

COMMON ORDER BELOW EXH.5 & EXH.36 IN
R.C.S.NO.19/2019

The application Exh.5 is for temporary injunction contending that, defendants failed to make tenant-able repairs and plaintiff intends to do so, to which defendants shall not obstruct or dispossess the plaintiff to carry out Saloon business.

2] Exh.36 application is also filed by plaintiff for temporary injunction contending that, defendants should not change the suit property unauthorizedly and not to newly construct the suit property and to dispossess the plaintiff till the decision of the suit.

3] Perused both the applications supported with affidavits and the respective says of defendants vide Exh.31 and 39. So also, heard the arguments of Ld. Adv. Shri. Veerkar for the plaintiff, Ld. Adv. Shri. Chorage for the defendant No.1 and Ld. Adv. Smt.Gupta for the defendant No.2. So also, gone through the citations placed on record by defendant No.2 and also gone through the entire documents on record.

4] Considering both the applications in order to avoid the repetition of discussion, they are taken together for common order. So also, both the applications are for temporary injunction itself. Thus, the following points arose commonly for both the applications i.e. application Exh.5 and Exh.36 for my determination against which I have recorded my findings alongwith the reasons thereto as under :-

Sr. No.	Points	Findings
1.	Whether plaintiff proves the prima facie case as to both the applications ?	...In the Negative.
2.	Whether plaintiff proves the balance of convenience and inconvenience in his favour with regards to both applications ?	...In the Negative.
3.	Whether plaintiff proves the greater hardship and irreparable loss as to both the applications ?	...In the Negative.
4.	What order ?	... Both the applications stands rejected.

REASONS

As to Point Nos.1 to 3 :

5] As all these points are interlinked with each others, therefore to avoid the repetition, they are taken together for discussion. In order to make out both these applications, so also in order to prove the basic ingredients of the temporary injunction applications under section 37[1] of Specific Relief Act, 1963, the plaintiff mostly relied on the following documentary evidence i.e.

- 1] City survey extract of CTS No.64, Exh.8
- 2] The tax receipt of property No.W1000048 Exh.9
- 3] Copy of notice to defendant dated 11/09/2018
- 4] Postal receipt
- 5] R.P.A.D. receipt regarding both defendants
- 6] Tax receipt of property No.48, Exh.12
- 7] Copy of Exh.1 in Civil Misc. Appln. No.6/76
- 8] Copy of compromise pursis in Civil Appln. No.6/76
- 9] Two photos of suit properties.

6] Ld. Advocate for defendants also relied on the following documents :-

- 1] Notice issued by Municipal Council, Mahabaleshwar
- 2] Notice reply alongwith RPAD receipt & acknowledgment
- 3] Copy of the Demarcation of property
- 4] Copy of Bye laws Development Control Rules
- 5] Sanction plan of the building bearing No.B.P/Mouje Mahabaleshwar/House No.64/1658 by TP, Satara
- 6] Sanction letter issued by Mahabaleshwar Nagar Parishad bearing Out.No.15/486
- 7] Photos of Poonam Paan Mehfil owned by Defendants
- 8] Tax receipt Form No.8 of village Metgutad Property No.172
- 9] Details of vehicle owned by plaintiff
- 10] Photos of Chines Stall namely, Yashraj snacks and Chinese meals on wheels owned by plaintiff
- 11] Photo copy of the Job of Mr. Prasad Jaywant Shirke in MSEB.

7] Ld. Advocate for defendant No.2 also relied on the following documents :-

- 1] Receipt of Municipal Council, Mahabaleshwar towards JCB machine rent dated 20/10/2020
- 2] Copy of court commission application in RCS No.416/2010
- 3] Two photographs
- 4] Measurement map of T.I.L.R., Mahabaleshwar dated 23/10/2018 regarding fixing of boundaries.

8] In support of both these applications, Ld. Advocate for plaintiff Shri. Veerkar strongly argued that, suit property i.e. the city survey No.64, old Municipal house No.39/40, new No.41/42, recent No.W1000048 nearby bungalow in this property, eastern side Saloon shop, north-south length approximates 20 fts. and east-west width approximates 5 fts. and in front of it at southern side approximate 10×11 fts. is the suit property. As per the proceedings of Civil M.A.No.6/76 which was decided by way of compromise pursis, defendant's father had purchased that property. It is the duty of landlord to maintain the tenant's property. Considering the para Nos.1, 4 and 6 of compromise pursis Exh.24, so also, the photographs on record, the tenant-able repairs of suit property is required to be made by the landlord as compromise is binding on the parties. The tenanted right of the plaintiff can't be extinguished. Defendants, by managing Municipal Council had issued the notices.

9] As per Rent Act, the landlord has not given the notice to tenant. Reply of defendant's Advocate dated 21/09/2018 is surprising one contending that, there is no execution of suit property. The notices are not communicated to the plaintiff. The landlord would have told to the plaintiff. Measurement map of 11/06/2018, construction permission notice are totally contrary stands where nothing has been asked to the tenant. The building permission order is of 15/10/2018 which was not complied within limitation. The photographs of eastern side are not on record. Illegal act, conduct of defendant is required to be seen. Plaintiff being poor person. Therefore, illegal act at the hands of defendant is required to be stopped. So also, consent decree never dies. The

aspect of possession and when defendant is not constructing, then what is harm to grant injunction. Plaintiff is in use of the suit property. Hence, lastly prayed to allow the Exh.5 and Exh.36 applications, accordingly.

10] Ld. Adv. for defendant No.1 Shri. Chorage also vehemently argued that, the suit itself is not tenable. Sections 7 and 9 of the Maharashtra Rent Act, 2000 is not applicable to the open site. Suit property is the beside land. The Municipal Council gave notice of house No.39/40. House No.39/40 is not the suit property. Civil Application compromise, if considered, then that situation is not in existence. The cause of action of 1976 proceedings is also not tenable. The conduct of plaintiff is such that which he is not entitled to the equitable relief. There is no pleading of continuation of suit or no suit is filed in this regard. Earlier Regular Civil Suit which was filed by the plaintiff in the year 2009 was dismissed. The building is in dilapidated condition. Photographs are filed at the time of filing the suit. The defendant's case is suit property is collapsed. No business of plaintiff. There is no prima facie case as the property is collapsed in the year 2018 and plaintiff came with the grievance after two years.

11] By way of reply notice defendant has agitated his case. Four sides wall will not come within the ambit of tenant-able repairs. As such plaintiff is not utilizing the remedy. When equally efficacious remedy is available to the plaintiff, then plaintiff can't take the benefit of the Rent Control Act. Why against the defendant No.1, the suit is filed. Natural calamity gets the tenancy right extinguished. There is no suit property is in existence. There

is no use of the suit property. Then, also how the plaintiff is claiming in equitable relief. Plaintiff can't blow hot and cold at the same time. As per the sanction of plan, the property is of defendants. It is malafied intention of the plaintiff that suit property of the defendants should not get developed. Plaintiff's right in the suit property is extinguished. So also, plaintiff failed to prove the three basic ingredients of the temporary injunction. Hence, prayed to reject the application.

12] Ld. Advocate for defendant No.2 Smt.Gupta also strongly argued that, the photograph No.1 which shows that, itself the structure in the property is in collapsed. Possession is with defendants. Plaintiff is having lodging business in Metguthad and vehicle Tavera from which he does tourist business. So also, the restaurant namely, 'Meals On Wheels'. Plaintiff's son is working at Maharashtra State Electricity Supply Distribution Company and having lavish way of source of income. There are totally different prayers in Exh.5 and Exh.36.

13] During the course of arguments Ld. Advocate for defendant No.2 also relied on the following citations :-

- 1] Cotton Corporation of India Ltd. V/s. United Industrial Bank Ltd. & Ors., reported in AIR 1983 SC 1272
- 2] Sir Shadilal And Sons, Shamli V/s. Commissioner of Income Tax, Kanpur, reported in 1988(Supp) SCC 42
- 3] Agnigundala Venkata Ranga Rao V/s. Indukuru Ramchandra Reddy (dead) by LRs. & Ors., reported in (2017) 7 SCC 694
- 4] Exhibitors Syndicate Pvt. Ltd. V/s. Repose Properties Pvt. Ltd. & Ors., reported in AIR 2006 Calcutta 323

5] Nagorao and Others V/s. The Nagpur Improvement Trust & Ors., reported in AIR 2001 Bombay 402.

14] As there is no possession of plaintiff, no injunction can be granted. Legal possession does not go in favour of plaintiff. Earlier suit was dismissed in default in the year 2011. Notices were given by Mahabaleshwar Municipal Council, because of heavy rain. The structure of building was dilapidated. The survey measurement took place in the year 2018. It is a barren land and nothing is there. Halsbury Law Dictionary has defined, what are tenant-able repairs which includes subsidiary parts and not renewal. It is not reconstruction of the whole as such not to grant repairs and not to grant injunctions as prayed. Compromise decree has been over. As such no possession is with plaintiff. As no injunction can be granted in his favour. Lastly, prayed to reject both the applications.

15] Basically, the prayer of the suit i.e. para No.9A itself is the prayer of the application Exh.5. So, at this juncture court has to considered the prayer of temporary injunction application. So also, Exh.36 application is regarding grant of temporary injunction application till the decision of the suit which includes defendants not to change the nature of suit property unauthorizedly and not to construct the suit property and to dispossess the plaintiff. Basically, the original proceedings between the predecessor in title of plaintiff and defendants in which compromise was carried out. That compromise is to be required to be scrutinized properly. The copy of the same is produced by plaintiff on record vide Exh.38 wherein the Civil Misc. Application No.6/76 was the application of

standard rent and the terms of compromise in that petition was recorded vide Exh.24. In para No.4 wherein it was agreed between both the parties in the year 1978 that, if at all new building construction scheme is proposed, at that time while taking down old structure of building, the opponent therein shall not removed the applicant from his possession of shop. But, only to take down old building with its old construction and on the area of old construction itself, new building is to be constructed, but while doing this, applicant has to removed his articles from the shop and to close the shop and to co-operate with the opponent at that time. If, applicant suffers any loss, then opponent is to compensate him till the completion of the building. Applicant used to carry out his business at the Varanda (ओटा) to which opponent has no objection.

16] Considering the compromise pursis, My Ld. Predecessor Court in that proceedings vide Exh.1 had order that, the standard rent fixed at Rs.40/- per month. In view of compromise pursis at Exh.24, no evidence is led before me of any kind about premises letting. So, the standard rent is fixed at Rs.40/- per month. No order as to costs. Thereafter, on the basis of this compromise deed, plaintiff is claiming the tenant-able repairs in the suit property in the year 2019 i.e. after the span of 33 years. In fact the compromise pursis doesn't state about whether it is binding on the legal representatives of the both the parties. So also, My Ld. Predecessor Court has come to the conclusion that, no evidence was led by the parties in this regard. Therefore, it can't be said that, today plaintiff can act upon that compromise pursis. If at all the cause of action of the suit is

considered, it is the registered notice dated 11/09/2018 to which defendants has replied contending there is no business going on the suit property. So also, above the compromise the rent of Rs.1,200/- was paid as the suit property was very old and in dilapidated condition which was not possible to stay. So, Municipal Council, Mahabaleshwar had sent number of notices to get down the dilapidated building. Already due to heavy rains, the property was collapsed and it is not proper to get it repaired.

17] Accordingly, defendants on record had filed the notices of Municipal Council, Mahabaleshwar dated 26/05/2016, 27/04/2018, 04/07/2019 and 13/12/2019. So also, the defendant has produced the building bye-laws and Development Control Rules of Mahabaleshwar Hill-Station Municipal Council in which para 20.2.1(d) states regarding side margin of 1.5 mtrs. for the purpose of light and ventilation. The construction permission dated 15/10/2018. So also, ten photographs, assessment list, taxi business documents of Deputy Regional Transport Office, Satara by defendants. Two photographs of 'Yashraj Snacks and Chinese Meals on Wheels', R.T.I. documents dated 01/06/2019 regarding Prasad Jaywant Shirke is the employee of Maharashtra State Electricity Supply Distribution Company.

18] Considering the ratios laid down in the above referred citations regarding refusal of temporary injunction and distinction between repairs and renewal, possession over the land must be lawful, court must decide as to who is in possession and prima facie case should be such that, it should appear on record that there is bonafide contest between the parties and serious question

is required to be tried. As such in the light of facts and circumstances of the case in hand, the citations above referred are helpful.

19] The plaintiff in a suit seems to have been taken stand i.e. on the basis of compromise deed. It is his pleading that, the business is closed. On the other footing, plaintiff is claiming tenant-able repairs in the suit property. Admittedly, to some extent landlord-tenant relationship between the predecessor in title of plaintiff and predecessor in title of defendant wherein existence at the time of 1976 or at the time of disposing of Miscellaneous Civil Application No.6/76 and which was disposed on 11/04/78. Thereafter, plaintiff in the suit has suppressed material facts that, one earlier suit bearing R.C.S.No.416/10 was filed against the defendants which was dismissed in default by my Learned Predecessor Court on 11/11/2014. Plaintiff has not come with his clear case of tenant-able repairs. On the contrary, plaintiff failed to established his possession over suit property at this juncture.

20] The second important aspect of the case is that, the prayer in the suit and also the prayer in the Exh.5 application are one and the same, where as the prayer of Exh.36 is altogether different as to not to change the nature of suit property and not to construct the same. Therefore, considering the entire pleadings when equally efficacious remedy was available to plaintiff as per the due process of law, then in that event the equitable relief of temporary injunction can't be granted. So also, it is clear that, plaintiff also suppressed the material facts. As he who seek equity must comes in the court with the clean hand. Therefore, in view of

provision of Section 41(h) of the Specific Relief Act, so also the aspect of possession at this juncture is not proved by the plaintiff. Therefore, plaintiff failed to established the prima facie case, the balance of convenience and inconvenience in his favour. On the contrary, if both the applications seems to be allowed, then defendants will suffer great loss, hardship and inconvenience as with the due permission of Municipal Council, he has started the construction in his property. It is well settled preposition of law that, those who seek equity must come with clean hands. Thus, any deliberate attempt by party of suppressing any material facts would dis-entitle such party from getting discretionary relief of injunction. Wherein if injunction is refused to the plaintiff, no loss will be caused to him, because plaintiff failed to make the case of tenant-able repairs in the suit property. Therefore, **points Nos.1 to 3 are accordingly answered in the Negative.**

As to Point No.4 :

21] In view of answers to the point Nos.1 to 3, plaintiff failed to establish the prima facie possession, the legal question at this juncture in the matter to be decided by the court. So also, there is no arguable case. Hence, in the light of above discussion and the settled position of law, both the applications deserves to be rejected. Hence, I proceed to pass the following order -

ORDER

- 1] Both the applications i.e. Exh.5 and Exh.36 are hereby rejected.
- 2] Costs in cause.

Date : 24/02/2020.
Mahabaleshwar.

(Shailesh U. Kanthe)
Civil Judge, Junior Division,
Mahabaleshwar.

