

MHST160007042025

**Regular Civil Suit No.173/2025**
(Riyaj Ibrahim Bhorl / Khan Vs.
Vilas Bajirao Sawant)**ORDER PASSED BELOW EXH. NO.5**

01. This is an application filed by plaintiff for grant of temporary injunction restraining defendants from obstructing possession of plaintiff over suit premises and committing any such act that cause damage to material kept by plaintiff in suit premises as per Order 39 Rule 1 and 2 of Code of Civil Procedure.

02. In short the facts of the application that, C.T.S. No.2392/A more particularly described in application in para No.1 (i.e. suit premises) is belonging to defendants. As a tenant plaintiff is in possession of suit premises. The month of tenancy commences from first date of each month as per english calender month. Plaintiff contends that, he agreed to pay monthly rent Rs.15/- to defendants. Electricity and water connection in the suit premises are in the name of his father Ibrahim Bhorl. Plaintiff is regularly paying bills of water and electricity. Plaintiff also regularly paid rent to the defendants but defendants avoided to take rent of suit premises. No outstanding dues is towards plaintiff in respect of suit premises. Even, plaintiff has sent rent to the defendants by way of money order. Plaintiff is running business of cold drinks by name "Sardar" in the suit premises. Plaintiff properly maintained suit premises.

03. Plaintiff averred that, in the year 1972 defendants purchased suit premises. Before that in 1952-53, predecessor of defendants had been

given possession of suit premises to father of plaintiff namely Ibrahim Kamruddin Bhorl by way of tenancy rights. Plaintiff pleaded that, since 1952-53 the father of plaintiff started to run shop of "Sardar Cold Drinks" in suit premises. Then, on 03.04.2004 the father of plaintiff Ibrahim has been passed away. Now, plaintiff is running said business in suit premises. Since the year 1952-53 the father of plaintiff was in possession of suit premises. After demise of his father, plaintiff as a successor is in possession of the suit premises. In such situation, defendants are trying to obstruct the possession of the plaintiff over suit premises by removing partition made in all sides of suit premises. Then, plaintiff filed complaint against defendants but police did not take any action against defendants.

04. Plaintiff averred that, on 21.12.2020, he issued notice to defendants to get repairing suit premises but in vain. Then, defendants send reply notice through his advocate and denied the contentions in notice issued by plaintiff them. The construction in the suit premises is in good condition. Plaintiff is in possession of suit premises and he is running his shop there which is only means of his livelihood. Defendants have threatened to dispossess the plaintiff from the suit premises. If plaintiff dispossessed from suit premises at the hands of defendants then it would cause irreparable loss to him. On all these reasons, plaintiff sought temporary injunction against defendants.

05. On the other hand, defendant Nos. 1, 4, 5 & 6 have resisted this application by filing say vide Exh.19. Defendant Nos. 3 appeared in present claim however he failed to file his written statement and say. Therefore, the present application is proceeded without written statement and say against defendant Nos. 3. Other defendants in their written

statement pleaded that, description of suit premises is correct. As per contentions of the defendants that, they have not rented suit premises to the plaintiff and plaintiff is never tenant of the suit premises. Even, father of plaintiff Ibrahim Kamruddin Bhorl was never tenant of the suit premises. No documentary evidence has led by plaintiff showing that he is tenant in suit premises.

06. Defendants never executed any agreement in favour of plaintiff. Defendants have not illegally acted by threatening to the plaintiff. Defendants contended that, on 16.05.2025, municipal counsel published notice in daily newspaper "Tarun Bharat" to give understanding to plaintiff to remove part of building in order to avoid loss of life as well as economical loss as the dilapidated condition of construction over the suit premises in view of Section 195 of the Maharashtra Municipal Act.

07. According to defendants, plaintiff is illegally running business in said dangerous premises. They also contends that, in R.C.S. No. 419/1975, it was proved that, plaintiff is not tenant in suit premises. The RTS No. 419/1975 was decreed in favour of defendants. Also, said decision stood intact in favour of defendants in Appeal No. 238/1987. Defendants never forcibly taken possession of suit premises. The plaintiff suppressed material facts from the court. There is no evidence so as to grant temporary injunction against defendants. On account of all these reasons defendants prayed application be rejected.

08. Considering rival pleadings and documents submitted on record, following points arise for determination to which I have recorded findings with reasons thereto as follows :-

Sr. No.	Points	Findings
1]	Whether the plaintiff has prime facie case against defendants ?	Yes.
2]	Whether the balance of convenience lies in favour of the plaintiff ?	Yes.
3]	Whether the plaintiff will suffer irreparable loss if temporary injunction is not granted ?	Yes.
4]	What order ?	Application is allowed.

REASONS

As to point Nos. 1 to 4 :

09. These points are interrelated with each other therefore in order to avoid repetition on facts and evidence discussed together.

10. Perused application, say and documents filed on records. Heard Ld. Advocate for plaintiff Shri. M. S. Aathale and Ld. advocate for defendant Nos.1, 4, 5 and 6 Shri. C. K. Jagtap. Ld. Advocate for plaintiff Shri. M. S. Aathale addressed submission in consonance with pleadings. It is submitted that, plaintiff as a tenant is in possession of suit premises. Previously father of plaintiff and thereafter plaintiff have paid rent in respect of suit premises. Plaintiff is paying water and electricity bills of suit premises. Possession is important aspect in the present case. Plaintiff is running the shop in the suit premises. Defendants cannot dispossess to the plaintiff from suit premises without following due process of law. If defendants dispossessed to the plaintiff from the suit premises then it will cause irreparable loss to the plaintiff. Hence, Ld. Advocate for plaintiff prayed to protect the possession of plaintiff by way of temporary injunction. In support of his argument reliance has been placed upon

following case laws :-

1. *Govind Vs. Rahul (writ petition No.7281 of 2022) dated 10.02.2023.* Wherein, Hon'ble High Court observed in para No.27 that, *"It is pertinent to take note of the judgment of the Hon'ble Apex Court, wherein the facts of the present case and the facts in said case namely Krishna Ram Mahale (supra) are similar and the Hon'ble Supreme Court of India by relying on the judgment of Privy Council in the case of Mindapur Zamindary co. Ltd. Vs. Naresh Narayan Roy, reported in AIR 1924 PC 144, has observed that "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."* The Hon'ble Supreme Court of India further observed thus:

"9.. In such circumstances, the law required that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the plaintiff entering upon the permises as a trespasser at all, as she had entered into the possession of the restaurant business and the permises where it was conducted as a licensee and in due course of law. .."

11. On the contrary, Ld. Advocate for defendants Shri. C. K. Jagtap submitted that, plaintiff has never been right to use suit premises. Plaintiff is never tenant in suit premises. Possession of plaintiff over suit premises is illegal. No documentary evidence on record to show that the plaintiff is tenant in suit premises. Plaintiff has not paid rent in respect of suit premises. It is also submitted that, illegal possession is not protected by way of injunction With these lights, Ld. Advocate for defendants urged application be rejected with cost. In support of his argument placed

reliance upon case laws as follows:-

1. **Pramod s/o Prabhakaran Vs. The secretary the Sultanpet Diocese society and anothers**. Wherein, Hon'ble High Court observed that, "*If the tenant/plaintiff fails to make such deposit, the interim order of injunction shall vacated at the first instance, and the court shall grant further times as it deems fit and the proper for the tenant to deposit such arrears. If such deposit is made, the interim injunction shall be revived on condition that the tenant of the plaintiff under takes to pay future rent, without fail*"

2. **Ram Naren Vs. Laxmi Dass Kundra reported in AIR 1971 Delhi 268.** Wherein Hon'ble High Court held that, "*the patent illegality being obvious in this case, I interfere with the decisions of the Controller and the tribunal and accepting this Appeal set the same aside. The appellant will be entitled to possession of the premises in the occupation of the respondent but the order for recovery of possession shall not be executable against the respondent for a period of six months from the date of this order*".

12. Before dealing the present application first of all, it is necessary to mention facts admitted to the respective parties. It is admitted fact that, defendants are actual owner of suit premises. Defendants also admitted material fact in their written statement that, plaintiff is running shop in suit premises. On perusal of property extract of C.T.S. 2392/A vide Exh.3/1 it discloses that, the names of defendants have been recorded to the suit premises in ownership column of said extract. As far as point of possession is concerned, the name of father of plaintiff Ibrahim Bhoru appears to have been recorded to the Tax assessment extract of column of possession suit premises of the year 1994-95. In addition to this, if documents such as renewal of license, electricity

and water receipts are collectively taken in to consideration it prima facie discloses that, previously father of plaintiff Ibrahim Bhorl was in possession of suit premises and after his demise plaintiff as successor is in possession of suit premises.

13. In present case, defendants have not disputed factum of possession of plaintiff over suit premises but according to defendants possession of plaintiff over suit premises is illegal. It is pertinent to note here that, possession of plaintiff over suit premises is relevant factor therefore at this stage it would not just and proper to adjudicate real controversy arose between respective parties pertaining to the legality of possession of plaintiff over suit premises. If aforesaid documents perused coupled with admitted facts bundled in the application it reveals that, prima facie plaintiff is seen in possession of suit premises. Also, plaintiff is running his shop namely "Sardar Cold-Drinks" there which is only means of his livelihood. There is no structural audit report of suit premises and building showing that the building is in dilapidated condition.

14. The complaint dated 07.08.2025 and notice of municipal council are clearly transpires that, defendants are trying to dispossess the plaintiff from suit premises without following due process of law. In such situation, there is reasonable apprehension to dispossess the plaintiff at the hands of defendants. From aforesaid proposition of case law filed by plaintiff it becomes clear that, no one can be ousted without following due procedure of law. In present case defendants are trying to oust the plaintiff forcibly from suit premises without following due process of law. Therefore, at least at this stage it would not be needed to go into details of law and merits of claim. As such, possession of plaintiff is required to be

protected by way of interim relief of temporary injunction. Thus, the arguments advanced by defendants side is not accepted. As against this, I find much substance in argument advanced by plaintiff side that the defendants cannot dispossess to the plaintiff from suit premises without following due process of law. I have gone through the above cited case laws relied upon by the defendants. However, defendants are based on different factual aspects which are not available in the case at hand. Therefore, with due respect, these case laws are not helpful to the defendants in case at hand.

15. In aforesaid background, plaintiff has successfully proved that, he is in possession of suit premises and defendants are trying to dispossess him forcibly from suit premises without following due process of law. So, plaintiff has made out prima facie case. Moreover, principle of balance of convenience lies in favour of plaintiff. If plaintiff is dispossessed by the defendants from suit premises then irreparable loss will suffer to the plaintiff. Therefore, plaintiff is entitled to get equitable relief of temporary injunction against defendants as claimed. Hence, in view of above reasons stated, I answer point No.1 to 3 in the affirmative and in answer of point No.4 I proceed to pass following order.

ORDER

- a) The application *vide* Exh.5 is allowed.
- b) Defendants or anybody claiming through them are hereby temporarily restrained from ousting plaintiff from possession over suit premises which particularly mentioned in plaint without following due process of law till final decision of suit.

- C) Defendants are anybody claiming through them are hereby temporarily restrained from committing any such act that cause damage to material kept by plaintiff in suit premises till final decision of suit.
- d) Costs in cause.

(Order dictated and pronounced in open Court)

Place – Wai.
Date:-21/11/2025.

(Mrs. S.R. Shinde)
Jt. Civil Judge (Junior Division)
Wai.