

CNR NO. MHSCA 20005432019

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT- 9

IN

R.A.D. SUIT NO. 323 OF 2019

Gouri Purshottam Dixit

..Plaintiff

Vs.

1. Rishi Gagan Trust & Ors.

..Defendants

Coram :N.P. Pawar

Judge, C. R. No. 9

Date : 09.01.2020

ORDER

1. In a suit for declaration and perpetual injunction, plaintiff has filed this application for restraining defendants from obstructing, interfering and disturbing her peaceful possession in the suit premises till disposal of the suit and further she be permitted to pay the rent in the court.
2. Plaintiff contended that she is tenant in respect of the suit premises i.e. flat No. 14, 3rd floor, "Joyeden" situate at Mereweather Road alias B.K. Boman Behram Marg, Colaba, Mumbai – 400 005. She is regularly paying the rent to the defendants. She has not committed any violation of the rules of Rent Control Legislation. Defendant Nos. 2 and 3 by notice dated 22.01.2018 terminated the plaintiff's tenancy in respect of the suit

premises stating that defendant Nos. 2 and 3 require the suit premises for their personal use and occupation. By the said notice, plaintiff was called upon to handover vacant possession of the suit premises to defendants. Further defendant is also not accepting rent by plaintiff, therefore plaintiff is constrained to file this application for restraining the defendants from disturbing her peaceful possession in the suit premises and seeking directions to pay the rent in the court.

3. **Defendants resisted the said application and filed reply at Exh. 13.** Defendants contended that application is misconceived and abuse of process of law and liable to be dismissed. Plaintiff has made this application to delay the hearing and disposal of the suit. Plaintiff has intention to permanently settle down elsewhere in the vicinity of her relatives and is not residing continuously in the suit premises. Plaintiff is not keeping well and god forbidden anything happens to her, it will be difficult to get the possession of the suit premises. Defendant requires the suit premises reasonably and bonafide for their personal use and occupation. Defendant by advocate letter dated 22.01.2018 has terminated the tenancy of the plaintiff in respect of the suit premises. Defendant denies the apprehension of plaintiff that in view of highhanded attitude adopted by the defendant No.1, defendant may dispossess plaintiff from the suit premises without following due process of law. Plaintiff is very old and staying alone in the suit premises since last 30 years. Defendant strongly apprehends

that plaintiff may create third party interest in the suit premises. These defendants never interfered with the possession of the suit premises. Hence question of granting interim order does not arise and hence prayed that application be rejected.

4. Plaintiff has filed rejoinder at **Exhibit -14** and denied the contentions of the reply filed by the defendants.
5. Considering the submission of both the parties, following points arise for my determination and I record my findings thereon for the reasons mentioned below:-

	POINTS	FINDINGS
1	Whether plaintiff has made out prima facie case?	Yes.
2	Whether balance of convenience lies in favour of plaintiff?	Yes.
3	Whether irreparable loss will be cause to plaintiff , if injunction is refused?	Yes.
4	Whether the plaintiff is entitled for the relief of deposit of the rent in the court ?	Yes.
5	What order?	As per final order.

REASONS

6. **Heard both the advocates at length . Perused the record.**
7. From the record, it appears that there is no dispute regarding the fact that plaintiff is the tenant of the suit premises and defendants are the landlord of the suit premises. Further defendants have also admitted that they have issued notice dated 22.01.2018 whereby they have terminated the tenancy of the plaintiff.
8. I have gone through the contents of the letter issued by defendants to plaintiff dated 22.01.2018. In para No. 2 of the said letter, defendants have contended that they require the suit premises reasonably and bonafide for their personal use and occupation and thereby terminated the tenancy. Here it is pertinent to note that the tenancy of the premises is governed by the provisions of Maharashtra Rent Control Act, 1999. The tenancy under this Act can be terminated only by two ways (1) by decree of the court or (2) by surrendering the tenancy by the tenant. Except these two ways, there is no other way to terminate the tenancy.
9. The tenancy under Rent Control Act cannot be terminated by issuing notice by only issuing notice to the tenant by the landlord. In spite of this clear provisions, yet defendants have attempted to issue notice to the plaintiff thereby terminating the tenancy of the plaintiff in the suit premises. This act of defendants issuing notice of termination is a highhanded act. Plaintiff is a senior citizen of

aged more than 70 years and she is residing alone in the suit premises. In such circumstances, the issuance of notice by the defendants will naturally raise an apprehension in the mind of the plaintiff who is senior citizen. The apprehension raised by the plaintiff seems to be probable. Thus, plaintiff has made out prima facie case in her favour. If the interim injunction is not passed as prayed then plaintiff will suffer irreparable loss as she will be thrown out from the suit premises. She is a weak helpless senior citizen and she will be homeless. Defendants in their reply have admitted that plaintiff is very old and staying alone. Thus balance of convenience tilts in favour of the plaintiff.

10. In this application, plaintiff has also prayed that the defendants have stopped to accept the rent from her in respect of the suit premises. The defendants have not even replied to her Advocate's letter dated 06.12.2018. Hence she prayed that she be permitted to deposit rent of Rs. 2,400/- being arrears of rent @ Rs. 600/- p.m. for the period commencing from October 2018 to January 2019 and also prayed that she may be subsequently allowed to pay the rent from February 2019 till disposal of the suit. Defendants contended that they required the suit premises reasonably and bonafide for their personal use and occupation. Plaintiff is not paying water charges, electricity charges and repair cess while other occupants are paying the same. Hence prayed that application be rejected.

11. Plaintiff is a tenant. She is occupying the suit premises. Defendants have not denied the statement of plaintiff that they have not accepted the rent from her from October 2018. The only contention of the defendants is that they have issued notice for termination of tenancy in favour of plaintiff. She is also not paying repair cess, electricity charges and water charges. The plaintiff has come before the court contending that she is ready and willing to pay the rent of the suit premises. As defendant has refused to accept the rent from her, since October 2018, hence she is entitled for the payment of the rent in the court. Therefore, the relief of plaintiff with regard to the deposit of arrears of rent from October 2018 to January 2019 needs to be allowed and also she need to be permitted to pay further rent regularly on or before 15th day of every month alongwith water charges, repair cess and electricity charges, if any.
12. Thus in view of above discussions, I am of the opinion that plaintiff is entitled for the relief of interim injunction as prayed and also entitled for the relief of depositing of rent of the suit premises in the court. Accordingly I **answer point Nos. 1 to 4 in the positive and in answer to point No.5 I pass following order.**

ORDER

1. Application is allowed.
2. Defendants themselves or through their agents, servants or any one on of their behalf are

hereby restrained by order of temporary injunction from disturbing, obstructing plaintiff's possession in the suit premises till final disposal of the suit.

3. Plaintiff is permitted to deposit in the court the monthly rent Rs.2,400/- for a period from 01.10.2018 till 31.01.2019 without prejudice to the rights of the plaintiff.
4. Defendants are further permitted to continue to deposit the rent alongwith water charges, repair cess and electricity charges, if any, henceforth on or before 15th day of each succeeding month till disposal of the suit without prejudice to the rights of the parties.
5. Defendants are permitted to withdraw the amount of rent, alongwith water charges, repair cess and electricity charges.

Mumbai.
Date :09.01.2020

[N.P. Pawar]
Judge, C.R. No.9