

CNR No. MHSCA2-002552-2018

IN THE COURT OF SMALL CAUSES AT MUMBAI

Order Below Exhibit 8
in
R.A.D. Suit No. 1284 of 2018

Mohammed Haider Ansari

..... Plaintiff

V/s

1. Bai Amtoollabai Kakkai Charitable Trust & Ors.

..... Defendants

Mr. M.A. Khan

Advocate for the plaintiff

Mr. Santosh Gupta

Advocate for defendant No. 3

Coram : M.D.Kamble**Judge, C.R.No. 22****Date : 07/04/2022****ORDER :**

The plaintiff has filed this application to restrain the defendant No. 1 and 2 from transferring the suit premises and rent receipt of the suit premises to the third persons and to restrain the defendant No. 3 from surrendering or transferring the suit premises to third persons.

2. The plaintiff submitted that he has been paying rent to the landlord and is in settled occupation and possession of the suit premises. He has strong apprehension that defendant No. 1 and 2 at the instance of defendant No. 3 may transfer the rent receipt of the suit premises to any third person. Defendant No. 1 is the trust and landlord of the suit premises and defendant No. 2 is the trustee of defendant No. 1 trust. Defendant No. 3 is the wife of plaintiff. The plaintiff had acquired the tenancy right of the suit premises in the name of defendant

No. 3 in the year 2009 by paying premium amount of Rs. 1,50,000/-. Defendant No. 3 is a housewife. The plaintiff is running tailoring shop in the suit premises. However, due to loss in his business, the plaintiff had decided to give the suit premises on leave and license basis. On 01/12/2017, the plaintiff had entered into an agreement on leave and license with one Naeem Ahmed Ansari. The leave and license agreement was prepared in the name of defendant No. 1 as licensor, however, the same was executed by the plaintiff. Some dispute arose between the plaintiff and his wife defendant No. 3 and his wife recorded N.C. against the plaintiff. Defendant No. 3 is threatening the plaintiff that she would transfer and dispose off the suit premises without informing the plaintiff. Defendant No. 2 informed the plaintiff that defendant No. 3 approached defendant No. 1 in August 2018 and requested him to give original bills of the suit premises to her as she intended to transfer the suit premises and requested them to give no objection for transfer of the suit premises. Defendant No. 3 also had a quarrel with the licensee of the plaintiff, therefore the licensee of the plaintiff vacated the suit premises. In view of the threats advanced by the defendant No. 3, the plaintiff has genuine apprehension that she will deprive the plaintiff, his tenancy rights in respect of the suit premises. Hence, this application.

3. Defendant No. 3 filed her reply at Exh. 18 and submitted that the plaintiff was never in possession of the suit premises nor conducting any business from the suit premises. The suit premises was independently acquired by defendant No. 3 out of her own funds and earnings and she is paying rent, tax and other charges for the suit premises. The rent receipts issued by defendant No. 1 stood in her name. She has denied that she has threatened the plaintiff that she will

dispose of or transfer the suit premises to third person. Presently, the suit premises is let out to another person who is doing his business from the suit premises. The plaintiff has not approached this court with clean hands and misguided the court with intention to grab the suit premises and dispossess defendant No. 3. Number of N.C. complaints, FIR, and complaints have been filed against the plaintiff in the court of law. Plaintiff has no right in the suit premises, hence this application is liable to be rejected.

4. The points for determination alongwith my findings thereon are as under :-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether plaintiff has prima-facie case ?	Yes.
2) Whether balance of convenience lies in favour of the plaintiff ?	Yes.
3) Whether the plaintiff will suffer an irreparable loss in absence of injunction ?	Yes.
4) What order ?	As per final order.

:: R E A S O N S ::

AS TO POINT NOS.1 TO 4 :

5. Perused the application and reply. Heard both sides. Defendant No. 3 has filed copies of photographs of the suit premises, copy of complaints and FIR filed against the plaintiff and copies of rent receipts and electricity bills regarding the suit premises.

6. Learned advocate for the plaintiff submitted that the plaintiff has taken on rent the suit premises by paying Rs. 1,50,000/- as premium amount in the name of defendant No. 3. Defendant No. 3 is

not working and is housewife. Defendant No. 3 used to quarrel with the plaintiff and she is threatening to dispose of and transfer the suit premises to third person. Therefore, it is necessary to restrain defendant No. 3 from transferring the suit premises.

7. On the other hand, the learned advocate for the defendant No. 3 submitted that defendant No. 3 herself has taken the suit premises on rent from her own income and she is paying rent and other charges in respect of the suit premises from her own income. Plaintiff is trying to grab the suit premises. Therefore, various NCs, FIR and complaints are lodged against the plaintiff by defendant No. 3. The plaintiff was never in possession of the suit premises. He has no right and interest in the suit premises. Hence, the application is liable to be rejected.

8. From the perusal of record and copies of documents filed on record, it reveals that rent receipts and electricity bills in respect of the suit premises are in the name of the defendant No. 3. The plaintiff submitted that the suit premises was taken on rent in the name of defendant No. 3. The plaintiff's contention is that the defendant No. 3 is a housewife. Whether the suit premises was taken by making payment of premium amount by the plaintiff or defendant No. 3 is a matter of evidence. As per the contention of defendant No. 3, at present the suit premises is let out to another person who is doing business of chicken centre from the suit premises. In such circumstances, it appears that at present the plaintiff is not in possession of the suit premises. The plaintiff has filed this suit for declaration as tenant in respect of the suit premises on the ground that he has paid the premium amount and paying rent in respect of the suit premises. Therefore, the plaintiff has

prima facie case for grant of injunction in his favour. Balance of convenience also tilts in his favour. If injunction is refused, it will frustrate the reason for filing this suit. Hence, I answer point No. 1 to 3 in the affirmative and proceed to pass the following order.

:: O R D E R ::

- 1) Application (Exh. 8) is allowed.
- 2) The defendant No. 1 and 2 are temporarily restrained from transferring the suit premises and rent receipt of the suit premises to the third persons, till disposal of this suit.
- 3) The defendant No. 3 is temporarily restrained from surrendering the suit premises to the landlords or transferring the suit premises to the third persons, till disposal of this suit.

Mumbai
Date : 07.04.2022

(M. D. Kamble)
Judge, C. R. No. 22