

**IN THE COURT OF SMALL CAUSES AT MUMBAI
ORDER BELOW EXHIBIT – 15**

IN

**R.A.E. SUIT NO. 130 OF 2016
[CNR No. MHSCA 20010052016]**

M/s. Om Navkar Skyline Pvt Ltd. Plaintiff.

Versus

1) Jyotendra Narayan Mistry and another. Defendants.

Coram : R. P. Deshpande,
Judge, C.R.No.10
Date : 27.03.2019

ORAL ORDER:

This is an application on behalf of plaintiffs for interim injunction.

Facts of the application are as follows :

2. According to the plaintiffs, the present suit is filed for eviction on the ground of illegal subletting and parting with possession of the suit premises without permission of the plaintiffs and such other grounds as mentioned in the plaint. The plaintiffs are relying on the pleadings and averments as mentioned in the plaint. The same may be treated as part and parcel of the present application.

3. The defendant no.1 is tenant in respect of the suit premises. The defendant no.2 is unlawful occupant in the suit premises. The defendant no.2 is carrying on the business of Auto Spare parts in the name and style of M/s. Merc auto from the suit premises. The defendant no.1 has unlawfully sublet or given on leave and licence basis or parted or assigned or transferred in any manner, his interest in the suit premises along with possession of the suit premises in favour of defendant no.2 without consent or permission of the plaintiffs. The defendant no.2 is using the suit

premises as godown for storing spare parts for vehicle and has made cabin of aluminum partitions in one portion of the suit premises thereby using it as his office to conduct business of spare parts. Earlier also defendant no.1 had sublet and transferred the possession of the suit premises to third party Mr Hemant Chimanbhai Jariwala and Mr. Mukesh chimanlal Jariwala, carrying on business of M/s. Maa Bhavani Creation and was using the suit premises for the purpose of factory and had installed huge machineries along with nine other persons in the suit premises. The licence Inspector 'D' Ward Municipal Corporation Mr. V.t. patil inspected the suit premises and found that Mr. Mukesh Chimanlal Jariwala is carrying on the above activity and described the above facts in his inspection report bearing No.0082325 dated 2.6.2004. The Licence Inspector noted that the defendant no.1 is not carrying on any trade of Automotive Repairing and he is not seen in the suit premises. The licence inspector Mr. M.L. Dhirer, Mr. J.A.H. Kazi (JE) inspected the suit premises and found Mr. Hemant Chimanlal Jariwala carrying on illegal activity of computer embroidery and demanded valid factory permit and other necessary licenses which the occupants were unable to produce.

4. The defendant no.1 is habitual offender and tried on multiple occasions in criminal proceedings bearing court case no.8278 of 2003, court case no. 5562 of 2004 and court case no.8368 of 2004 in the Presidency Magistrate Court at Shindewadi, Dadar wherein the defendant no.1 and the illegal occupants pleaded guilty and penalized of Rs. 1200/-, 1800/- and 2500/- for various offence as mentioned.

5. The defendant no.1 is not in need of the suit

premises. He is only interested in generating revenue by unlawfully subletting the suit premises and recovering licence fees for himself. The director of the plaintiff Gaurav Jain on 9.10.2018 visited the suit premises noticed persons visiting the suit premises for taking the same on leave and license basis. The defendants are in process of or contemplating to part with possession of the suit premises by further unlawfully subletting to third party and inducting them in the suit premises under same arrangement or agreement to seriously cause prejudice to the plaintiffs. The plaintiffs have made out prima facie case as unlawful occupant. The defendant no.2 is currently in possession if the defendants succeeded in their further parting with possession and inducting unlawful occupant. It will create multiplicity of the proceeding then the plaintiff shall suffer irreparable loss and injury which cannot be compensated in terms of money. Hence, plaintiff has requested that the defendants be restrained from further parting with possession of the suit premises or unlawfully or inducting any person in the suit premises and from changing the present condition of the suit premises i.e. Gala no.2, ground floor, 178A Jamnabai Madhavji Estate, Saraswati Bhavan, Dr. D.B. Marg, Lamington Road, Near Minerva Theatre, Mumbai 400 007 till final disposal of the suit.

6. Other side i.e. defendant no.1 filed reply at Exh-16 and resisted the present application contending that the application as made is bad in law and hence, liable to be discharged with costs. The present application has not been made as per procedure and hence, liable to be discharged in limine. The defendant has filed written. The same may be considered as included in this affidavit in reply. According to the defendant no.1

he is tenant in respect of the suit premises. He has denied that the defendant no.2 is unlawful occupant in respect of the suit premises and has been carrying on business in the suit premises as alleged. The defendant no.2 has nothing to do with the suit premises. Hence, the question does not arise that defendant no.2 has been carrying on business under the name and style of M/s Merc Auto from the suit premises. It is denied that defendant no.1 has sublet or given on leave and licence basis or parted assigned or transferred in any other manner his interest in the suit premises along with possession in favour of defendant no.2. The defendant no.2 has nothing to do with the suit premises. It is denied that the defendant no.2 is using the suit premises as godown for storing spare parts for vehicle as alleged.

7. It is denied that the possession of the suit premises transferred to third party i.e. Mr. Hemant Chimanbhai Jariwala and Mr. Mukersh Chimanbhai Jariwala and they are carrying on business of M/s. Maa Bha vani Creation and was using the suit premises for the alleged factory and installed huge machinery. According to defendant no.1 he is not aware about the visit of licence inspector Mr. V.T. Patil of Municipal Corporation 'D' Ward and hence, denied the allegations in said respect. The defendant no.1 has denied that he is habitual offender and alleged penalties as mentioned in para no.3 of the application under reply. It is denied by the defendant no.1 that he is not in need or requirement of the suit premises and only interested in generating revenue by unlawfully subletting the same and recovering license fees for himself. The applicant plaintiffs have not enclosed or given inspection of the documents mentioned in para no.4 of the application. Therefore, he cannot rely upon the said document.

8. The defendant no.1 has also denied the contents of para no.5 of the application that Director of plaintiff company Gaurav Jain visited the suit premises on 9.10.2018 and noticed the person for taking the suit premises on leave and licence basis and defendant no.1 in process of contemplating to part with possession or unlawfully subletting the suit premises to third party.

9. The suit premises are the only premises from which the defendant no.1 can earn bread and butter for himself and members of the family therefore by no stretch of imagination he can think about the same. The defendant no.1 has no intention to do the same. According to defendant no.1 he has no intention to do acts as mentioned in para no.6 of the application, hence, question does not arise about the alleged suffering of irreparable loss and injury as mentioned. There is no prima facie case for relief as claimed in para no.6 of the application. The balance of convenience is in favour of defendant. Till today the defendant no.1 carrying on his business in the suit premises . Hence, the defendant no.1 requested for rejection of the application.

10. The plaintiff has filed rejoinder at Exh-17 and reiterated and maintain whatever stated in their application for injunction and denied each and every allegations of the defendant. According to the plaintiff, the defendant no.1 in his written statement in para no.9 and 10 stated that he is doing the repairing of cars work from the suit premises. The defendant no.1 has stopped conducting any business by himself due to his old age of 72 years. He has inducted defendant no.2 in the suit premises unlawfully. In the written statement in para no.11, defendant no.1 has admitted the fact of Mr. Hemant Chimantbhai Jariwala

and Mr. Mukesh Chimanbhai Jariwala carrying on business on the name of M/s. Maa Bhavani Creation and was using the suit premises and also admitted criminal proceedings bearing court case no.8278 of 2004, court case no.5562 of 2004 and court case no.8368 of 2004 in the Presidency Magistrate Court at Shindewadi, Dadar. The plaintiffs have made out prima facie case. The defendant no.1 has been parting with possession of the suit premises in the past also and has recently inducted the defendant no.2 in the suit premises. He is inviting various persons in the suit premises for further unlawfully letting and transferring the possession. The defendant no.1 has admitted that he is not able to carry out business from the suit premises due to his old age and hence, it is quire event from his own statement that he intends to unlawfully induct persons from the suit premises for gain and mandatory benefit. The defendant no.1 is making baseless and imaginary allegations against the plaintiff which are not at all the matter of dispute and have no merits. No prejudice or harm or injury will be caused to the defendant as he claims to be in possession and alleges to remain in possession of the suit premises. Granting of injunction for maintaining the status quo and not inducting any one unlawfully is to mitigate multiplicity of proceeding in courts. Hence, plaintiffs have requested that their notices be made absolute with costs.

11. Heard learned advocates appearing on behalf of plaintiff and defendants.

12. Considering the rival pleadings of the parties, following points arise for my determination, my findings thereon recorded as under for the reasons stated below:

Points**Findings**

- | | | |
|----|---|----------------------------|
| 1) | <i>Do plaintiffs prove prima facie case in their favour ?</i> | <i>In the negative.</i> |
| 2) | <i>Do plaintiffs prove balance of convenience in their favour ?</i> | <i>In the negative.</i> |
| 3) | <i>Do plaintiffs prove that they are the persons who would likely to face irreparable loss if junction is not granted ?</i> | <i>In the negative.</i> |
| 4) | <i>What order ?</i> | <i>As per final order.</i> |

REASONS**As to point Nos. 1 to 3 :**

13. Heard learned advocates appearing on behalf of plaintiffs and defendants. The plaintiffs' advocate has submitted the written argument at Exh-18. It is contended in the written argument that the defendant no.1 has sublet the suit premises to defendant no.2. The defendant no.1 in his written statement has contended that he is senior citizen, he is of 72 years old. Hence, he cannot do any physical taxing work and he has stopped his own business due to his old age and own ill health. The defendant no.1 has inducted the defendant no.2 unlawfully and illegally in the suit premises. It is also contended that the defendant no.1 in his written statement has admitted that Mr. Hemant Chimanbhai Jariwala were occupying the suit premises. However, the defendant no.1 in reply to the present application has denied the same, it discloses that the defendant no.1 making false statement in his reply. It is also contended in the written argument that report of bailiff discloses that for various occasions he had visited the suit premises for service of summons, but defendant no.1 was

not found at the suit premises and on inquiry with the neighbourer, it is noted that defendant no.2 occupied the suit premises, hence, it is submitted that the defendant no.2 is in possession of the suit premises and defendant no.1 has illegally unlawfully inducted the defendant no.2 in the suit premises. The defendant no.2 is running the business of Auto Spare Parts in the suit premises in the name and style of M/s Marc Auto. The advocate of the plaintiffs has submitted that the plaintiffs are having prima facie case in their favour for grant of relief of injunction.

14. However, while opposing the application, advocate of the defendant no.1 has submitted that the defendant no.1 is in possession of the suit premises. No any single documentary evidence is placed on record on behalf of plaintiffs to support their contentions that defendant no.2 is in possession of the suit premises and runnning the business as alleged in the application. Whatever stated by the plaintiffs in the written argument is not correct. According to the defendant no.1 though plaintiffs have contended in the application that on 9.10.2018, the director of the plaintiffs company Gaurav Jain had visited the suit premises and found persons visiting the suit premises for taking the same on leave and licence basis and defendants are in process of parting with possession of the suit premises to third party, but no any documentary evidence is placed on record by the plaintiffs. The plaintiffs have not filed affidavit of Gaurav Jain to support the above contention of the plaintiffs from the application. Hence, it is submitted that, the plaintiffs have misreably failed to prove prima facie case in their favour for the relief of injunction.

15. The advocate of the plaintiff in support of the application relied upon case **M.K. Dasappa vs G. Ramachandra**

reported in [AIR 1976 Karnataka 53]. The Hon'ble High Court observed that,

“The grant of temporary injunction primarily depends on the existence of prima facie case of plaintiff. In determining such a question the court should be guided more and more by the apparent strength or otherwise of the plaintiffs' case as revealed by the affidavit and other materials and then has to consider the balance of convenience for grant or refusal of interim injunction. The Court while considering the question of balance of convenience must pertinently put the question “Will the plaintiff suffering irreparable damage, if no injunction is granted now?”

16. There is no dispute about ratio of above mentioned case. Case. The advocate of the plaintiff also relied upon the case **M/s. Pradip Port Trust vs. M.D., IDCO, Bhubaneswar reported in AIR 2001 Orissa 146**. In para no.11, the Hon'ble High Court observed that,

“While considering the question of granting temporary injunction, the learned Courts below are required to see that there is bonafide contention between the parties and then on which side in the event of success, will lie the balance of convenience, if the injunction is not issued. The real point to be considered is whether there is a substantial question to be investigated and whether matters should not be

preserved in status quo until that question could finally be disposed of. It is also the settled principle that where a perpetual injunction is prayed for and the plaintiff applied for a temporary injunction, the Court should grant a temporary injunction, if the effect of not granting such an injunction will be to deprive the plaintiff for ever of the right claimed by him in the suit. The object of injunction in such a case is to preserve the status quo on granting injunction. It must be emphasised that in the matter of granting temporary injunction it is the duty of the Court to take into consideration the effective and relevant documents before it records a finding. Merely referring to the documents in the judgment is not enough and there must be some discussion about the effect of the document before a conclusion is arrived”

17. Admittedly, in the present case the plaintiff has prayed for permanent injunction in the suit. In the reported case it is observed that if the effect of non granting such an injunction will be to deprive the plaintiffs for ever of the rights claimed by him in the suit then and then the court should grant temporary injunction to preserve status quo of granting injunction.

18. The advocate of defendant while opposing an application submitted that the defendant no.1 is in possession of the suit premises. The plaintiffs falsely stating that the defendant no.2 is inducted in the suit premises by the defendant no.1 illegally. No any documentary evidence is placed on behalf of plaintiff to show that defendant no.2 is in possession of the suit

premises. The story put up by the plaintiff in the application for grant of injunction is concocted story and hence, the plaintiffs are not entitled for grant of temporary injunction. To support the abovesaid contention the advocate of the defendant no.1 relied upon the case **Shri Vidyadhar Govind Patwardhan vs Shri Arvind Shreedhar Ghatpande reported in [1990(3) Bom.C.R. 567]**. The Hon'ble High Court observed that

“While granting interim reliefs, Courts have to be careful and no cock and bull story entitles the author of that story to interim relief, though in a sense, even such stories may require to be listened to.”

The advocate of the defendant no.1 submitted that the plaintiffs have put concocted story in the application without any satisfactory evidence and documentary evidence that defendant no.2 is in possession of the suit premises and defendant no.1 has sublet the suit premises to the defendant no.2, hence, advocate of the defendant no.1 submitted that the plaintiff has no prima facie case and the application filed by the plaintiffs deserves to be rejected.

19. It is seen from the averments of the application that it is the case of the plaintiffs that defendant no.1 is the tenant of the plaintiffs. The defendant no.1 illegally inducted or sublet or parted the possession of the suit premises in favour of the defendant no.2 and the defendant no.2 is running business of Auto Spare Parts in the name and style of M/s. Marc Auto Spare Parts, but it is seen that no any documentary evidence is placed on record on behalf of the plaintiffs to support the said contention of the plaintiffs from the application. It is also asserted by the

plaintiffs that director of the plaintiffs company namely Gaurav Jain on 9.10.2018 had visited the suit premises and noted that several persons visiting the suit premises for taking the suit premises on leave and licence basis and the defendants are in process to part with possession of the suit premises by further unlawfully subletting the suit premises to third party. It is seen that the plaintiffs have not disclosed the name of the persons who visited the suit premises in presence of Gaurav Jain to take the suit premises on leave and licence basis from the defendants. No any satisfactory evidence placed on record on behalf of the plaintiffs to support the said averments of the plaintiffs. Admittedly, the plaintiffs have filed present eviction suit against the defendants on the ground that the defendant no.1 illegally and unlawfully sublet the suit premises to defendant no.2 or parted the possession of the suit premises in favour of defendant no.2 and on the ground of subletting. The plaintiffs have filed the present suit for eviction of defendant no.1 tenant. When it is contention of the plaintiffs that defendant no.2 is in possession of the suit premises and defendant no.1 illegally inducted the defendant no.2 in the suit premises and defendant no.2 running the business of Auto Spare Parts in the name and style of M/s. Marc Auto in the suit premises, then, definitely the plaintiffs would have filed documentary evidence to show that defendant no.2 is running the said "Marc Auto" in the suit premises. No any documentary evidence placed on record on behalf of plaintiffs in said respect. It is also submitted on behalf of the plaintiffs that in written statement the defendant no.1 has contended that his father was doing business of Motor car repairing, garage which was continued by him. However, due to his illness and age of 72 years he has stopped said garage as he could not longer do physically taxing work and therefore, started accepting work of auto parts package. It is also contended in the

application that defendant no.1 has also asserted in the written statement that he has stopped car repairing garage due to his age and ill health and hence, it is submitted that the above facts contended in the written statement shows that the defendant no.1 is not in possession of the suit premises and he illegally inducted the defendant no.2 in the suit premises. It is also seen that defendant no.1 in his written statement contended that he is in use and occupation of the suit premises and carrying on his own business of packaging. In my opinion, as defendant no.1 in his written statement contended that his father was doing the business of Motor Repairing garage and it was continued by him and due to ill health presently he has stopped the garage. The above pleadings from written statement in my opinion not sufficient to infer that the defendant no.1 is not in possession of the suit premises and defendant no.2 is in possession of suit premises, because defendant no.1 has clearly pleaded in the written statement that he started accepting work of auto spare parts of package in the suit premises. It is also contended in the application that defendant no.1 in his written statement contended that Mr Hemant Chimanbhai Jariwala and Mr. Mukesh Chimanlal Jariwala, were occupying the suit premises with the permission of the then landlord. It is also contended that the plaintiffs were not the landlord of the suit property at that time.

20. It is main contention of the plaintiffs in the suit and application that the defendant no.1 who is tenant of the suit premises illegally and unlawfully sublet the suit premises to the defendant no.2 and defendant no.2 is in possession of the suit premises and running business of Auto Spare Parts having name and style of M/s. Marc Auto Spare Parts, but the plaintiffs have not placed on record any evidence except his bare words of the

plaintiff in said respect. Moreover, though the plaintiffs have stated that on 9.10.2018 the director of the plaintiffs company Gaurav Jain visited the suit premises and noticed that several persons visiting the suit premises for obtaining the same on leave and licence basis from the defendant no.1. But neither plaintiffs have placed affidavit of Gaurav Jain to support the said contention of plaintiffs from the application nor disclosed the names of person amongst several persons who had visited the suit premises on 9.10.2018 to obtain the same on leave and licence basis. Thus, there are bare words of plaintiffs that defendant no.1 sublet the suit premises to defendant no.2 and now the defendant no.1 further trying to create the third party interest or further trying to part the possession of the suit premises to third party. No cogent, satisfactory and believable prima facie evidence is placed on record on behalf of plaintiffs to support his averments from the application. Hence, in my opinion, the plaintiffs have failed to prove prima facie case in their favour. The prima facie case always coupled with balance of convenience, the same is also not in favour of the plaintiffs and the plaintiffs are not the persons who would cause heavy and irreparable loss if the injunction is not granted. Hence, I answer point no.1 to 3 in the negative. Hence, I pass following order.

: ORDER :

1. Application is rejected
2. Costs in cause.

(R. P. Deshpande)
Judge, C. R. No. 10
27.03.2019

Order dictated on : 27.03.2019
 Order typed on : 27.03.2019
 Order checked & signed on : 29.03.2019