

IN THE COURT OF SMALL CAUSES, AT MUMBAI
ORDER BELOW EXHIBIT - 9
IN
R.A.D Suit No. 674 of 2023

Gajanan Bhalchandra Worlikar Plaintiff

V/s.

1.Mr.Jagannath Sitaram Kalighan & Anr. Defendants

Coram: R.R.Kale
Judge
Court Room No.14
Date: 19.07.2023

ORDER:-

Present suit is filed for declaration of tenancy rights in respect of premises described in para no. 1 of the plaint (hereinafter referred as 'suit premises').

2. Present application is filed by plaintiff pending the hearing and final disposal of the present suit, to issue a temporary order and injunction restraining the defendants, their agents, servants and / or any other person or persons claiming through or under them from in any manner causing any obstruction in the plaintiff's carrying out necessary repairs to the suit premises at his own costs.

3. In brief, it is the contention of the plaintiff in the application that, considering the forthcoming monsoon recently the City of Mumbai have experienced the effect of the heavy rain and cyclone . It is just and necessary to carry out necessary repairs to the premises in question. Therefore, pending the hearing and final disposal of the suit temporary injunction order restraining the defendants, their agents ,

servants, or any other person claiming through them in any manner causing obstruction in the plaintiff's carrying out necessary repairs to the suit premises is necessary at his own costs. If the application is allowed, no prejudice will be caused to the defendants. If the relief is not granted in favour of plaintiff then he would suffer grave prejudice which would not be compensated in terms of money. Contending all these grounds, the plaintiff has prayed for grant of the application.

4. The defendant no.1 after service of summons of the suit and application vide Exh. 9, has appeared through Counsel and filed his reply at Exh.14 to the present application. It is the say of defendant no. 1 in brief that, said defendant has never disputed the status of the plaintiff in his capacity as a lawful tenant in respect of the suit premises. As far as the repairs to the suit premises are concerned, this defendant has never objected for the same. He does not have objection if the plaintiff carries out necessary repairs in respect of the suit premises including the building in question jointly without claiming any compensation from the defendant. While carrying out such repairs, the plaintiff shall not make any additions, alternations of whatsoever nature of the premises of the building in question. No cause of action has arisen in favour of the plaintiff to file the present suit. The suit deserves to be disposed of accordingly.

5. The defendant no.2 after service of summons as well as application vide Exh. 9 has filed reply at Exh.16 and thereby strongly opposed the present application. The defendant no.2 in brief in his reply submits that, since beginning on the ground floor of suit chawl had a hotel operating in it and the landlord used to reside on the first floor. On 11.3.2007 a gas cylinder burst inside the hotel premises which resulted in a fire in the hotel and losses. Since that time the

hotel has been shut. There has been litigation between the landlord and the tenant operating the hotel premises in the Court of Small Causes, Mumbai. Somewhere in the first week of May 2023, plaintiff who is a contractor started unauthorized construction in the premises where the hotel existed. He started carrying out work of constructing / putting up RCC pillars , columns. The defendant no.2 and his family members on 26.5.2023 noticed that under the guise of repairing the said plaintiff with the implicity and direct consent of the landlords of another chawl had started encroaching upon the public road by constructing and moving the wall therein. The defendant no.2 pointed the same to plaintiff, the owner of Dharma Bhendu Chawl and his family member and conveyed to them that they could not encroach upon the public road located right outside the suit chawl as the same was narrowing. Said plaintiff along with family members of defendant no.1 threatened to defendant no.2 and his son and his brother and used filthy language. The present plaintiff along with the plaintiffs in RAD Suit Nos.673 of 2023 and 675 of 2023 are brazenly carrying out illegal unauthorized construction in the suit chawl thereby extending and / or encroaching upon the public road. The said illegal and unauthorized work is still going on inspite of notice being given by concerned ward office. The plaintiff in present suit along with the plaintiffs in above mentioned suits are clearly in collusion and connivance with the defendant no.1 and his family members.

6. The defendant no.2 further submits in his reply that, present plaintiff is well aware that, the construction work being carried out by him is unlawful, illegal and unauthorized and still he is seeking an order to carry out so called tenable repairs when in reality all they intend to do is carry on with their unauthorized and unlawful

construction upon the suit chawl. The defendant no.2 is neither the owner/ landlord of the suit chawl, still he has been made as a party to the present suit intentionally by the plaintiff. The plaintiff does not intend to carry out any tenantable repairs and is only giving reason of monsoon, heavy rains and cyclone to further his unlawful agenda. The plaintiff has not made any sort of case for carrying out repairs to the suit premises. Therefore, if the application is rejected no prejudice will be caused to any of the parties. Hence, application be rejected. Contending all these grounds, the defendant no.2 has prayed for rejection of the application.

7. From the contents of the application and say filed thereon, following points arose for my determination and I record my findings thereon as under:-

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff has proved that prima facie case is in his favour?	..No.
2.	Whether the plaintiff has proved that balance of convenience lies in his favour?	..No.
3.	Whether the plaintiff has proved that irreparable loss will cause to him if application is not allowed?	..No.
4.	What Order?	..Application is rejected.

REASONS

As to Point No.1 :-

8. Heard respective Ld. advocates/Holding Advocates at length. Ld. Advocate for the plaintiff argued that, considering the forthcoming monsoon; heavy rain and cyclone, it has become

necessary for the plaintiff to carry out necessary repairs to the suit premises and defendants may kindly be restrained by way of temporary injunction order from causing any obstruction in his carrying out necessary repairs.

9. The Ld. Advocate/ Holding Advocate for defendant no.1 has argued as per the reply vide Exh.14. On the contrary, the Ld. Advocate/ Holding Advocate has vehemently argued that, the present application is liable to be rejected as the suit is not tenable under the provisions of Maharashtra Rent Control Act. There no dispute between landlord and tenant. She further argued that, the application is hit by provision of Section 14 (2) for it's non-compliance; the plaintiff has even failed to show the nature of repairs which he intended to do in the suit premises. She further vehemently prayed that, application be rejected.

10. After considering the submissions of both sides, since the present application is filed for carrying out for necessary repairs it would be just and proper to reproduce Section 14 of Maharashtra Rent Control Act.

11. **Section -14 -"** 1) Notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair. 2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that, where the repairs are jointly made by the tenants, the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent per annum on such amount:

Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year.

(3) For the purpose of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord. "

12. The importance of Section 16(1) (h) of the Rent Act will have to be understood in the light of Section 14 of the Act. Section 14 of the Act casts duty on the landlord in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repairs. If the landlord neglects to make any repairs, which he is bound to make under sub-section (1) of Section 14 of the Act, within a reasonable time after a notice of fifteen days is served upon him by post or in any manner by tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord. From careful reading of Section 14, Section 28 and Section 16 (1)(h) of the Act, it appears that it is primary responsibility of the landlord to keep tenanted premises in good condition. Under Section 28 of the Act, landlord can take inspection of the suit premises. If, upon inspection of

the suit premises, landlord finds that he requires the suit premises for reasonable and bonafide for carrying out repairs which cannot be carried out without the premises being vacated, then, he can approach the Court for recovery of tenanted premises.

13. It must be noted that repairs contemplated under Section 16(1)(h) of the Act are not minor repairs or tenantable repairs. The law in this regard contemplate the repairs which are major in nature and cannot be carried out otherwise than vacation of the tenanted premises by tenants. Therefore, whenever, the plaintiff approaches Rent Court under Section 16(1) (h) of the Rent Act, he must satisfy the Court by reliable evidence that condition of tenanted premises is such that major repairs are required. Further, he should satisfy the Court that these major repairs cannot be carried out unless the suit premises is vacated. Moreover, Clause 7 of Section 16 of the Rent Act makes it expressly clear that right of tenant with regard to the premises recovered by the landlord remain to be continued.

14. A duty is imposed on the landlord to keep premises in good condition. In case of failure to keep the premises in good condition, a notice or intimation by the tenant to point out a necessity of urgent repairs was required to be given. In absence of any such notice if the tenant without written intimation and permission of the landlord makes alternation in the suit premises then he is liable to be evicted. So notice of 15 days is required as per Sec. 14 (2) of the Act.

15. After hearing both sides at length and in view of provisions of Section-14 of the Act; admittedly every landlord shall be bound to keep the premises in good and tenantable repair. If the landlord neglects to make any repairs which he is bound to make under sub-

section (1) within a reasonable time after a notice of 15 days is served upon him by a tenant interested in such repairs, then it is the tenant who has to do such repairs.

16. Admittedly, prima facie it seems that, there is no dispute between the plaintiff and defendants that the plaintiff is the tenant and the defendant no.1 is the landlord in respect of the suit premises. From the averments made in the injunction application and plaint, the plaintiff intends to carry out repairs in the suit premises. However, what kind of repairs the plaintiff intends to do in respect of suit premises has not been clearly pleaded by him. It was bounden duty of the plaintiff to put up the sufficient pleadings on record in relation with necessary repairs which he intended to do in the suit premises. That has not been followed by the plaintiff. Another utmost legal requirement was to issue the 15 days notice to the landlord by the plaintiff under Section 14 (2) of the Act prior to do necessary repairs in respect of suit premises. The said statutory compliance has also not been done by the plaintiff. The plaintiff has failed prima facie to place anything on record that temporary injunction order is absolutely necessary against the defendants. So also, the present application is not tenable against defendant no.2 who prima facie seems not related with suit premises. The plaintiff has failed to establish prima facie case in his favour. Hence, point no. 1 is answered in the negative.

As To Point Nos. 2 and 3:

17. As the plaintiff has failed to establish prima facie case in his favour, the balance of convenience also not lies with him. Therefore, by refusing the present application no irreparable loss will be caused to

the plaintiff. Therefore, I answered point nos. 2 and 3 in the negative and in answer to point no.4, I proceed to pass the following order:

ORDER

1. Application vide Exh. 9 stands rejected.
2. Costs in cause.

Date : 19.07.2023.

[R.R. Kale]
Judge
C.R. No.14

