

Order below Exh.6 in H.R.P. Suit No.316/2018**Appearance:-**

Mr. J. K. Shaikh, Learned advocate for the plaintiffs.

Mr. K. D. Choksi, Learned advocate for the defendants.

Coram: Mr. Daxesh Rajeshkumar Jaguwala, Judge.

O R D E R

1) The plaintiffs have filed the present application to get temporary injunction against the defendants.

2) The brief facts of the plaintiffs' case are as under:-

The plaintiffs are daughters of deceased Hansaben Keshavji Vaghela, who had died here in Ahmedabad on 08.10.2017 and the power of attorney holder is the father of plaintiffs and the plaintiffs are doctors and therefore they are unable to attend the Hon'ble Court. The defendant no.1 was let out the suit premises for running garage by deceased mother of plaintiffs in year about 1973. The defendant no.1 has illegally, without any written consent or permission from the landlord-plaintiffs, handed over the possession of the suit premises to the defendant no.2 and thereby profiteering and the defendant no.2 is running garage in the suit premises. The defendant no.1 has not paid rent from 10.04.2018 and the defendant no.1 is not using the suit premises and thereby kept it unused without any reasonable cause or excuse and the defendant no.2 is using the suit premises from last 10 years and the defendant no.2 is in exclusive possession of the suit premises. The

plaintiffs have apprehension the defendants may further sublet the suit premises and therefore, the defendants are required to be evicted from the suit premises. Therefore, the plaintiffs have filed this suit as well as present application and prayed relief as per para-4 of this application against the defendants.

3) The defendants have been duly served summons / notice of the suit as well as this application and the defendants have appeared before the Court through their learned advocate and the defendant no.1 has filed written statement vide Exh.23 and denied almost all the facts of the plaintiffs' case and contended that the suit of plaintiff is not maintainable at law as by so called reasons the power could not be entrusted. The monthly rent of Rs.1,000/- is not standard rent and it is very oppressive and tyranny and the defendant no.1 is entitled to do any business and at present, the defendant no.1 is doing business in the suit premises and the defendant no.2 is doing work with the defendant no.1's business. The plaintiff has fabricated false facts and filed this suit as well as present application against the defendants. During the court commission work carried out in the present suit, the business of defendant was running and therefore, the dispute of plaintiff is false that the suit premises has not been used from last 10 years. The plaintiff has not accepted the rent from the defendant therefore, the defendant has deposited the rent in the Hon'ble Court in this suit. Rest of the say of the defendant however is in denial. Therefore,

the defendant has prayed to reject the suit as well as present application with cost and also prayed for special compensatory cost.

4) I have heard learned advocates for both the parties and perused the record of the case. Herein the case on hand, there is no dispute in respect of relationship of landlord and tenant between the plaintiff and the defendant no.1. It is the case of the plaintiff that the defendant no.1 has sublet the suit premises to the defendant no.2, however, it is subject matter of evidence. Presently, the plaintiff has apprehension that the defendants will transfer or assign suit property to third party and if the prayer asked by the plaintiff will be granted then the defendants will not suffer any hardship rather than plaintiff as the plaintiff is a landlord of suit premises and the defendants have no right to sublet or transfer or assign suit premises to third party and therefore, if the interim injunction is granted, it will not prejudice to the defendant. Thus, at this juncture, the plaintiff has prima-facie case and balance of convenience is also in favour of the plaintiff rather than the defendant and if defendants are not prevented from transferring suit premises to third party then the irreparable loss may cause to plaintiff which is not compensated in terms of money. Hence, I pass the following order:-

O R D E R

(1) The present application of the plaintiff is hereby allowed.

(2) The defendants, their men, agents, servants etc. are hereby restrained by way of interim injunction from transfer, assign the suit premises to any third person in any manner till final disposal of the suit.

(3) Costs shall be cause in a suit.

Signed and pronounced in the open Court today on this 6th day of March, 2019.

Ahmedabad.
Date: 06/03/2019.

(Daxesh Rajeshkumar Jaguwala)
Chamber Judge, UIC No.GJ00973,
Small Causes Court,
Ahmedabad.