

Order passed below Exhibit 5.

(Passed on 30/10/2021)

1] The plaintiffs have filed this application under Order 39 Rule 1(c) of the Code of Civil Procedure (CPC for short) seeking temporary injunction restraining the defendants from dispossessing the plaintiffs and obstructing the plaintiffs from using common facilities situated outside the suit premises, till disposal of suit.

2] The plaintiffs have filed instant suit for Injunction Simplicitor, in respect of tenement admeasuring 8 x 25 sq.ft. along with a room admeasuring 4 x 4 attached on its rear side, standing on city survey No. 41A, Tikka No.22 of Gokhale Road, Shelar Wadi, Naupada, Thane-West. This property as described in para No. 1 of the plaint is hereinafter referred to as 'suit premises' for the sake of brevity.

3] Perused the application and the say cum written statement filed by defendant No. 1, 3, 4/1 below Exh. 25, along with documents and affidavits filed on record. Also perused purshis Exh. 146, filed by defendant Nos.1, 2/1, 2/2, 2/3, 3/1 to 3/4 stating that they shall not dispossess the plaintiff without following due process of law. Heard arguments advanced by Mr. Jaydeep Patkar, learned advocate for the plaintiff and Mr. Vijay Kadam, learned advocate for the defendants.

4] Following points arise for determination. Findings and reasons for the same are as follows.

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the plaintiff has made out a prima facie case?	Yes.
2.	Whether the balance of convenience weighs in favour of plaintiff ?	Yes.
3.	Whether the plaintiff would suffer irreparable loss if the injunction is refused?	Yes.
4.	What order ?	Application is allowed.

: REASONS :

Point No.1 to 4 :-

5] As these points are interlinked they are taken up for discussion together to avoid repetition.

6] At the outset it will be apposite to cull out the admitted facts of this case, which are as under.

a) Defendants are the owners of the suit premises. Vide agreement dated 14.01.1993, the defendants granted the suit premises on monthly tenancy to the plaintiff. The plaintiffs are carrying out the business of selling ready made garments in the suit premises by running a shop named 'Commander'. The suit premises was given on rental basis on the month rent of Rs. 500/- per month.

7] On the foundation of these admitted facts, the plaintiffs contend that defendants purposefully started refusing to accept rent since January 2012 on one or the other pretext. Hence, the plaintiff issued notice dated 12.11.2013 to the defendant and forwarded the rent by money order but the defendant No.1 refused to accept the same. Then in the month of

December 2013, defendant No.1 demanded monthly rent @ Rs.15000/- per month. The plaintiff thereafter initiated proceeding under section 8 of the Maharashtra Rent control Act, 1999 for fixation of standard rent. That being so, on 09.12.2013 and 11.12.2013, the defendants threatened to dispossess the plaintiffs from the suit property. The plaintiffs are conducting the business of selling ready made garments from the suit property. They would suffer irreparable loss, if the defendants succeed in forcibly dispossessing them without following due process of law. The plaintiffs therefore, contend that they have prima facie case, balance of convenience tilts in their favour and they would suffer irreparable loss if their possession is not protected. Hence, they filed this application.

8] In support of their claim, plaintiffs placed on reliance on nine documents running into 82 pages.

9] The defendant Nos. 1, 2, 3 and 4/1 contested the suit and the application by filing written statement cum say at Exh. 25.

10] The defendants came with the case that the plaintiffs surrendered the tenancy right unconditionally on 20.10.2013 by handing over physical possession of the suit property to them. The plaintiff requested the defendants to permit them to keep the stock of their goods in the suit property for eight days and defendants gratuitously allowed the plaintiffs to do so for few days. The plaintiff however, approached the defendants on 29.10.2013 and informed them that they have changed their decision of surrendering the tenancy, and requested the defendants to restore the possession of suit property by opening

their locks. When the defendants conveyed their inability, the plaintiffs threatened to take forcible possession. In such situation the defendants filed Regular Civil Suit No. 812/2013 against the plaintiffs. The instant suit is filed as a counter blast to the suit filed by the defendants. Thus, the defendants denied the claim of possession of the plaintiffs in toto and prayed for the rejection of the application.

Prima facie case, Balance of Convenience and Irreparable Loss :

11] The plaintiff came with the case that they are holding possession of the suit premises in view of tenancy agreement dated 14.01.1993. Copy of said agreement is filed below Exh. 3/1. The said fact of plaintiffs being inducted as tenant in the suit property is admitted by the defendants in their pleadings. In support of their claim of possession, the plaintiffs have filed the copies of electricity bills and telephone bills issued on their name at the address of suit premises. Though the defendants in their written statement contended that plaintiffs surrendered their tenancy rights in the year 2013, they have filed purshis (Exh. 146) on 29.10.2021 before this Court wherein they have stated that “defendants shall not dispossess the plaintiffs without following due process of law.”.

12] The statements of the defendants in purshis (Exh. 146) prima facie establishes the fact of plaintiffs' possession over the suit property.

13] As such, the plaintiffs have successfully made out a prima facie case of their rights and possession and apprehension

of dispossession at the hands of defendants from the suit property. Considering the defense raised in the written statement regarding surrender of tenancy right, the apprehension in the minds of plaintiffs that defendants may dispossess them appears reasonable. If the defendants succeeded in executing their threats of dispossession without following due process of law, then it will cause irreparable loss to the plaintiffs. On the other hand, no prejudice would be caused to the defendants if they are refrained from taking forcible possession. As such balance of convenience tilts in favour of plaintiffs and they would suffer irreparable loss, if the injunction is refused.

14] For the reasons discussed above, this Court concludes that the plaintiffs succeeded in making out a prima facie case of their rights, possession, apprehension of dispossession at the hands of defendants. Therefore, the application deserves to be allowed to that extent. Hence, points are answered accordingly. In result, following order is passed.

ORDER

1. Application is allowed.
2. Defendants are hereby temporarily restrained from dispossessing the plaintiffs and obstructing the plaintiffs from using common toilet and water facility of the suit property without following due process of law. Costs in Cause.

Thane.
Date : 30/10/2021.

(Ms. G. D. Nirmale)
4th Jt. Civil Judge, Senior Division.