

**Order Below Exh.6 in H.R.P. Suit No.155/2023****Appearance**

Mr. J. N. Ahmedi learned advocate for the plaintiffs.

Mr. D. M. Saiyed, learned advocate for the defendant.

**Coram:- Mr. V. S. Dave, Judge.**

1. The plaintiffs have filed the suit as well as the present application against the defendant. In the present application, the plaintiffs have prayed to grant a temporary injunction against the defendant, his men, agents, servants, etc. restraining from letting, subletting, assigning, transferring or on leave and license the possession of suit premises to any third party in any manner till final disposal of the suit.

2. Summons/notice duly served to the defendant and the defendant has appeared before the Court through his learned advocate and has filed his written statement at Exh.17 wherein he has denied almost all the allegations made by the plaintiffs in the plaint as well as in the present application and further contended that the monthly rent Rs.115/- along with taxes when the grandfather of the defendant had rented the suit premises from the previous owner. The defendant's grandfather has started paying rent at monthly Rs.450/- from 01/10/2005 and the defendant and his father were doing business with his grandfather. Therefore, the defendant and his father Mohammad Yunus Nurmohammad are legally entitled to

tenancy rights as per Section 5(11)(c)(2). The defendant has further contended that the defendant is ready and willing to pay the rent to the plaintiffs and further contended that the plaintiff's suit and application was dismissed by CPC Order 7 Rule 11, the suit is barred by jurisdiction and also barred by Section 28 of the Bombay Rent Act, so the suit is liable to be dismissed. Defendant has further contended that the use of the suit premises is carried on as a shop non-residence and the consumption of goods in the shop is as it has been for years. Hence there is no question to arise that the change in the manner of use of the shop was not with the consent or permission of the plaintiffs. The defendant has further contended that the defendant does not want to transfer, and assign the suit premises and will not transfer the same. Hence, there is no possibility to transfer or assign the suit premises to any third parties. The rest of the say of the defendant however is in denial. Therefore, the defendant has prayed to reject the suit as well as the present application.

3. I have heard the arguments of learned advocates for both parties.

4. Taking into consideration the pleadings as well as evidence of the parties on the record, the following points emerge for my consideration and determination to decide this application, which reads as under:

5. **P o i n t s**

1. Whether the case of the plaintiff is prima-facie?
2. Whether the principle of balance of convenience is in favour

of the plaintiff?

3. Whether refusal or denial of the injunction results into irreparable injury to the plaintiff which cannot be compensated in terms of money ?

4. What order?

5. My reply to the above points are as under:

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

6. My reasons for the above reply points are as under:

**Reasons:-**

**Joint discussion of points nos.1 to 4:**

(6.1) Considering the facts of the application and submission made on behalf of the plaintiffs as well as the defendant, in the present case, the relation between the plaintiffs and the defendant as landlord and tenant is an undisputed fact. It is established law of interim injunction that the plaintiffs must prove their prima facie case for getting equity relief of interim injunction. Plaintiffs have produced a documentary evidence list vide Exh.04. Looking to the vide Exh.4/1, which is the property card and prima-facie show that plaintiffs are the landlord of the suit premises. Further looking to the vide Exh.4/2 and Exh.4/3 which are the xerox copies of the rent receipts and prima-facie show that the forefather of the defendant is a tenant of the suit premises. Furthermore, looking to the vide

Exh.4/5 which is the Xerox copy of the electricity bill shows prima facie that the forefather of the defendant is an occupier. On the contrary, the defendant has produced his documentary evidence vide documentary evidence list at ex.19. Looking to the vide Exh.19/1, which is the rent receipt and prima-facie shows that the forefather of the plaintiff is the landlord of the suit premises. Vide Exh.19/2 to Exh.19/34 which are original electricity bills show prima facie that the forefather of the defendant is an occupier. Vide Exh.19/35 to Vide Exh.19/45 are original municipal tax bills that show prima facie that the forefather of the defendant is an occupier. Vide Exh.19/46 to Exh.19/48 are xerox copies of the rent receipts which show prima facie that the forefather of the defendant is a tenant of the suit premises. Vide Exh.19/49 is the window slip of the money order and Vide Exh.19/51 is the receipt of the tax bill.

**(6.2).** Looking at the record, the plaintiffs have applied to the court commission vide Exh.8, which is allowed and the court commissioner has submitted his report vide Exh.14. Looking at the commissioner report vide Mark-14/2, both the parties are present and the suit premises is running condition. The defendant is in possession of the suit premises.

**(6.3).** As per say of the defendant in para-18 of the written statement produced vide ex.17, the defendant will not transfer the suit property to the third party in any manner and the plaintiffs have prayed to grant a temporary injunction against the defendant, his men, agents, servants, etc. restraining from letting, subletting,

assigning, transferring or on leave and license the possession of suit premises to any third party in any manner till final disposal of the suit. The plaintiffs have shown several grounds to grant an interim injunction against the defendant. The defendant has no rights to let, sublet, transfer or assign the possession of suit premises to a third party and in that case plaintiffs have prima facie case and balance of convenience is also in favour of the plaintiffs and if the defendant succeeds in his motive, then there is no mean to file the suit, being a landlord the plaintiffs have to suffer irreparable loss. Therefore, to that aspect, the plaintiffs are entitled to get an interim injunction. Refusal or denial of injunction would cause great hardship and inconvenience as well as such injury to the plaintiffs which cannot be compensated in terms of money. Whereas, the defendant would not suffer any hardship or inconvenience or any other injury by granting of injunction. On perusing the pleadings of both parties it appears that the defendant is in possession of the rented premises. It is not disputed that the defendant is in possession of the suit premises. Hence, I held **Points Nos.1, 2 and 3** are **partly in affirmative** and I pass the following order in respect of **Point No.4** in the interest of justice:

**:: O R D E R ::**

- 1.** An interim injunction application vide **Exh.6** is hereby **partly allowed.**
- 2.** The defendant, his men, agents, servants, etc. are restrained from letting, subletting, assigning, transferring or on leave and license the possession of suit premises which is mentioned in Para-2 of Ex.1 to

any third party in any manner till final disposal of the suit.

3. The costs shall follow the result of the suits.

Pronounced and signed in the open court on this 21st day of  
September 2023.

Date: 21-09-2023.  
Place: Ahmedabad.

(V. S. DAVE)  
Chamber Judge,  
Small Causes Court No.13,  
Ahmedabad.  
UIC No. GJ01138