

S.C. SUIT NO.1065 OF 2018

2. The plaintiff's father Pannalal was the monthly tenant of the suit premises. Behmered B. Felfeli & Others are the owners and landlord of Sethana Building wherein the suit premises is situated. The plaintiff's

father expired. The plaintiff is paying monthly rent @ Rs.516.67 per month to the landlord. He is issuing rent receipt in the name of plaintiff's deceased father. The plaintiff has paid the monthly rent from January, 2017 to December, 2017 regularly. There is also electric connection in the suit premises. The plaintiff is paying it regularly. The defendant No.1 is company and defendant No.2 is director/partner of the defendant No.1 company and claiming to be the developers of it. They have purchased the property known as Sethana Building wherein the suit premises is situated. The plaintiff is doing the business of Jewellery in the same area just adjacent to the suit premises and using the suit premises at the time of lunch and for taking rest after lunch. The defendant No.2 along with 6-7 persons came in the suit premises on 04.04.2018 and asked the plaintiff to vacate the suit premises. He requested defendant No.2 that he is ready to vacate the suit premises provided the defendant No.2 is ready to provide permanent alternate accommodation in the redeveloped building in the said property, however, he denied it, hence, plaintiff has constrained to institute the present suit. He prays that defendants be restrained from dispossessing him from the suit premises and demolishing Sethana Building or any part thereof without following due process of law.

3. The defendants put their appearance in the proceeding. They submitted near about 12 documents in support of their defence.

4. I heard oral arguments advanced by both the sides at length. The sum and substance of the case of the plaintiff is that he is tenant of suit premises after demise of his father and suit premises is in his settled possession. Id. Advocate for plaintiff submitted in his argument that father

of the plaintiff is having two sons including the plaintiff. He has also stated that there was a settlement in between parties and suit premises came to the share of the plaintiff. Though Ld. Advocate for plaintiff submitted the said fact in his argument. The plaintiff has not whispered anything about it in the plaint for best reasons known to him. He has also not produced single document to show that suit premises came to the share of the plaintiff after the demise of father as a settlement. In short, he has suppressed material facts from the Court. Secondly, according to the plaintiff, suit premises is in his settled possession. He has placed on record rent receipts, however, rent receipts are appearing to be issued in the name of his father and not in his personal name. Thirdly, he put reliance on the number of electricity bills. On perusal of bill dated 03.06.2015, it clearly shows that there was no electrical consumption since from August, 2014 to March, 2015. Furthermore, from the bill dated 03.02.2016 it shows that there is hardly consumption of electricity to the extent of 9 units since from June, 2015 to November, 2015. The same fact is revealed on perusal of electricity bill dated 03.02.2016. Thus on the basis of these electricity bills it is not positively inferred that suit premises is in actual possession of the plaintiff. The plaintiff has not placed on record the authentic document like Pan Card, Voters Card, Bank passbook so as to show that he resides at the suit premises. In short, plaintiff has failed to prove his settled possession over the suit premises.

5. The Ld. Advocate for defendants submitted number of documents which show that developer has taken concerned building for the redevelopment. Moreover, corporation had issued notice under Section

353 (B) of MMC Act., dated 11.01.2018. Thereafter structural audit was carried out in March, 2018. On perusal of said report, it shows that the said building is classified as 'C1' and auditor gave a specific finding contending that occupants be evacuated and building be demolished immediately. Thus from the said material prima facie on record, it clearly shows that said building including suit premises is required to be demolished on account of its dilapidated condition.

6. The Ld. Advocate for the plaintiff put reliance on the ruling reported in AIR 2-004 SC 4609 in the matter of Rame Gowda V/s. M. Varadappa Naidu. However, plaintiff has failed to show his settled possession over the suit premises, hence, ratio of the said ruling is not applicable to the facts of present case.

7. Ld. Advocate for the defendants put reliance on the ruling reported in AIR 1994 SC 853 in the matter of S.P. Chengalvaraya Naidu V/s. Jagannath, in which it is observed that Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. It can be said without hesitation that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. In the present case, plaintiff has suppressed the facts that he has a brother. He has also failed to show that suit premises came to his share on the basis of settlement. Thus he has not come in the Court with clean hands and for the said reasons he is not entitled for ad-interim relief. In short, plaintiff failed to prove prima facie case. The balance of convenience is with the defendants and not with him. No irreparable loss will be caused to him if

notice of motion is rejected. Hence, I am not inclined to grant any ad-interim relief in favour of the plaintiff as prayed for.

ORDER

Ad-interim relief is hereby refused.

12/04/2018

**(J.V. DESHMUKH)
J U D G E
CITY CIVIL COURT,
DINDOSHI, MUMBAI.**

Date of dictation	:	12/04/2018
Date of transcription by steno	:	16/04/2018
Date of order signed by HHJ	:	
Date of delivery to CC	:	

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER."

UPLOADED ON 21.04.2018 AT 04.00 P.M.

PRASAD SHARAD TARE, STENOGRAPHER