

NM 1755/2016 in Suit No.1591/2016 O-1

IN THE CITY CIVIL COURT AT MUMBAI, BORIVALI DIVISION,
DINDOSHI, GOREGAON, MUMBAI.

NOTICE OF MOTION NO.1755 OF 2016

IN

SUIT NO.1591 OF 2016

Supreme Transport Organization Pvt. Ltd., ... Plaintiffs

V/s.

Mr. Ravindra Agarwal & Anr. .. Defendants

Ld. Advocate Shri A.M. Sarogi for plaintiffs.

Ld. Advocate Shri Rakesh Singh for defendants.

CORAM:HIS HONOUR JUDGE

SHRI D.K.BHENDE

(C.R.No.2)

DATE : 21ST MARCH, 2017

ORDER

1. The plaintiffs-Private Limited Company seeking permanent injunction that their possession over the flat (vide No.233 shown in para one of the plaint and flat vide No.153 shown in prayer clause), situated at Kalpataru Pinnacle, Opp. Inorbit Mall, Goregaon (West), Mumbai should not be disturbed at the hands of defendant No.1 or any person on his behalf except by following due process of law. Moreover, they sought permanent injunction that they should not be disturbed while mortgaging the suit flat for the purpose of benefits of the company with any of the

banking organization. In addition, they sought interim relief in regard Flat No. 153 in present Notice of Motion bearing No. 1755/2016.

2. In brief, the plaintiffs-company, who is incorporated under the provisions of Companies Act 1956, owned and possessed suit flat No.233. The defendant No.1 has been holding some shares, which are in dispute and the matter is subjudice before the Company Law Board. There are disputes and differences between major share holders of the company and the defendant No.1 herein above, hence, necessary proceedings have been filed before the Company Law Board, wherein existing directors of the company had shown their willingness to take over and purchase all the shares owned by the defendant No.1 herein above. The complaint has been filed with Sahar Police Station against defendant No.1. The defendant No.1 also filed complaint with Aarey Road Police Station against the directors of plaintiffs which indicates strain relations amongst them. This defendant No.1 had agreed to assign and transfer all his rights in respect of the shares hold by him. It is averred that defendant No.1 does not have any right, title or interest in respect of property belonging to the company of plaintiffs. The suit flat is owned and belonged to the plaintiffs-company and defendant No.1 does not have personal right. The plaintiffs have obtained financed from Kotak Mahindra Bank in respect of suit flat. Now they are getting better offer from any other bank organization and accordingly, they are intending to shift their credit facilities from the existing bank to other bank. Accordingly, the plaintiffs had made an application to other bank for availing credit facilities so that the financial

assistance availed from the existing bank be repaid and further financial credit facilities would be availed by the company of plaintiffs. Berfore and on 02.06.2016, the officer of said Bank had visited the suit flat for the purpose of verification and valuation. However, the defendant No.1 came to know, he rushed to the suit flat and prevented the bank officer from entering into the flat. In consequence, the plaintiffs could not avail their legal right. As no alternative, they filed suit along with notice of motion seeking relief as mentioned above.

2. Initially, the suit was against defendant No.1 only. In the meantime, the plaintiffs had moved the chamber summons No.690/2016 which was came to be allowed on 18.08.2016 leading to incorporate the defendant No.2, who is father of defendant No.1. I would like to mention here that the matter was kept before this Court on 16.06.2016 by way of precipe for the first time. Both the sides were heard partly. On same date, the plaintiffs had filed some documents with list Ex.5, matter was kept for further argument on 17.06.2016. At that time, an additional affidavit was filed by the defendants and copy was supplied to the plaintiffs, matter was adjourned and kept for rejoinder of plaintiffs on 07.07.2016. In the meantime, the plaintiffs had moved draft Chamber Summons and it was registered on 21.07.2016 vide No. 690/2916. On that date, the defendants also moved draft Notice of Motion under Section 9A of C.P.C. On 18.08.2016 that Chamber Summons was came to be allowed and the plaintiffs were asked to carry out an amendment within 14 days. On 29.08.2016, the plaintiffs did not file writ of summons on defendant No.2,

hence, matter was adjourned and kept on 20.10.2016 for Writ of summons on defendant No.2. In the meantime, the copy of common orders of Hon'ble High Court dated 27.09.2016 in Appeal from Orders received. On perusal, it is noticed that the plaintiffs had approached to the Hon'ble High Court with a grievance that this Court has not passed order on the notice of motion, even after parties were heard substantially thereon. It is noticed that Her Ladyship asked this Court to pass an order expeditiously as possible. On perusal of Roznama, crystal clear that the parties were not heard substantially on notice of motion, on the contrary, plaintiffs themselves had moved the chamber summons which was came to be allowed on 18.08.2016.

3. The defendants put up their separate reply and strongly opposed the claim on the ground that the suit itself is not maintainable in the eyes of law, even there is no cause of action as defendant No.1 was not in Mumbai on 02.06.2016 but he was in Delhi as he had to attend the Company Law Board in relation to a petition filed by some one against the plaintiffs company organization Pvt. Ltd., in which he is one of the defendant. He averred that he is shareholder along with other director aggregating to 48% of total share. He emphasized that petition is subjudice before the Company Law Board at New Delhi vide Petition No. 88/NB/2015 under Section 397, 398 of Companies Act 1956. He raised an objection about tenability of suit as it is simplicitor for injunction. He averred that the suit flat is in his exclusive possession. There is no legal and valid resolution for lodging the present suit. The defendant No.2 is

also supporting to the defendant No.1.

4. In the light of aforesaid rival pleadings, I have to see whether plaintiffs-company is having prima facie case, balance of convenience and would they suffer an irreparable loss, if temporary injunction is not granted.

5. I heard both the sides at length and perused the pleadings as well as documents. On perusal, it is noticed that plaintiffs-company is Pvt. Ltd., Company and it is a family concern of Late Nagarmal Agarwal. The present defendants and others have already initiated petition before the Company Law Board under Section 397, 398, 402 and 403 of the Company Act wherein, they put up much grievances including the mismanagement at the hands of major group share holders. The suit flat is also seems to be subject matter of that petition. It is noticed that concerned board has been passed an order on 13.01.2016 like status-quo. Now the present suit is concerned, it is filed by one person by name Mr. Varun Ramesh Kakria posing as an employee. The copy of resolution is placed on record at page 154 of the plaint, which appears the signature i.e. A.K.Agarwal. As per statement of Kamal Nagarmal Agarwal dated 21.02.2016 before police, there are nine (9) directors in said company including Anand Agarwal, Ammeet Agarwal and Akash Agarwal. We cannot say firmly that actually who has signed above letter cum resolution as no details about the name is shown. That signatory may be Anand, Ammeet or Akash. The possibility of Anand is not here as the Anand

Kumar Agarwal is defendant No.2 in present proceeding. The question arose whether only one director of the company authorise the employee or third party to initiate litigation on behalf of company in the Court of law. Whether this authorised person is having personal knowledge about facts of the matter, plaint is silent in that respect. The plaintiff specifically averred that the suit flat is owned and possessed by it but for that purpose no document is placed on record to say firmly that the suit flat is exclusively in the possession of plaintiffs. On the contrary, the record shows that there is an allotment letter dated 03.11.2014 in favour of defendant pertaining to the suit flat by which he has been authorised to use the same for residential use. No averment that the defendants have took the possession of suit flat forcibly.

6. Now the allegations in regard the disturbance at the hands of defendant No.1 is concerned, there is a vague and formal statement in the plaint that when the officer of concerned bank visited the flat on several occasions including on 02.06.2016, the defendant No.1 has created obstruction. On the other hand, the defendant No.1 has put up Air Ticket indicating that on 30.05.2016 he had left Mumbai for Delhi and on 04.06.2016, he arrived at Mumbai. No specific report in regard obstruction at the hands of defendant at the time of so called verification of flat by the concerned bank. Even no affidavit of bank officer to the effect that the suit flat is in the possession of plaintiffs but the defendant had created ruckus. The Ld. Counsel for defendants placed reliance on following authorities.

- (i) **Smt. Nirmala W/o. C.S. Srinivasa Murthy V/s. Sri Naveen Chhaggar S/o. Mangilal Chhaggar, Manu/KA/8406/2006**, wherein Hon'ble Karnataka High Court observed that in suit for bare injunction, unless the possession of plaintiff is independently established, there is no way of the suit being decreed. The relief of injunction cannot be granted for the mere asking, but only when there is necessary pleadings and supporting evidence.
- (ii) **Ponnuthai V/s. P. Muthusamy, Manu/TN/0400/2004**, wherein Section 38 and 41 of Specific Relief Act, Section 53 A of Transfer of Property Act as well as Section 73 of Indian Contract Act has been dealt with and observed that "It is apparent that even pleading did not make out the proof of possession or interference with possession. Lastly held that finding of facts in suits for bare injunction are normally not interfered with in second appeal.

7. I have gone through the rejoinder as well as Sir Rejoinder of both the sides. The defendant is not a stranger but one of the director of the plaintiffs company. He has been permitted to use the suit flat by issuing allotment letter dated 03.11.2014. No pleadings that the defendant has surrendered the suit flat in favour of the plaintiffs and now he is intending to take possession forcibly. In sum up, prima facie the plaintiffs company is not in possession of suit flat. The defendant is not third party or trespasser. The petition is already sub-judice before the Company Law Board wherein, the present defendant is one of the petitioner. Under these circumstances, my considered opinion is that plaintiffs-company is having no prima facie case and balance of convenience and would not suffer an irreparable loss, if the interim relief is not granted. Hence, following order.

ORDER

Notice of Motion No. 1755/2016 is hereby rejected and disposed of accordingly.

21/03/2017

**(D.K.BHENDE)
J U D G E
CITY CIVIL COURT,
DINDOSHI, MUMBAI.**

Date of dictation to Steno : 21/03/2017
Order put up for signature on : 22/03/2017
Date of order signed by HHJ :
Date of delivery to CC

**CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED
JUDGMENT/ORDER.”**

UPLOADED ON 23.03.2017 AT 12.10 P.M. PRASAD SHARAD TARE, STENOGRAPHER