

ORDER BELOW EXH.6

- 1.1 The plaintiff has filed this application in accordance with Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking relief that the defendant refrain from making any alteration or new construction, subletting, or handing over possession of the property to be transferred to anyone, either directly or through his agent.
- 1.2 According to the plaintiffs, it is owners of the suit premises mentioned in paragraph 1 of the plaint. The defendant no. 1/1, 1/2/1 to 1/1/3 has long been a tenant of the premises. It is alleged that the defendants have sublet the premises to defendant no.3 and 4. The defendants have not paid the rent since long. The defendant is not using the premises for the purposes it was let. It is also alleged that the defendants are attempting to sublet the premises and have made changes to the premises and changed its identity. Hence, on the basis of above said ground, plaintiff has prayed for possession of the disputed property and further prayed to get permanent injunction.
2. After the summons was served, defendants no. 1/1, 1/2/1, 1/2/3 appeared through their advocate and submitted his written statement at Exh.25, 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. Defendants have denied any alteration or construction on the suit property it is also denied that they are trying to hand over the possession to third party. They stated that they

have not sublet the premises. It is asserted that the defendant has not made any permanent construction. The defendant has also requested that the present injunction application be dismissed with costs.

3. Heard the Ld. Advocate for the Plaintiff and the Ld. Advocate for the Defendants and read 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.

6. 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 a 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 sue 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 favor 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 an 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.

7. With this legal prospectus; if we consider the facts of the case on hand here in the present case, the plaintiff has claimed order of eviction from the defendant tenant on different grounds under Bombay Rent Control Act . It is apt to note here that it is an admitted position that the present defendants are in possession of the suit premises.
8. Referring to the document marked 4/1 and 4/2 which are rent agreement and rent receipt. The defendant has not challenged the relationship as of the landlord and tenant. Thus it can be prima facie construed that the plaintiff is the landlord. It is also not in dispute that the plaintiffs are the landlord of the suit premises and the defendants are the tenants. Looking to the pleadings of the plaint, the present plaintiff has ultimately prayed to recover possession of the disputed property on the basis of different grounds of the Rent Act.
9. Now apprehension expressed by the plaintiff regarding transfer or assign of possession of disputed property and further regarding alteration be made on disputed property is concerned; as per the provision of Rent Act, tenant cannot sublet the rented premises nor can make any change or alteration in structure of 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, the defendant has to show extraordinary strong grounds to get any relief in that regard.

10. 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 the 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. Furthermore, if the defendant constructs or alters the property without the landlord's permission, the identity of the premises may be changed, which is prohibited by law in order to prevent the tenant from altering the construction of the property or making new construction.
11. 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. It is also revealed from the local inspection report that defendants; being tenant; are in possession of said rented premises. 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, 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 pendency of present suit in any other manner till the final disposal of the suit.

The defendant is further directed to refrain from constructing or altering the structure of the premises without the prior written consent of the landlord, pending the final disposal of the present suit.

3. Costs will follow the results.

Pronounced & signed in the open court today.

AHMEDABAD.

Date: 21.04.2025

(H.J.Thaker)

Chamber Judge; Small Cause Court.

Ahmedabad. [GJ00940]