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CNR NO. MHSCA 20009422021

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT-9

IN

R.A.D. SUIT NO. 472 OF 2021

1. Shri. Nitin Manilal Furia & Anr.

...Plaintiffs

Vs.

1. M/s. Aarti Realchem LLP. & Ors.

...Defendants

Mr. Aniruddha A. Sapre

: Learned Advocate for plaintiffs.

Vaibhav Mehta & Associates

: Learned Advocate for defendants.

Coram : M. S. M. Y. Rachbhare

Judge, C.R. No.09

Date :- 06.01.2022

ORDER:-

1. By way of this application, plaintiffs are seeking injunction against the defendants for enjoyment of the right side (south side) gate of the compound wall of the suit property, the independent lift as well as common terrace, to bring their vehicles in and out of the compound wall of the suit property and park their vehicles in the right side gate of the compound, from closing or locking the right side gate of the compound and to open locks to the doors of the common terrace as well as to open lock of the door between third floor and terrace of the suit building and other various reasons mentioned in the application in respect of the suit premises i.e. front block, situated on third floor of the building known as

Bhalchandra Bhavan , 216 A , Sir Bhalchandra Road, Matunga (East), Mumbai – 400 019 approximately 1225 sq.ft.

2. According to the plaintiffs, the suit building viz. Bhalchandra Bhavan was constructed in the year 1935 and initially consisting ground plus two upper floors and half portion of second floor, subsequently, balance of half portion of the second floor and one room on third floor was constructed, the room situated on third floor was let out to Dr. Ajit Phadke as a tenant. Plaintiffs have submitted that they approached previous landlord Bhalchandra in the year 1991 and made proposal to construct entire third floor of the suit building. Plaintiffs have further submitted that as per his request construction on third floor was done accordingly tenancy right and memorandum of understanding [MOU] was executed between plaintiffs and previous owner. Plaintiffs have further submitted that one room on third floor was let out to Dr. Ajit Phadke and remaining portion on third floor i.e. suit premises was let out to plaintiffs. Plaintiffs have further submitted that for construction of suit premises they had given Rs. 2,50,000/- and at the time of MOU they had given Rs. 10,00,000/- to previous landlord. Plaintiffs have further submitted that as per MOU and tenancy agreement, they have right to enjoy right side compound wall gate to in and out their vehicles and to park inside of compound gate as well as there is separate lift to suit premises which is being constructed by previous landlord for using tenants of the third floor. Plaintiffs have further submitted that there is engine room of lift which is situated on terrace and independent water tank of plaintiffs is on terrace. Plaintiffs have further submitted that defendants have purchased 75 % ownership right in the suit premises in the year 2013 and remaining 25 %

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ownership right was purchased in the year 2017, but plaintiffs are residing in the suit premises since 1991. Plaintiffs have further submitted that they got shock on 13.02.2020 when came to know defendants put lock to the right side gate of compound wall and locked to the terrace door as well as defendants have put new steel gate on terrace and closed entry of plaintiffs between second floor and third floor. Plaintiffs have further submitted that the ground floor tenant Dr. Phadke has also filed suit against defendants and he has given affidavit to support his contention. Plaintiffs have further submitted that prior to this , previous owner Mr. Rele had also kept lock to the right side gate of the compound wall, therefore in suit of plaintiffs' injunction application was taken out by plaintiffs against Mr. Rele , the said application had been allowed by this court on 24.10.2015 , accordingly previous owner Mr. Rele was restrained for keeping lock and closing right side gate of the compound wall. Plaintiffs have further submitted that defendants made structural audit and Plaintiffs themselves made structural audit but there is difference in both the audit, therefore it was referred before Technical Advisory Committee and Technical Advisory Committee observed that suit building is reparable condition, plaintiffs got permission from BMC to repair but defendants are obstructing and harassing them by way of illegal act. Plaintiffs have further submitted that defendant wants to redevelop suit building, therefore they are pressurizing them to give consent for redevelopment, but when plaintiffs are not ready to give consent, therefore defendants have put lock on right side gate of compound wall as well as put lock to the door of terrace. Plaintiffs further submitted that they have been restrained by defendants for using right side gate of compound wall

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for their livelihood and to access on terrace for cleaning water tank and maintenance of plumbing work and engine room of lift. Hence they filed present application for interim relief for opening the right side gate of the compound wall of the suit premises as well as to open lock of door of terrace. Accordingly, prayed to allow the application.

3. I have heard Advocates for plaintiffs. Also gone through record and proceedings. Following points arose for my determination. I have recorded them with my findings thereon, for the reasons to follow, as under :

POINTS

FINDINGS

- | | |
|--|---------------------|
| 1. Whether plaintiffs have prima facie case ? | Yes |
| 2. In whose favour balance of convenience lies ? | To the plaintiffs. |
| 3. Whether plaintiffs shall suffer irreparable loss on refusal of relief of temporary injunction ? | Yes |
| 4. What Order ? | As per final order. |

:REASONS:

AS TO POINTS NO.1 TO 3 :-

4. All points are interrelated with each other, therefore clubbed together for discussions. Plaintiffs have come with the case that he is tenant of suit premises which is situated at third floor in the

suit building. It is pertinent to note that plaintiffs after acquiring tenancy of the suit premises, memorandum of understanding (MOU) was executed between himself and previous owner Bhalchandra Rele, accordingly, plaintiffs had paid Rs.10,00,000/- to earlier owner for construction of the suit premises. It is pertinent to note that as per clause of MOU there is lift which is independent lift of plaintiffs. The copy of MOU is on record. It is not disputed that erstwhile landlord executed MOU in favour of plaintiffs. It also appears that prior to this, erstwhile landlord had locked the left side gate of compound and erstwhile landlord had filed suit against Dr. Ajit Phadke and his wife who are another tenants, wherein injunction order was allowed in favour of tenant and lock was removed on gate by order of Small Causes Court, Mumbai. The copy of the said order is on record. Advocate of plaintiffs argued that the present landlord became owner of the suit building in the year 2013 of 75 % ownership right in the suit building and remaining 25% ownership right in the suit building in the year 2017.

5. Plaintiffs have further argued that suit premises is in their possession since 1991 and defendants have purchased the suit premises in the year 2013 and wanted to redevelop the suit premises, therefore they started doing harassment to him for giving consent to them for redevelopment, therefore put lock to the compound gate and on terrace door. Plaintiffs have further argued that prior to this earlier landlord had also restrained to forefather of the another tenant Mr. Phadke in respect of using right side compound gate and terrace door, their forefathers had taken out injunction application, the said interim relief injunction application was granted in favour of forefather of the Mr. Phadke against the

earlier landlord and earlier landlord was restrained for not to close left side compound gate and terrace door of the suit building, which is being used by forefather of the Mr. Phadke and right side gate is being used by present plaintiffs for coming and going and also to park their vehicles inside to the compound gate.

6. It is pertinent to note that it is not disputed fact that plaintiff is tenant and defendant is a landlord. It is also not disputed that suit premises is situated on third floor. Plaintiffs have filed number of documents to support his contention wherein photos and other documents. It appears that there additional steel channel gate was fixed on terrace door which was locked. Similarly, it also appears that in photograph that steel railing was fixed on staircase and gallery. All photographs appear that plaintiffs were restrained by the act of the defendants by putting lock. The clause of MOU appears that lift is independent lift which is being used by tenant of third floor i.e. plaintiffs for their residential purpose which was constructed later on and earlier landlord was executed MOU in favour of the plaintiffs. The clauses of said MOU is binding on defendants, as they have acquired ownership right in the suit building alongwith occupants in building. In the present suit, defendants appeared in the suit but failed to file reply to the present application inspite of many opportunities and also failed to file written statement to suit, therefore suit as well as present application proceeded exparte against defendants.

7. As discussed above, application proceeded exparte, therefore adverse inference can be drawn against the defendants that, plaintiffs were restrained by the act of defendants as alleged by the plaintiffs in the application. At this stage, court has to see prima

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facie case and balance of convenience lies in whose favour. Considering the submission and documents produced by plaintiffs , it appears that plaintiffs have prima facie case. Hence at this juncture, defendants should be restrained not to close right side gate and terrace door by putting lock for enjoyment of plaintiffs for access as alleged by him in the suit premises otherwise very purpose of filing present application will become infructuous. **For all above reasons I answer points No.1 to 3 in affirmative.**

AS TO POINT NO.4:-

8. For all above reasons I am of the opinion that plaintiffs have established their prima-facie case for restraining the defendants not to close right side gate and terrace door by putting lock for enjoyment of plaintiffs for access as alleged by him in the suit premises. Considering facts on record I am of the opinion that if the defendants will not be restrained from said act, till the disposal of the suit, plaintiffs will suffer irreparable loss. The apprehend act of defendants by closing right side gate and terrace door will certainly create chaos and confusion. It will create multiplicity of the proceeding and unnecessary complications during trial and execution of decree. On the contrary grant of such relief in favour of plaintiffs will not be harmful to defendants as discussed above. **In the result, in answer to point No.4 I proceed to pass following order which will meet the ends of justice.**

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:ORDER:

1. Application [**Exhibit – 9**] is allowed.
2. Pending the hearing and final disposal of the suit, the defendants, their servants, agents and all persons claiming through or under them, are hereby restrained from interfering with and / or disturbing with the peaceful use, occupation and enjoyment of the plaintiffs' right to ingress and egress to the right -side (south side) compound of the suit property , the use of independent lift as well as common terrace of the suit building, without following due process of law.
3. Pending the hearing and final disposal of the suit defendants and any person on their behalf are restrained not to put lock on right side (south side) gate of the compound wall of the suit building and are restrained them for hampering vehicles entering and existing in the right side (south side) gate of the compound for parking.
4. Pending the hearing and final disposal of the suit defendants and any person on their behalf are restrained not to put lock on the door of the terrace and to door between third floor and terrace.

[order dictated and pronounced in open court]

SD/-

Mumbai

Date :- 06.01.2022

Order dictated on : 06.01.2022
Order transcribed on : 06.01.2022
Order checked and signed on : 06.01.2022

[M. S. M. Y. Rachbhare]

Judge, C. R. No.09