

IN THE COURT OF SMALL CAUSES AT MUMBAI**ORDER BELOW EXHIBIT 10
IN
R.A.D. SUIT NO.185 OF 2018
(CNR NO. : MHSCA2-000091-2018)**

Mr. Stephen Harry Dass ...Plaintiff

V/s.

1. Mr. Mustafa Edris Pardawala and ors. ...Defendants

**Coram : Smt. S. R. Shinde, Judge,
Court Room No.15,
Date : 14.11.2018**

ORAL ORDER :

Perused the application. This is plaintiff's application for interim injunction restraining defendants, their agents, servants and a person claiming through them from forcibly dispossessing plaintiff from the suit premises and / or from interfering with or disturbing plaintiff's possession in any manner without following due process of law.

2. Defendant No.3 has filed purshis at Exh.18 informing that his written statement be treated as reply to application for interim injunction.

3. Points for determination along with my findings thereon, are as under :

POINTS**FINDINGS**

1) Whether plaintiff has prima-facie case ?

Yes.

- | | |
|--|---------------------|
| 2) Whether balance of convenience lies in favour of plaintiff ? | Yes. |
| 3) Whether plaintiff will suffer irreparable loss if injunction is not granted ? | Yes. |
| 4) What order ? | As per final order. |

REASONS

AS TO POINT NOS.1 TO 3 :

4. Heard plaintiff's advocate. Advocate for defendant No.3 remained absent. On perusal of roznama, it transpires that defendant No.3 and his advocate are not attending the proceeding since long.

5. It is plaintiff's case that he is lawful tenant of the suit premises. In the year 2009, on account of his financial difficulties and job abroad, he intending to transfer his tenancy right in suit premises for consideration to defendant No.3 with consent of the landlord i.e. defendant Nos.1 and 2. But, defendant No.3 after making payment of initial token amount, in collusion with defendant Nos.1 and 2 did not pay entire amount of consideration. Besides, defendant Nos.1 and 2 in term transferred rent receipt of the suit premises in the name of defendant No.3 without their being any transfer deed or surrender deed executed by plaintiff. In such situation, plaintiff is tenant of the suit premises. Defendants tried to dispossess plaintiff illegally. Hence, plaintiff has lodged police complaint on 13.12.2017 against defendants. In such situation, plaintiff apprehend that defendants are likely to

dispossess plaintiff illegally of the suit premises.

6. As against this, it is defendants' contention that plaintiff has surrendered the suit premises and has executed a consent letter in favour of landlord as he was in need of money. Defendants have paid huge amount to the plaintiff and his family members. As property rates have increased tremendously with an intention to extract money from defendants plaintiff has filed present suit. Plaintiff has no right in respect of the suit premises.

7. Though according to defendant No.3, plaintiff has given consent letter to transfer suit premises to defendant No.3, defendant No.3 has not produced said consent letter or its copy with the written statement. Defendant No.3 has also not produced any documentary evidence in respect of the amount of consideration paid by defendant No.3 to plaintiff. In such situation, bare words of defendant No.3 cannot be relied upon to hold that plaintiff has surrendered tenancy rights in respect of the suit premises after receiving huge amount of consideration and now out of greed has filed present suit to extract more amount.

8. Defendant No.3 in his written statement Exh.17 has made a counterclaim seeking possession of the suit premises from plaintiff on the basis of alleged surrender of tenancy rights in respect of suit premises by the plaintiff and consent letter executed by him in favour of defendant No.3. This shows that plaintiff is in possession of suit premises till date. In such situation, when there is no documentary

evidence produced in respect of alleged surrender of tenancy rights by plaintiff, long standing possession by the plaintiff needs to be protected by granting interim relief of injunction. Hence, I hold that plaintiff has prima facie case in his favour. Balance of convenience also tilts in plaintiff's favour. If plaintiff shall lose possession of the suit premises on account of forcible eviction, then certainly he shall suffer irreparable loss. As against this, defendants shall not suffer any irreparable loss if interim relief of injunction as prayed for by the plaintiff is granted. Hence, I answer point Nos.1 to 3 accordingly and pass following order :

ORDER

- 1) Defendants, their agents, servants and any person claiming through them are hereby restrained by an order of interim injunction from forcibly dispossessing plaintiff and his family members of the suit premises and from disturbing plaintiff's use, occupation and possession of suit premises in any manner till decision of the suit without following due process of law.
- 2) Costs in cause.

(S. R. Shinde)
Judge, C.R.No.15
14.11.2018

Dictated on : 14.11.2018
Transcribed on : 14.11.2018
Checked & signed on : 14.11.2018