petitioner appeared to be *prima facie* in possession of the suit premises and a strong *prima facie* case of threat of dispossession was made out.

5. Respondent No.1 preferred an appeal. Certain proceedings ensued, reference to which is not warranted in the light of the view this Court is persuaded to take.

6. The principal grievance of respondent No.1 was that respondent No.1 was not served though the suit was instituted on 18th December, 2024. The claim of the petitioner that he had tenancy rights in the suit premises was prospective in nature and based on the Family Settlement Agreement, to which the landlord was not a party. There was

material to indicate that the tenant - defendant – respondent No.2, had surrendered the tenancy.

7. The Appellate Bench of the Court of Small Causes was of the view that even if it was assumed that the petitioner was in possession of the suit premises, yet, the parameters delineated in the judgment of the Supreme Court in the case of *Morgan Stanley Mutual Fund vs. Kartick Das*¹ for grant of *ex parte* injunction, cannot be said to have been made out.

8. The learned Counsel for the petitioner would urge that the Appellate Court has taken a very technical view of the matter. There was material to indicate that upon being threatened with dispossession the petitioner took the steps and approached the authorities. The claim of surrender of tenancy by the defendant – respondent No.2 is untenable as Mr. Harvinder Singh had acknowledged in the consent terms filed before this Court that he has no right, title and interest in the premises held by M/s. Manjeet Transport and Company – the defendant No.2.

9. In opposition to this, Mr. Dhakephalkar, the learned Senior Advocate for respondent No.1, would submit that from the very averments in the plaint and the petition it becomes

1 (1994) 4 SCC 225.

evident that the petitioner is not in possession of the suit premises. In any event, the claim of tenancy is contingent upon the Family Settlement Agreement being acted upon by the parties, and the petitioner cannot force himself as a tenant on the landlord.

10. Evidently, there are rival claims as to the factum of possession over the suit premises. Likewise, the claim of tenancy of the petitioner is contentious. At this stage, it is necessary to note that the matter arises out of an *ex parte* ad-interim order passed by the Trial Court. The application for interim injunction (Exhibit-9) is subjudice before the Trial Court. The learned Counsel for the petitioner submits that the pleadings are complete. It would, therefore, be in the fitness of things that the parties are heard by the Trial Court on the aspect of grant of interim relief and the said application (Exhibit-9), is decided on merits.

11. Since there is serious dispute about the factum of possession, the interest of the parties can be protected by directing that both the parties shall not precipitate the things.

12. The learned Counsel for the petitioner and the learned Senior Advocate for defendant No.1 state that the respective

parties will not alter the existing position by their positive act till the application is heard and decided by the Trial Court.

13. The parties shall appear before the Trial Court on 30th June, 2025.

14. The parties are permitted to file additional pleadings, if any, on or before 26th June, 2025.

15. The learned Judge, Court of Small Causes, is requested to make an endeavour to hear and decide the application (Exhibit-9), after providing an effective opportunity to the parties, as expeditiously as possible and, preferably, within three months from 30th June, 2025.

16. The statements made on behalf of the petitioner and defendant No.1 that the petitioner and defendant No.1 will not alter the position, as it obtains today, by their positive act, are accepted as the statements made to the Court.

17. The petition stands disposed.

[N. J. JAMADAR, J.]