

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXH. 12
IN
L. E. C. SUIT No. 74 OF 2021**

Girish S. Bhilare

..Plaintiff

Vs.

A. A. Anjaneyulu & Anr.

..Defendants

ORAL ORDER :-

1) This is an application filed by plaintiff under O. XXXIX R. 1 of Code of Civil Procedure, for grant of temporary preventive injunction to restrain defendants from parting with possession of the suit premises or creating third party interest therein in any manner whatsoever till the decision of the suit.

2) It is contended in the application that defendants are defaulter in payment of license fees. Plaintiff has learnt from neighbours that defendants are showing the premises to several persons. They are likely to part with possession in favour of third party for consideration with malafide intention. Hence, it is necessary to restrain defendants from parting with possession by order of temporary injunction. Balance of convenience tilts in favour of plaintiff. Hence, it is prayed that injunction be granted.

3) Defendants have strongly resisted the application by filing their reply. They have submitted that suit itself is not maintainable. The Court has no jurisdiction to try & entertain this suit. The suit of the plaintiffs is based on concocted story. Plaintiff has not come before the Court with clean hands. Plaintiff has suppressed material facts from the Court. All allegations made in the application are false. False complaints are filed against defendants. This is with an object to malign the goodwill

and reputation of defendants. The electricity supply was illegally disconnected. All allegations of para 2 are false. Plaintiff is not entitled for any such relief of injunction, as prayed. The application is not maintainable. If injunction is granted, defendants will suffer an irreparable loss. Hence, it is prayed that application be rejected.

4) Considering the application and say filed, following points arise for my determination to which I have recorded my findings with reason thereto as under :-

<u>Points</u>	<u>Findings</u>
<i>1. Whether plaintiff has made out prima facie case ?</i>	<i>In the affirmative.</i>
<i>2. Whether balance of convenience tilts in favour of plaintiff ?</i>	<i>In the affirmative.</i>
<i>3. Does plaintiff prove that he would suffer an irreparable loss, if injunction is not granted ?</i>	<i>In the affirmative.</i>
<i>4. What order ?</i>	<i>As per final order.</i>

REASONS

As to Point Nos. 1 to 4 :-

5) I have heard arguments of both the Ld. Advocates. From the record, it appears that more than Rs. 7,00,000/- is due an outstanding from defendants. Order is already passed in respect of payment of arrears vide order below Exh. 13.

6) According to plaintiff, he came to know that defendants are showing the suit premises to several persons and likely to part with possession or create third party interest for consideration with malafide intention. The application of plaintiff is on affirmation. Admittedly, license period is already over. Prima facie it appears that defendants are defaulter. They appear to be in financial crises. In this situation, the possibility of defendants parting with possession of the suit premises or

creating third party interest therein for monetary consideration, cannot be ruled out.

7) If defendants part with possession or create third party interest in the suit premises, it would lead to more complications and multiplicity of proceedings. In that case, plaintiff will certainly suffer an irreparable loss. Plaintiff has made out a prima facie case. Balance of convenience tilts in his favour. In such circumstances, the order of injunction appears to be necessary. If such preventive temporary injunction is granted, no prejudice or irreparable loss would be caused to defendants. In result, I answer point Nos. 1 to 3 in affirmative and proceed to pass the following order.

:- O R D E R -:

1. Application is allowed in following terms.
2. Defendants, their agents, servants, representatives and person claiming through them are temporarily restrained by an order of preventive injunction from parting with possession or creating third party interest in the suit premises in any manner whatsoever, till the decision of the present suit.
3. Costs in cause.

Sd/-

(A. H. Baig)
Judge, C. R. No. 16

Date : 09.11.2021