

IN THE COURT OF SMALL CAUSES AT MUMBAI

Order below Exh.9

In

RAD Suit No. 221 of 2018

Tejkumar Mathurprasad Dikshit

... Plaintiff

Versus

Arvind Kothari

... Defendant

Shri.B.P. Shukla, Advocate for Plaintiff.

Shri.D.A. Barot, Advocate for Defendant.

Coram :- Bijesh A.Gaikwad

Judge

Court Room No.17

Date :- 16.11.2018

ORDER :-

1. By way of this application, plaintiff is seeking an injunction against the defendant from dispossessing him/interfering with his possession of the suit premises pending the hearing of the suit and permission to deposit the monthly rent of the suit premises.

2. It is the case of the plaintiff that his father Mathuraprasad Dikshit become the tenant of the suit premises, of which defendant is the landlord by way of transfer of tenancy right in his favour by one Shankar Vinayak Wagle by way of Registered Indenture of Assignment dated 01.11.1961 Shri.Shankar Vinayak Wagle was carrying on his business of dealership of dyes and chemicals in the name and style of "S.V.Wagle".

Since 1961, plaintiff's father was in possession of the suit premises as a tenant. He was paying rent to the landlord. He was carrying on his business in the name and style of "Purchase & Sales Exchange". The Shops and Establishment Licence issued by the Bombay Municipal Corporation in his father's name shows that his father was carrying on his business from the suit premises.

3. The plaintiff's father Mathuraprasad Dikshit died on 21.11.1998 at Mumbai leaving behind plaintiff as his only legal heir and representative. After the death of his father, plaintiff is in occupation and possession of the suit premises and continuing the business of his father from the suit premises. The Shop and Establishment Licence to that effect is issued by the Bombay Municipal Corporation in his name. After the death of his father, he was regularly paying rent to the defendant and request to transfer the rent receipt in his name. But, defendant continued to accept the rent, but was issuing rent receipt in the name of his father. The defendant sought to accept the rent from the plaintiff in respect of the suit premises due to his repeated request for issuing rent receipt in his name.

4. According to the plaintiff, he had addressed a letter along with the cheque towards payment of rent and electricity charges and requested to accept same and issue rent receipts on 07.07.2017, 12.09.2017 and 16.09.2017, but defendant declined to accept the same. As defendant was demanding more money for transfer of rent receipt in his name, plaintiff, again by way of his letter dated 16.09.2017 submitted all the documents in support of his tenancy and requested to transfer rent receipt in his name. Again on 07.10.2017, 09.10.2017, 02.11.2017, 06.11.2017 and 07.11.2017,

plaintiff requested the defendant to accept the rent and other charges in respect of the suit premises, but defendant did not accept the same.

5. The plaintiff, being only legal heir and representative of deceased Mathuraprasad Dikshit, is entitled to inherit the suit premises as tenant as per section 5(11)(c) of the Bombay Rent Act and corresponding section 7(15) of the Maharashtra Rent Control Act, 1999. In spite of this, defendant is not accepting him as tenant, therefore this suit is filed by the plaintiff. After the death of plaintiff's father, defendant do not want to continue the tenancy with the plaintiff and wants to induct some other person. On 29.01.2018, at about 11.30 a.m. some persons came to the suit premises and threatened him to vacate it, they threatened that failing which, he will face dire consequences. The plaintiff went to Police for help, but they refused to assist him as the matter is of Civil nature. The defendant, being associated with the anti social element and having good relations with the local Police and politicians, the plaintiff is having strong apprehension that the defendant will succeed in taking away his legitimate right in respect of the suit premises if injunction will not be granted.

6. Plaintiff, in addition to above prayer also prayed that he be allowed to deposit the monthly rent of the suit premises in the Court till decision of the suit. According to the plaintiff, in spite of his various attempts referred in the application in detail, the defendant has not accepted the rent in respect of the suit premises. It be allowed to be permitted to deposit in the Court. If, it will be allowed, no any injustice will be caused to the defendant. Hence, this application.

7. The defendant has resisted the present application by way of his detail reply at Exh.16 and submitted that the application is

misconceived, malafide and not maintainable in law. The defendant relied upon his written statement and further submitted that there is no relationship of landlord and tenant between the plaintiff and defendant in respect of the suit premises, therefore, there is no question of depositing the rent in the Court and granting relief of injunction as sought by the plaintiff. Further, it is submitted that there is no apprehension as alleged by the plaintiff, because contention of said apprehension in the application of the plaintiff is totally vague and without any particulars.

8. The second contention of the defendant is that the plaintiff has annexed the rent receipt allegedly issued by M/s.Kantilal Narbheram & Co. All the correspondence mentioned in the application and the plaint, on which the plaintiff has relied upon in respect of the payment of rent and other charges, is addressed to M/s.Kantilal Narbheram & Co., therefore, there is no cause of action as set out in the plaint. Moreover, the specific description of the suit premises is nowhere mentioned either in the plaint as well as in the present application of the plaintiff, therefore, plaintiff is not entitled for relief sought.

9. Considering the rival contentions of the parties, following points arose for my determination. I have recorded them with my findings thereon, for the reasons to follow, as under :

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether plaintiff has prima facie case ?	Yes
2.	In whose favour balance of convenience lies ?	In favour of plaintiff
3.	Who shall suffer irreparable loss on grant	Plaintiff

or if refusal of relief of temporary injunction ? if relief is refused.

4. Whether the plaintiff is required to be permitted to deposit the monthly rent in respect of the suit premises as prayed ? Yes
5. What order ? As per final Order

REASONS

AS TO THE POINT NOS.1 TO 3 :-

10. Admittedly, the suit is filed by the plaintiff for declaring him as a tenant. It will take it's own time for decision. The written statement of defendant shows that he has not disputed the possession of the plaintiff over the suit premises. The main question for adjudication is whether plaintiff is entitled for declaration as a tenant in respect of the suit premises as he is occupying it after the death of his father, who was the original tenant in respect of the suit premises. As per section 5(11)(c) of the Bombay Rent Act and corresponding section 7(15) of the Maharashtra Rent Control Act, 1999.

11. At this juncture, while granting equitable relief of injunction, the Court has to see whether the plaintiff has established all three ingredients referred above in his favour. The main objection of the defendant is that there is no relationship of landlord and tenant exists between him and plaintiff. All the correspondence, which are mentioned in the plaint and the present application in respect of payment of rent by the present plaintiff after demise of his father are made to the firm M/s.Kantilal Narbheram, who is not party to the suit. The entire plaint

does not disclose any relationship between the plaintiff and the defendant in the present case. When the entire correspondence, rent receipts are showing the name of M/s.Kantilal Narbheram, no cause of action has arose against the present defendant for institution of the suit. In such circumstances, suit itself is not tenable. Hence, no question of granting equitable relief of injunction arose.

12. I have given the thoughtful consideration to the objections of the defendant. It is a matter of record that the present defendant has taken out the separate application vide Exh.18 for rejection of the plaint on the very same ground referred above and by way of order passed by this Court today itself the said application is rejected on the ground that the cause of action is based on bundle of facts and unless and until, its trial is completed, it cannot be held that no cause of action is arose as alleged by the defendant. It is clearly stated by the plaintiff that he was having impression that M/s.Kantilal Narbheram & Co. is the landlord of the suit premises and under the said impression, he had made correspondence with the said firm. There seems no any malafide on the part of the plaintiff for such correspondence. On the contrary, it is specifically pleaded by the plaintiff that after inquiry about the landlordship when he came to know that the defendant is the landlord of the suit premises, he has approached to the present defendant and requested him to transfer the rent receipt in his favour by accepting rent. The material available before the Court itself not shown any malafide on the part of plaintiff for such correspondence with M/s.Kantilal Narbheram & Co. The objection of the defendant that the suit is not maintainable as the said M/s.Kantilal Narbheram & Co, who is necessary party to the suit and against whom, the entire cause of action

arose is not made party to the suit is required to be decided during the trial. If, during the trial, Court finds that it is necessary and proper party, then it can be added as party to the suit on Court Motion or on the basis of application of the plaintiff.

13. At this initial stage of the suit, when the defendant is admitting the possession of the plaintiff through his father in the suit premises since long i.e from 1961, I am of the opinion that the plaintiff has succeeded in establishing his prima facie case for the purpose of protecting his possession.

14. Now, next question arose whether merely because the number of the suit premises is not mentioned in the plaint, the plaintiff is disentitled from seeking equitable relief of injunction. To that effect, I am of the opinion that it will not be fatal to the plaintiff. The plaintiff has specifically mentioned the boundary marks of the suit premises, in the plaint. The photographs, which are produced on record by him prima facie shows that the suit premises and other shops in the suit building are not having any separate numbers on them. Moreover, effect of non disclosure of property number in the plaint can be decided during the trial. The plaintiff will not be disentitled from seeking equitable relief of injunction in respect of the suit premises on that count, because his possession over the suit premises is from since near about last 60 years through his father and thereafter, his own. The M.M.C has issued Shop and Establishment Licence to his father and thereafter to the plaintiff for conducting their business from the suit premises. The plaintiff has specifically mentioned the date i.e of 29.01.2018, when some persons came to the suit premises and threatened him to vacate the suit premises, it shows reasonable

apprehension for his dispossession from the suit premises at the hands of defendant. It appears that the Police have refused to take cognizance for such apprehension being it matter of civil nature. In such circumstances, to my mind, the plaintiff is having balance of convenience in his favour. When plaintiff is in continuous and unobstructed possession of the suit premises initially through his father and thereafter himself since nearabout last 60 years, he has shown rent receipt issued in favour of his father in respect of the suit premises, the Shop and Establishment Licence issued in the name of his father and thereafter him and when he has come before the Court for declaring him as a tenant, in such circumstances balance of convenience lies in his favour. Hence, if the defendant will succeed to evict him from the suit premises by taking forcible possession at the hands of anti social elements and by using political pressure, the plaintiff will suffer irreparable loss, which cannot be compensated in terms of money.

15. Considering all these aspects, I am of the opinion that plaintiff has established all three ingredients required for granting equitable relief of injunction in his favour. In such circumstances, if the injunction will be granted, no any loss or prejudice is going to be caused to the defendant. On the contrary, it will avoid multiplicity of the proceeding and further complications during the trial as well as at the time of execution of the decree. Hence, I answer point nos.1 to 3 in the affirmative.

AS TO POINT NO.4 :-

16. All the correspondence, which are on record made by the plaintiff shows that he tried to deposit the rent in respect of the suit premises to M/s.Kantilal Narbheram & Co. and thereafter, to the defendant. The correspondence with M/s.Kantilal Narbheram & Co. was

due to inadvertence of plaintiff. After getting knowledge that the defendant is the landlord of the suit premises, he has instituted the suit premises against the defendant for accepting him as a tenant and requested to issue the rent receipts in his favour. Admittedly, the suit will take its own time for its decision. Whether plaintiff is the tenant of the defendant can be decided only after trial. At this juncture, when the defendant is in possession of the suit premises, which is admitted by the defendant and rent of the suit premises is not accepted by the defendant, if plaintiff will be allowed to deposit the rent in respect of the suit premises as prayed by him without affecting the rights and contentions of both the parties and under protest by the plaintiff, no any prejudice would be caused to the defendant. Hence, to my mind, it is necessary to allow the defendant to deposit the arrears of rent in respect of the suit premises as prayed by him and continued to deposit the monthly rent in respect of the suit premises on or before 10th day of each succeeding month till decision of the suit without prejudice to the rights and contentions of both the parties. Hence, I answer point no.4 in the affirmative.

AS TO POINT NO.5 :-

17. In view of my findings recorded by me to point nos.1 to 4, I proceed to pass following order, which will meet the ends of justice.

ORDER

(1) Defendant, his servants, agents or persons and representatives are hereby restrained by an order of interim relief of injunction from parting with possession or occupation of the suit premises or any part thereof or from inducting any third party interest

therein under any arrangement till decision of the suit.

(2) The plaintiff is permitted to deposit all the arrears of rent in respect of the suit premises within one month from today without prejudice to the rights and contentions of both the parties and shall further continue to deposit the monthly rent of the suit premises on or before 10th day of each succeeding month till decision of the suit without prejudice to the rights and contentions of both the parties.

(3). Cost in cause.

Mumbai
Court Room No.17
Date :- 16.11.2018

(Bijesh A.Gaikwad)
Judge

Order dictated on :- 16.11.2018
Order transcribed on :-17.11.2018
Order checked & signed on :-17.11.2018

(Bijesh Gaikwad)
Judge