

ORDER BELOW EXHIBIT-24

(INJUNCTION APPLICATION OF THE DEFENDANTS)

LEARNED ADVOCATES:

Shri K. H. BHADIYADRA, Ld. Advocate for the Plaintiff

Shri R. C. PRAJAPATI, Ld. Advocate for the Defendants.

1. **Factual Matrix**

Brief facts are that the plaintiff has filed this suit under Section 13 of Bombay Rent Act, seeking vacating and handing over the possession from the defendants of the property of the plaintiff bearing Seat Number 87, C.S.No. 5094 measuring 108.41 Sq. Mtr, Botad Nagarpalika property number 440/1 ward number 8 situated at Botad, rented to the defendants and also sought declaration in favor of the plaintiff.

Plaintiff has asserted that:

Plaintiff has purchased the above-mentioned suit property from Jiviben Hirjibhai Darediya by paying Rs. 1 lakh as consideration vide registered sale deed number 154/2000 dated 24/01/2000 with the tenancy rights of the Bipinbhai Dhanjibhai @ Rs. 5/- per month as rent. It is the say of the plaintiff that the father of the defendant i.e. Bipinbhai Dhanjibhai was the tenant of the room above the entrance door from about 90 to 75 years ago and

after his death, the defendants. As per the plaintiff, the defendants have not paid the arrears of the rent of total amount of Rs.1140/- for the duration of 24/01/2000 to 24/01/2019 has not been paid to the plaintiff. Further asserted that the defendants have illegally constructed, without the consent of the plaintiff, a single room with a permanent roof, kitchen and paving, of which the defendants were not tenants and hence illegal trespassers and therefore also the plaintiff wants them to vacate. Further plaintiff has sent a legal notice dated 29/08/2001 under rent act. Defendants have replied evasively to that notice. On 1/05/2014 the plaintiff has sent a legal notice to hand over the possession of rented property to which the defendants have replied dated 24/05/2014. Further asserted that defendants are not residing at the suit property and they have constructed a new house at Bhupatbhai's Jin. Plaintiff asserted that they bonafidely require the suit property. Hence this suit has been filed.

2. After filing of the suit the defendants have appeared and vide Exhibit-22, filed a written statement and counter claim to declare the defendants as the tenants of the whole portion of terrace. The defendants have also filed an application vide

Exhibit-24 for seeking temporary injunction under Order 39 Rule 1 and 2 and Section 151 of Civil Procedure code.

3. **Relief Claimed in Exhibit -24 Injunction application:-**

The defendants have filed this application seeking following reliefs against the plaintiff:-

1. *"to issue a temporary injunction that the plaintiff shall not disturb, detain, obstruct or demolish the tenanted property of the defendants in any manner whatsoever, and shall not cause to do any act prejudicial to the tenancy right of the defendant;*
2. *To direct the plaintiff to reestablish the tap and sewer connections immediately which he has cut and stopped;*
3. *To order the plaintiff to make habitable repairs as well as new construction thereon in the defendant's rightful tenanted property as it is in need of habitable repairs as well as new construction thereon And in the alternative to make an order allowing the defendants to carry out such construction at their expenses and to order that the expenses incurred in connection with such construction shall be recovered from the amount of the rent paid by the defendants;*

4. *to issue a temporary injunction that the plaintiff shall not obstruct in any way in making above said construction and to order to grant police protection to the defendants while making such construction;*
5. *to issue an injunction that while connecting the tap and sewer connection by the Nagarpalika, the plaintiff shall not act, obstruct or hinder in such circumstances."*

4. **Submissions:-**

From the Defendant's Side:

Learned advocate for the Defendant's has argued that:

- a. Defendants are the tenants of the whole of the upper portion of the plaintiff's property.
- b. Before the plaintiff had purchased the property from One Jiviben, Defendants were tenants and they are there from the last 3 generations as tenants.
- c. One RCS/217/2008 has also been filed by the defendants in which counter claim of the plaintiff has been also rejected and suit has also been rejected. Against which Appeal has been filed and thereafter before the Hon'ble High Court, the matter is pending.

- d. The defendants are the tenants of the whole upper portion as it can be seen from the notice dated 15/06/1998.
- e. Plaintiff and the earlier owner Jiviben has mentioned in the sale deed that defendants are the tenant of the room only. This deed is not applicable to the tenant as they are not parties to it.
- f. The relation between the plaintiff and defendants is well established that they are landlord and tenants.
- g. Plaintiff has cut off the essential services of the defendant's tenanted property which the defendants are legally entitled and under section 24 of the rent control act, the landlord gets penalized for contravention of the provision.
- h. Plaintiff is the wrongdoer as there are other proceedings also have been initiated earlier. Wrongdoers can not be allowed to take advantage of the wrong done by him.
- i. Defendants have prima facie case and hence Injunction be granted.
- j. Balance of Convenience is in favor of the defendants.

- k. If the injunction is not granted then the defendants shall suffer irreparable injury which would not be compensated in terms of money.

From the Plaintiff's Side:

Learned advocate for the plaintiff has argued and submitted that:-

- a. Defendants have filed 2 Injunction applications one in this suit and other in RCS/597/2019 and both the applications are identical & claiming the same reliefs.
- b. Defendants are not residing at the suit property as they are claiming.
- c. Defendants have never cut off any essential services and if assuming it to be cut off, the defendants have to proceed before the deputy collector.
- d. Defendants are not able to prove that they are residing there. As per the sale deed it is clear that the defendants are not the tenants of the whole property.
- e. No evidence has been shown that the tap or sewer or any other connection has been severed.
- f. The defendants are the illegal trespasser of the property and hence the trespasser can not be given benefit by law.

- g. There is no balance of convenience, Irreparable injury and no prima facie case.
8. Considering the pleadings, documentary evidence and arguments advanced by the Learned Advocates for the parties for deciding this application, following issues i.e. points for the determination of the present application under Order 39 Rule 1 and 2 of the Civil Procedure Code and Section 151 of Civil Procedure Code, have been raised:-
 1. Whether the Defendants/Applicants prove that they are having a prima-facie case?
 2. Whether the Defendants/Applicants prove that the balance of convenience is weighing in their favor?
 3. Whether the Defendants/Applicants prove that if injunction as prayed is not granted then they shall suffer an irreparable loss which cannot be compensated in the terms of money?
4. What order?
9. My finding regarding the above points/ issues are as follows :
 1. In the **Negative.**
 2. In the **Negative.**
 3. In the **Negative.**

4. As per final order.:-

-:- REASONS -:-

Point Nos. 1 to 3:-

10. For the sake of brevity I am dealing with Issue no. 1 to 3 together as they all are interconnected. I have gone through the submissions as advanced by the learned advocates appearing for the parties and also gone through the documents as submitted by the parties on record and while considering the settled principle of law at this stage for adjudicating the present case, it is clear that entire merit is not required to be discussed and appreciated while deciding the Injunction application.
11. At this juncture before discussing further, I would like to discuss the Judgment of the Hon'ble Supreme Court in which the Hon'ble Supreme Court has observed that:

" 5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favor which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has

to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favor of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If

weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit.”¹

(Emphasis supplied)

12. For granting the relief of the temporary injunction under Order 39 of CPC, the party has to satisfy three ingredients by sufficient evidence. As held by the Hon’ble Supreme Court,

“ it is settled principle of law that mainly three ingredients as provided it means under Order 39 Rule 1 and 2 of the Code of Civil Procedure are required to be taken into consideration and for that the plaintiff has to prove his case prima facie by submitting sufficient evidence, then only the plaintiff is entitled for ad-interim injunction, but he must also prove other two ingredients which are, the balance of convenience is in favor of plaintiff and if the ad interim injunction is not granted in favor of the plaintiff, then he will have to suffer irreparable loss which cannot be

¹ Dalpat Kumar Versus Prahlad Singh, AIR 1993 SC 276.

compensated in terms of money. Further, it is also settled principle of law that all above ingredients are interconnected to each other and it is the duty of the plaintiff to prove all the three ingredients and if above three ingredients are proved by the plaintiff, then the plaintiff is entitled for ad-interim injunction. ”²

(Emphasis supplied)

13. Therefore, while considering the above ingredients and considering the facts as averred by defendants in their application vide Exhibit-24, it clearly and ostensibly transpires from the documentary evidences that the plaintiff has brought suit claiming the relief of handing over the possession from the defendants of the property of the plaintiff which was given on rent to the defendants. The defendants in this suit have filed an injunction application seeking reliefs as mentioned above. From the bare perusal of the documentary evidences it appears that the defendants have submitted that rent receipts of the suit property and upon perusal of Mark 23/1 to Mark 23/13 it appears

2 Kashi Math Samsthan vs. Srimad Sudhindra Thirtha Swamy, AIR 2010 SUPREME COURT 296.

that in various years the rent have been paid through money order. Vide Mark 23/14 and Mark 23/15, rent has been deposited before the court dated 31/01/2013 and 24/01/2012 respectively. It appears that it can not be said that the defendants have not paid the rent from the year 24/01/2000 as asserted by the plaintiff. Looking at the rent paid through money order produced at mark 23/1 to 23/13, Mark 23/18 to mark 23/32, it seems that the name of the father of the defendants and grandfather of the defendants have been written along with the address. In these documents, only address written is "Chattri Same ni Gali or Chaatri Same na Khancha ma". The plaintiff has not denied the fact that the defendants were never given the property on rent. Only dispute is which portion of the property is given on rent.

14. The defendant have sought the relief which is mandatory in nature and to order the plaintiff to omit from demolishing the suit property and to compel plaintiff to reestablish the tap and sewer connection and to construct the suit. At this juncture, I would like to discuss the Judgment of the Hon'ble Supreme Court in which the Hon'ble Supreme Court has observed that:

“The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- 1. The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.*
- 2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.*

3. *The balance of convenience is in favour of the one seeking such relief.*

Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of judicial discretion.”³

(Emphasis supplied)

In case of the mandatory interlocutory application, a higher standard than a prima facie case is required. Generally the court can grant the relief of mandatory injunction in certain special circumstances.

TRIPLE TEST

16. PRIMA FACIE CASE:

3 Dorab Cawasji Warden vs Coomi Sorab Warden & Ors, 1990 AIR 867.

Samir Narain Bhojwani vs M/S Aurora Properties and Investments, Supreme Court, Civil Appeal No. 7079 OF 2018.

Prima facie case basically means “sufficient to establish a fact or raise a presumption”. As per the documents produced by both the sides, it is clearly and ostensibly transpires and admitted by the parties that the plaintiff i.e. Lalitbhai Ganeshbhai Dabhi is the owner of the Suit property. It is admitted by both the parties that the defendants are the tenants of the suit property. As per the plaintiff the defendants are the tenants of the Room at the terrace whereas as per the defendants, the defendants are the tenants of the whole upper portion. In support of their submissions, the defendants have submitted the Money order, Tax receipts etc. in which the address can be seen. Looking at the reliefs sought in the injunction application, Defendants have sought the relief that the plaintiff shall not demolish the suit property but no iota of evidence has been produced on record by the defendants which suggest that the suit-property is in imminent danger and that the property is being demolished. Defendants have sought the relief of re-establishing the Tap and sewer connection but except the oral assertion, the defendants have not been able to place on record any evidence which suggest that the tap and sewer connection has been disconnected by the plaintiff. The defendants have also

submitted other evidences such as Criminal proceedings between the Plaintiff and the defendants and the series of letter transactions between the Nagarpalika and the Plaintiff and defendants but this evidence is not helpful to the defendants at this stage.

Defendants, to seek the reliefs of injunction, have to prove prima facie case but it can not be said that the prima facie case has been made out. Defendant has sought that the plaintiff shall not demolish the whole terrace as it was given on rent to them but they have not been able to prove that the whole portion of the terrace of the suit property has been given on rent to the defendants and hence Law can not give its shelter and benefit to the illegal trespasser. Therefore, without entering into the merits of the case in hand, I am of the view that the defendants have not succeeded to prove that they are having prima facie case against the plaintiff for obtaining injunction. Hence I answer Issue no. 1 in **Negative**.

22. **BALANCE OF CONVENIENCE:**

Balance of Convenience, the balance of convenience basically means “to determine the party who would suffer greater harm/loss and that party would be said to be having a balance of

convenience". Looking at the facts, circumstance and case record it appears that the defendants are tenants of a room at the Terrace and they have the right to enjoy the property which has been given on rent only. Therefore the comparative mischief or inconvenience likely to be caused from granting injunction will be greater. Therefore I am of the view that the balance of convenience is not in favor of the plaintiff. Hence I answer issue no.2 in **Negative**.

23. **IRREPARABLE INJURY**

Irreparable injury basically means "an injury which is impossible to rectify". Further considering the facts and circumstance of the case in hand, if the injunction is not granted then it will not cause serious injury to the right and interest of the plaintiff and it will not cause irreparable injury to the defendants which can not be compensated in terms of money. Therefore the defendants are not able to prove that if injunction as prayed is not granted then they shall suffer an irreparable loss which cannot be compensated in the terms of money. Hence I answer issue no.3 in **Negative**.

Point No. 4

24. Hence, in the view of all the above circumstances and satisfaction of all the three ingredients, for the issue no. 4, the following order has been passed :-

:: ORDER ::-

1. The present interim injunction application as filed vide Exh.-24 by the plaintiff is hereby **Rejected**.
2. No order as to costs.

Pronounced and signed in open court today on this 19th day of March, 2024 at Botad.

Date:-19/03/2024

Place:- Botad.

(RAVINDRA KUMAR)

2nd Additional Civil Judge,

Botad

(Code No. GJ01713)