

**HRP SUIT NO. 107 OF 2023**

**ORDER BELOW EXH.6**

**Coram: Hiren J. Thaker, Judge.**

1. The plaintiff filed this application in accordance with Order 39 Rule 1 and 2 of the Code of Civil Procedure, seeking relief that the defendant, by himself or through his representatives, agents, and any other person interested in the premises, be restrained from subletting, parting with, or assining with the suit property until the suit is finally decided.
  - 1.1. According to the plaintiff, he is the owner/landlord of the suit property mentioned in paragraph 1 of the plaint. The defendant is the tenant of the suit premises prior to 2001. The defendant has not paid the rent since April 2014. The plaintiff has bona fidely required the suit premises. Additionally, the defendant has kept premisis in non use and also made illegal construction.

Hence, on the basis of above said ground, plaintiff has prayed for possession of the disputed property and further prayed to get a permanent injunction.

2. After the summons was served, the defendants appeared through their advocates and filed their written statement at ex.18, in which he stated that the plaintiff had no cause of action to file this suit. The plaintiff is not come with the clean hand and material information has been concealed. The plaintiff, thus, is not entitled for equitable relief. The construction which the plaintiff claims was already in existence. Defendant has not made any construction. Further, the property was in regular use,

but on 08.05.2023 it has become muddy due to heavy rains and the level of the road has become higher than the land of the property. The goods of the defendant were lying in the claimed property. At the time of the argument the learned advocate of the defendant has fairly stated that they are not going to transfer or sublet the premises to any one.

3. Heard the Ld. Advocate for the Plaintiff and the Ld. Advocate for the Defendants and perused the entire record.
4. The following issues arise for final adjudication of present applications.
  1. Whether the plaintiff establishes prima facie case?
  2. Whether the plaintiff establishes the balance of convenience in his favour?
  3. Whether the plaintiff establishes that irreparable loss would be caused to him if injunction would not be granted?
  4. What order?

**My finding for above issues is as follows,**

1. In the affirmative.
2. In the affirmative.
3. In the affirmative.
4. As per final order

**:- REASONS :-**

Since Issues No.1, 2 & 3 are co-related with each other for the sake of avoiding repetition, all the issues are discussed together.

**Issue No.1, 2 & 3:**

5. It is a settled law that a party is entitled to an order of injunction only if he is able to satisfy the court that a strong prima facie case has been made out in his favour, the balance of convenience also lies in his favour and that refusal of injunction will cause an irreparable injury to him. Prima facie case means that there is a likelihood of infraction of a legal right of the plaintiff by the defendant. It means that the case of the plaintiff raises a triable issue which needs investigation, consideration and adjudication. The plaintiff is also to establish that balance of convenience lies in his favour. Balance of convenience connotes comparative mischief likely to be caused to either party in case of grant or refusal of relief of injunction.
- 5.1 The plaintiff is also to satisfy the court that non-interference by the court would result in an irreparable injury and that there is no other remedy available to him except one i.e. the grant of injunction in his favour. Irreparable injury means an injury which is a material one and one that cannot be adequately compensated by way of damages. Further, it is a settled law that grant of temporary injunction is an equitable relief wherein the plaintiff has to satisfy the court that he has acted bonafidely. In a suit for permanent injunction while the Court is considering an interlocutory application, the Court is not called upon to decide the real disputes between the parties. The Court is called upon to see whether the party who has approached the Court has a plausible case and whether there is a possibility of such case succeeding at the trial. If that test is satisfied then it

is the duty of the Court to see whether the damages the plaintiff is likely to suffer for the action of the defendants complained of can be compensated in money and if so whether there is a standard for ascertaining such compensation. If such compensation can be ascertained and afforded in money then the interlocutory order of injunction should normally be refused. But if, on the other hand, the Court is of the view that such compensation cannot be ascertained and afforded in money then it is the duty of the Court to see the balance of convenience and inconvenience of the parties. If the balance of convenience is in favour of grant then the Court shall normally issue an interlocutory order of injunction upon undertaking of the plaintiff to compensate the defendant against whom the order of injunction is passed if at the trial it is held that the plaintiff is not entitled to such permanent injunction. On the other hand, if it is found that the balance of convenience is against passing of such order, the Court will normally refuse to pass interlocutory injunction. The aforesaid are broadly the principles on which the Court acts while exercising discretion in deciding an interlocutory application for temporary injunction made in a suit for permanent injunction.

6. With this legal prospectus; if we consider the facts of case on hand here in the present case, plaintiff has claim order of eviction from defendant tenant on different grounds under Bombay Rent Control Act . It is apt to note here that it is admitted that the present defendant is the tenant of the suit premises; therefore, there is a jural relationship between the plaintiff and the defendant.

7. One of the obligations laid down under the Rent Act is that the tenant cannot sublet the property or transfer the property or any part of it into the possession of another without the consent of the owner. Thus, defendant is protected under the Rent Act, and likewise, he is bound to comply with the terms of the tenancy.
8. As far as the apprehension expressed by the plaintiff regarding transfer or assignment of possession of disputed property is concerned; as per the provision of Rent Act, tenant cannot sublet the rented premises without the permission of landlord. When law itself has made certain restrictions on the defendant under different provisions regarding subletting and alteration in disputed property, defendant has to show extraordinary strong grounds to get any relief in that regard.
9. As per the prayer clause of plaint, the present plaintiff has instituted the present suit for recovery of possession from defendants on several grounds under the Rent Act. It seems required to maintain status quo particularly for the possession of the disputed property. It can be ascertained that during the pendency of the present suit, if possession of disputed property is transferred, in such circumstances multiplicity of proceedings be attracted. Further, in such circumstances, the present suit may be infructuous on part of the plaintiff. Therefore, it seems that non-interference by the court would result in an irreparable injury and that there is no other remedy available to him except one, i.e. the grant of injunction in his favor.
10. Thus, without making any final observations on aspects of

issues involved for final adjudication, at least prima facie it can be inferred that prima facie plaintiff has established that he is landlord of the suit property and further Plaintiff has direct legal interest over the suit property. At this juncture, at the stage of deciding the application for temporary injunction, the court is not required to go in to the merits of the case in detail but on a careful consideration of the factual position presented in the instant case and looking to the documents produced by both parties, and going through the arguments advanced by the Ld. Advocates of either side, plaintiff / applicant, have established a prima facie case; therefore, balance of convenience and irreparable loss are in favor of plaintiff; hence, the issues no 1 to 3 are held in the affirmative, and the following final order is passed in the interest of justice.

**ORDER**

1. The application at Exh. 6 is hereby granted.
2. The defendants are hereby restrained from transferring or assigning the possession of disputed property or part thereof until the disposal of present suit in any other manner.
3. Costs will follow the results.

Pronounced & signed in the open Court today i.e. 29<sup>th</sup>  
day of November, 2023.

Date : 29/11/2023  
Place : Ahmedabad

(Hiren Jasvantray Thaker)  
Code No. GJ-00940  
Chamber Judge, Small  
Cause Court no.13  
Ahmedabad.