

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT - 13

IN

R. A. E. SUIT NO. 2000 OF 2014

The Cricket Club of India Ltd. Plaintiff.

Versus

Indian Bank's Association Defendant.

Mrs. Naazish N. Shah, Ld. Advocate for Plaintiff.

Dave & Girish & Co., Ld. Advocate for Defendant.

**Coram : H. S. Satbhai, Judge
C. R. No. 11**

Date : 17.10.2016

ORAL ORDER :-

The application is under Order 39 Rule 1 and Order 40 of the Code of Civil Procedure, seeking temporary injunction against the defendant from parting with the possession of suit premises and creating any third party interest therein and / or appointing a receiver on suit premises.

The plaintiff came out with the case that it has sought eviction of the defendant from the suit premises. The suit premises are not being used by the defendant for the purpose for which the same were let. Said non-user causing waste and damage to the suit premises. Therefore, it is necessary to appoint the receiver and / or to prevent the alienation of suit premises to third person. There is necessity to grant the interim injunction.

2. The defendant objected the application, vide reply Exhibit 14

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on the premise that the application is not maintainable. There is no reason / basis or cause for the alleged apprehension of the plaintiff. The defendant denied that the suit premises are not being used for the purpose for which the same were let. The defendant also denied causing waste and damage to the suit premises. According to defendant, there is no need to grant any relief.

3. Heard both. Perused application, say Exhibit 14 and the record. On its basis, following points rise for the determination and the findings to each of them for the reasons recorded as below.

POINTS

1. Whether plaintiff has made out a prima facie case ?
2. In whose favour the balance of convenience is ?
3. To whom the Irreparable loss would cause, if the order is passed in favour of either party ?
4. Whether it is just and convenient to appoint the receiver on suit premises ?
5. What order ?

FINDINGS

In the negative.

In favour of the defendant.

To the defendant, if temporary injunction is granted.

In the negative.

Application is rejected.

REASONS

AS TO POINTS NO. 1 TO 4 :-

5. Order 39 Rule 1 of the Code of Civil Procedure provides granting of interim injunction on proving of the case, either by affidavit or otherwise. The essential requirements are making out prima facie case, explaining the balance of convenience in favour of the plaintiff and pointing out the irreparable loss, if the injunction has been refused. The

ingredients to either grant or refuse the interim relief / injunction are explained by Hon'ble Apex Court in case of Seema Arshad Zaheer and Ors. Vs. Municipal Corporation of Greater Mumbai and Ors. (2006(4) Bom. C. R. 46) and Hon'ble Bombay High Court in case of Sanjay Shrikishanji Somani and Anr. Vs. Vishnupant Shankarrao Shahane (2008(1) Bom. C. R. 749).

6. For the purposes of granting interim relief, what necessary is to have a cause of action. In present case, though the prayer of appointing the Receiver on suit premises is sought, it requires to mention that the appointment of Receiver of Hon'ble High Court is to be made only by Hon'ble High Court. The subordinate court is not supposed to appoint the Receiver of Hon'ble High Court in the litigation pending before it. So far as appointing the Receiver under Order 40 of the Code of Civil Procedure is concerned, it is necessary to prima facie establish the circumstances enabling the court to handover the property in the hands of Receiver. The question that whether defendant is not using the suit premises, is going to be dealt in main suit. At this stage, it would be premature to hold that indeed the suit premises are not being used by the defendant. And there are chances of the suit premises being wasted or damaged. When the defendant came out with the plea that the suit premises are always being used, it is appropriate to decide the question at the trial.

7. As stated above, the plaintiff must disclose the cause of action, which enabled to seek the interim relief against the defendant. A perusal of application, nowhere such cause of action is seen. The application speaks that the averments of the plaint are part and parcel of the application. But a perusal of the plaint, no materials are found, which would suggest that the defendant is intending to create any third party

interest in suit premises or parting with the possession of suit premises. Merely, after a lapse of time the defendant sought leave to make repairs or to renovate the suit premises, it does not give rise to seek any interim injunction apprehending that the suit premises are being alienated. Neither the plaint, nor the application disclosing the just need to make an interference in order to preserve the suit premises from being wasted, damaged or alienated by the defendant.

8. The fact that the suit has been contested by the defendant. The matter is subjudice before the Court. In such circumstances, if any transaction of alienation or creating third party interest by defendant taken place, it is always subjected to outcome and decision of the present suit. Merely, the plaintiff brought the suit for eviction of defendant on the grounds available under the Rent Act, the mere filing of suit does not entitle the plaintiff to ask for an interim injunction, that too, when there is no basis for alleged apprehension. Had it been the cogent materials made available by the plaintiff suggesting the apprehension as genuine and reasonable, certainly the interference of the court was warranted. But, a cryptic ambiguous and vague application, without the details and particulars, so also necessary materials, cannot be the basis to pass any prohibitory order. The prayer of appointing the Receiver and to put the plaintiff in possession of suit premises at interim stage, certainly not to be granted.

9. The requirements explained in the case of **Seema and Sanjay (Cited supra)**, to grant the interim reliefs are not satisfying. No prima facie case has been made out by the plaintiff to cause an interference. Certainly, the balance of convenience is also not in favour of the plaintiff. As observed above, any transaction of alienation of suit premises, if made by the defendant, it shall be subjected to the decision of the present suit.

Hence, no loss or inconvenience is going to be caused to the plaintiff, if the interim relief, as asked, is not granted. Hence, answering the points accordingly, following order is passed.

ORDER

1. Application Exhibit 13 is rejected.
2. The costs shall be in main cause.

(H. S. Satbhai)
Judge, C. R. No. 11
17.10.2016

Order dictated on : 17.10.2016
Order checked & signed on : 19.10.2016

mrs.