

CNR No. MHSCA10008192022

IN THE COURT OF SMALL CAUSES AT MUMBAI
(APPELLATE BENCH)

Order below Exh. 7

IN

Misc. Appeal No. 242 of 2022

IN

Exhibit 16

IN

L.E. & C. Suit No. 25 of 2020

Mrs. Neha Vinayak Nagwekar : Appellant
(Orig. Plaintiff)

Versus

Mr. Harendra Damji Bhalla : Respondent
(Orig. Defendant)

Appearance :

Mr. P.V. Nayak, learned Advocate for the Appellant
Mr. R.L. Dubey, learned Advocate for the Respondent

Coram : S.T. Soor,
Additional Chief Judge
And
K. R. Rajput
Judge, Court Room No. 2

Date : 07.11.2022

ORDER : (Per S.T. Soor, Additional Chief Judge)

We have heard advocate for both parties and perused the application (Exh.7). Appellant (original plaintiff) is seeking stay against order dated 25.08.2022 below application (Exh.16) passed by the trial Court. She is also seeking stay to hearing of application

(Exh.37) and (Exh.40) pending before the trial Court in L.E. & C. Suit No. 25 of 2020. Respondent is the defendant in the suit. *(Parties are hereinafter referred as per their original status before the trial Court.)*

2. Facts leading to filing of the present application are that plaintiff has filed above suit for recovery of possession, license compensation and *mesne* profits. She has also filed application (Exh.16) for temporary injunction restraining the defendant from creating third party interest in the suit premises and for appointment of the Court Commissioner. Defendant filed reply and resisted the application. Vide order dated 25.08.2022, the trial Court rejected application (Exh.16) observing that defendant is not in possession of the suit premises, one Sanket Nagwekar, brother-in-law of the plaintiff is in possession of the suit premises, there is effective order of injunction against Sanket Nagwekar in a suit filed by the plaintiff before the City Civil Court and no order can be passed in absence of third party who is possession.

3. Contention of advocate for the appellant/plaintiff is that plaintiff has preferred present appeal against order dated 25.08.2022 passed by the trial Court below application (Exh.16). Defendant has filed application (Exh.37) for amendment in the written statement and Sanket Nagwekar has filed application (Exh.40) for adding him as defendant in the suit. Impugned order is causing serious irreparable damage to the plaintiff due to its illegality on the face of it. Impugned order will be relied upon by the defendant and Sanket Nagwekar for seeking reliefs and benefits in their application at Exh.37 and 40. Hence he prayed for allowing the application.

4. Respondent/defendant filed reply (Exh.11) and opposed the application. Contention of advocate for the defendant is that defendant has filed application (Exh.37) for amendment in the written statement to bring subsequent events on the record. Third party has filed application (Exh.40) for adding him as a defendant. Appellant is seeking stay on the proceedings of the trial Court. Impugned order is not executable. There is no substance in the application. Hence he prayed for rejection of the application.

5. Advocate for the plaintiff, relied on the judgment of the Honble Apex Court in **Sant Lal Jain Vs. Avtar Singh, 1985 SCC (2) 332** and submitted that after termination of the license, the licensee is under obligation to surrender his possession to the the licensor. With due respect, we fail to understand how this authority is helpful to the plaintiff at this stage.

6. From the perusal of record, it is evident that in a suit for recovery of possession and license compensation, plaintiff has filed application (Exh.16) for temporary injunction restraining the defendant from creating third party interest in the suit premises and for appointment of the Court Commissioner. Defendant filed reply and resisted the application. After perusing the record and hearing advocate for the parties, the trial Court rejected application (Exh.16) vide order dated 25.08.2022. Being aggrieved and dissatisfied with said order, plaintiff preferred present appeal.

7. As per section 41 of the Specific Relief Act, 1963, an injunction can not be granted – (i) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to

prevent multiplicity of proceedings; (ii) to restrain any person from instituting or prosecuting any proceeding pending in a Court not subordinate to that from which the injunction is sought and (iii) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

8. It is not in dispute that Sanket Nagwekar is brother-in-law of the plaintiff. Plaintiff has filed a suit against Sanket Nagwekar before the City Civil Court and there is effective order of injunction against him. Sanket Nagwekar is not a party to the suit. Defendant claims that during Lock-down period, he handed over possession of the suit premises to Sanket Nagwekar.

9. Defendant has filed application (Exh.37) for amendment in the written statement to bring subsequent events on the record. Third party, Sanket Nagwekar has filed application (Exh.40) for adding him as a defendant in the suit. Plaintiff/appellant is seeking stay to the impugned order on the ground that it will be relied upon by the defendant and Sanket Nagwekar for seeking reliefs and benefits in their application at Exh.37 and 40.

10. It appears *prima facie* that impugned order is not of executable nature. Appellant is also seeking stay to the hearing of application (Exh.37) and (Exh.40) pending before the trial Court. Thus plaintiff is seeking stay against proceedings of the trial Court. Plaintiff has opportunity to oppose amendment application (Exh.37) filed by the defendant and application (Exh.40) filed by third party for addition of party to the suit. Both applications have no bearing on the present appeal. The trial Court will decide both applications on merits. Under the facts and circumstances, we are of the view that

the appellant failed to make out a case for grant of stay as prayed on facts as well as in law. Application is devoid of merits and liable to be rejected. In the result, we proceed to pass the following order -

ORDER

Application (Exh.7) rejected.

I agree,

(K. R. Rajput)

Judge

C. R. No. 2

07.11.2022

(S.T. Soor)

Additional Chief Judge

C.R. No. 2

07.11.2022