

**Order Below Exh.6 in H.R.P.Suit No.197/2023****Appearance:**

Mr.D.N.Bhatt, L.A. of the plaintiff.

Mr.B.H.Oza, L.A. Of the defendant.

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

1 The plaintiff has filed the suit as well as present application against the defendant. In the present application, the plaintiff has prayed to grant temporary injunction against defendant, her men, servants, etc. restraining them from taking forcible possession of the suit premises and restraining the defendant from interfering with or obstructing the possession of the plaintiff and from doing any act which may damage the tenancy rights of the plaintiff and from demolishing work in the suit premises till final disposal of the suit.

2 Summons / notice duly served to the defendant and the defendant has appeared before the Court through her learned advocate. The defendant has filed their reply cum written statement vide Exh.24 wherein, except admitted facts, the defendant has denied the allegations made by the plaintiff in the suit and injunction application and contended that there is no previty of contract between the plaintiff and defendant and therefore the plaintiff has no right to file this suit and injunction

application. The plaintiff has no title of the suit premises and the suit and injunction application "title without suit" deserves to be dismissed. The plaintiff has no filed any documents which supports the case. The plaintiff is using the suit premises for commercial purpose in residence scheme and The Ahmadabad Municipal Corporation has given notice in the year 1987 for unlawful construction and use. The defendant has purchased the suit premises in the year 2005 and in registered sale deed no.305, there is no mention of any shop of plaintiff's use and occupied Jaysantoshi Auto Garage.

(2.1) The true fact is that the plaintiff has done illegal construction of commercial use in the residence scheme owned by the defendant. The plaintiff quarreled with the defendant and the defendant informed the police and the police had taken action for breach of peace. The plaintiff has suppressed these facts. The plaintiff has no prima facie case, balance of convenience is not in favour of the plaintiff. Therefore, the defendant has prayed to reject the suit as well as present application with cost.

3 I have heard the arguments of learned advocates for the parties and they have argued as per their pleadings and evidence on record.

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

**: 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 findings 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.

**-: REASONS :-**

6 Point Nos.1 to 4 : For the sake of

brevity and to avoid repetition, all the points are discussed together herein.

(6.1) Considering the facts of the application and submissions made on behalf of the plaintiff as well as the defendant, in the present case, the relationship between the plaintiff and the defendant as a tenant and landlord is a disputed fact. It is established law of interim injunction that the plaintiff must prove his prima facie case for getting equity relief of interim injunction. In the present application, the plaintiff was rented the suit premises by her previous owner at the rate of Rs.150/- per month, plus liability to municipal tax, electric burning charges for commercial purpose. Here, as pleaded by the plaintiff, the defendant intends to take the possession of the suit premises from the plaintiff without due process of law.

(6.2) In the present suit, the plaintiff has produced documentary evidence vide Exh.4, looking to the vide mark-4/1 to vide mark 4/13, mark-4/1 a copy of rent receipt which was given by the erstwhile owner Govindbhai R. Shah to the plaintiff Dhaniram Patiram for payment of rent Rs.150/- on 18.7.92, mark-4/2 is a copy of Municipal tax bill of the disputed shop which

shows the name of the plaintiff Dhaniram Matiram Koshti as occupier. Mark-4/3 is a copy of electricity bill of Torrent Power Limited which shows the name of the defendant Alkaben Rajeshkumar Rana. Mark-4/9 is a copy of photograph which shows autoparts in the shop.

(6.2) Here, at this juncture, considering the documents produced by the plaintiff i.e. rent receipt at mark-4/1 and the copy of Municipal Tax bill at mark-4/2, all these documents prima-facie show that the plaintiff Dhaniram Matiram Koshti is the tenant and the occupier of the disputed property. Therefore, the question raised by the defendant in her reply that the plaintiff has no title of the suit premises and the suit and injunction application "title without suit" deserves to be dismissed and the dispute that the plaintiff has not filed any documents which supports the case are not tenable at this prima facie stage. Further, the disputed raised by the defendant that the plaintiff is using the suit premises for commercial purpose in residence scheme. The question whether the construction is carried out by the plaintiff and such construction is legal or illegal can be decided after taking evidence of both side in the matter.

(6.3) As per the above discussion and

documents produced by the plaintiff, it prima-facie, reveals that the plaintiff is the tenant of the suit premises. It is established law of interim injunction that the plaintiff must prove his prima facie case for getting equity relief of interim injunction. Hence, prima-facie it is proved that the plaintiff is the tenant of the suit premises. Further as per the say of the plaintiff, he is in possession of the suit premises as a tenant. The plaintiff being tenant has right to protect his possession in the suit premises by way of status quo against the forcible dispossession by the defendant. It is established law of interim injunction that the plaintiff must prove his prima facie case for getting equity relief of interim injunction. The plaintiff has prayed to grant temporary injunction against the defendant, her men, servants, agents, etc. restraining them from taking forcible possession of the suit premises and restraining the defendant from interfering with or obstructing the possession of the plaintiff and from doing any act which may damage the tenancy rights of the plaintiff and from demolishing work in the suit premises till final disposal of the suit. The L.A. Of the defendant has relied on the judgments reported in: (1) A.I.R.2003 MADRAS 219 Madras High Court, N.Karpagam and others V/s. P.Deivanaiammal alias Deivathal alias Deivathayee

Ammal, (2) A.I.R. 2006 CALCUTTA 97, Fertiliser Corporation of India Ltd. V/s. Indian Explosive Lt., (3) A.I.R. 2011 Himachal Pradesh 116 Himachal Pradesh High Court, Jyoti Prakash V/s. Kamal Kant (4) 2018 O Supreme (Del) 1002 2018 247 DLT 485; 2018 170 DRJ 235; 2018 74 PTC 499 In the High Court of Delhi at New Delhi, Marina Food Products Private Limited V/s. Britannia Industries Limited. I have perused these judgments, but the said judgments are regarding issue suitable directions to police for implementation of injunction order, suit for recovery of money and for declaration as secured creditor, suit for declaration abated on death of the plaintiff and legal heirs filed application for temporary injunction to restrain the defendant to raise construction over the suit property and the last citation is regarding Trademark Infringement and ex-parte injunction. The said citations are on different lines and the facts of the present case on hand are different and therefore these citations are not helpful to the defendant.

(6.4.) In the present suit, when the plaintiff has prima facie proved his possession in the suit premises as tenant then the order of status quo is required to be granted otherwise during pendency of the suit if the possession of the plaintiff is taken by force then the plaintiff

would have to enter in to multiplicity of proceedings and his valuable tenancy rights may be affected and if order to maintain the status quo of the rent premises is passed, the defendant will not suffer any hardship or irreparable loss. Therefore, I answer Point Nos.1, 2 and 3 in "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 and accordingly, earlier order of status quo passed below this application is made absolute till final disposal of the suit in respect of the suit premises described in para.1 of the plaint.
- 2 Both the parties shall maintain the status quo of the suit premises till the final disposal of the suit.
- 3 The costs shall follow the result of the suit.

Pronounced and signed in the open court on this 19<sup>th</sup> day of January, 2024.

**Place: Ahmedabad (Virendra Shashikantbhai Dave)**

**Date :-19/01/2024**

**Judge, (Code No.GJ01138)**

**Small Cause Court No.13**

**Ahmadabad.**

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