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CNR NO.MHSCA20015982018

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXH.14

IN

RAD SUIT NO.1169 OF 2018

Jadavji Virak Bhanushali

...Plaintiff

Versus

Suryakant Narayan Patel

...Defendant

Advocate for Plaintiff : Mr. N. R. Tiwari

Advocate for Defendant : Mr. Gaurang K. Mehta

Coram :- Bijesh A. Gaikwad
Judge, C. R. No.17
Date : 05.10.2019

ORDER:-

1. By way of present interim application plaintiff is seeking direction against the defendant for temporary accommodation and/or entering an agreement or undertaking with defendant in respect of the suit premises. According to the plaintiff, he is tenant of the defendant in respect of the suit premises, which is more particularly mentioned in para No.1 of the plaint. The suit premises is demolished by M.C.G.M. on 10.10.2017 after issuing notice under Section 354 of M.C.G.M. Act 1888 to the plaintiff and defendant i.e. tenant of the suit premises. The suit premises is demolished after following said provision of law as defendant failed to repair it inspite of repeated demands made to him.

:2:

2. According to the plaintiff after demolition of said premises, defendant is liable to provide permanent or temporary accommodation to the plaintiff till new premises is constructed over there and possession of the same is handed over to the plaintiff. In alternate it is prayed by the plaintiff that agreement with specific details of place, time for possession etc of newly constructed premises is required to be executed by the defendant in favour of the plaintiff. As the defendant failed for the same, this application based on the grounds mentioned in the application in detail is taken out.

3. Defendant by way of detailed reply strongly opposed the application and stated that the plaintiff is not at all entitled for relief of mandatory nature as sought. Granting relief sought would be like granting final reliefs claimed by the plaintiff in suit. According to the defendant, suit itself is not maintainable before this Court and therefore instant application taken out by the plaintiff be rejected with costs.

4. Heard both sides. Also gone through records and proceedings. Following points arose for my determination. I have recorded them with my findings thereon, for the reasons to follow, as under :

POINTS

FINDINGS

1. Whether plaintiff has established all three ingredients required to be for granting equitable relief of injunction and thus is entitled for relief sought ?

No

:3:

2. What Order ?

As per final order

REASONS

AS TO POINT NOS.1 AND 2 :-

5. It appears that plaintiff in suit is seeking declaration as tenant of the suit premises which is more particularly mentioned in para No.1 of the plaint. Admittedly it is demolished by MCGM on 10.10.2017 after issuing notice under Section 354 of MCGM Act, 1888 to the plaintiff as well as defendant. It is demolished after complying due process of law. As on today the suit room/premises is not in existence. Whether suit room was demolished due to deliberate intention and malicious act of defendant prior to entering into agreement of redevelopment with plaintiff is matter of adjudication. Thus whether plaintiff is entitled for main relief i.e. decree against the defendant for permanent accommodation in view of demolished suit room/premises is main issue which is to be decided by this Court during the trial.

6. At this juncture when plaintiff is seeking equitable relief of injunction against the landlord/defendant, he is required to establish his prima-facie case as well as balance of convenience should be in his favour. Plaintiff is also required to establish that if the relief which is sought by him by way of instant application will not be granted, plaintiff will suffer irreparable loss which cannot be compensated in terms of money.

7. According to the plaintiff as mentioned in para No.17 of

:4:

his application, defendant is likely to part with the possession of the suit premises to third person in order to defraud the plaintiff. According to him member of visitors are visiting the suit premises making enquiry with other occupants. Thus it is alleged by the plaintiff that defendant intend to create third party right, title and interest in respect of the suit premises and/or alternate and/or assign and/or transfer etc. the entire building in which suit premises was in existence in favour of third person. But after careful perusal of his application and documents on record no such material showing any apprehension as prayed by him is established by plaintiff even prima facie.

8. Facts on record shows that suit premises is already demolished on 10.10.2017 and plaintiff has not brought on record any material even prima-facie showing that defendant is having malafide intention to create any third party interest in respect of the suit premises/property where the suit building was existed. In fact no any material is brought on record by plaintiff showing that any new building or structure is going to be built by defendant over the land on which old building was in existence.

9. Thus he has utterly failed to bring on record that there is any redevelopment process started by the defendant and some construction work is going on at the property where the suit building was in existence prior to its demolition.

10. The facts of the present case shows that suit premises/room is demolished by MCGM after issuing notice under Section 354 of MCGM Act 1888 to the plaintiff and defendant. It is in

:5:

compliance of provisions of MCGM 1888. It is not demolished by defendant i.e. landlord for its reconstruction. In such situation whether defendant is liable to grant temporary accommodation to the plaintiff till construction of new premises and/or is required to execute any agreement as sought by plaintiff in his favour can be decided only after full fledged trial.

11. After perusal of prayers of plaintiff in the light of pleadings of both parties to suit it reveals that plaintiff is seeking mandatory injunction at initial stage of suit. Issues are already framed by Court if those are perused it reveals that plaintiff by way of present application is seeking performance of certain acts by defendant which are yet to be adjudicated during trial. Unless trial is completed it can't be held that plaintiff is entitled for same.

12. Thus, I am of the opinion that unless and until plaintiff establish his right/status as sought to be declared by him in suit, no question of granting interim reliefs sought by him by way of instant application arouse. Thus for all above reasons I answer point Nos.1 and 2 accordingly and proceed to pass following order which will meet the ends of justice.

ORDER

Application stands rejected.

Date :- 05.10.2019

**(Bijesh A. Gaikwad)
Judge, C. R. No.17**

:6:

Order dictated on : 05.10.2019

Order transcribed on : 05.10.2019

Order checked and signed on : 07.10.2019