

ORDER BELOW EXH.5
(Passed on 19.03.2018)

1] The applicant filed this application under O. XXXIX, Rule 1 & 2, of the Code of Civil Procedure and prayed to restrain the defendant from vacating to the plaintiff from the suit property. I read an application and say filed by the defendant at Exh.14. Perused the entire record. Heard the learned counsel for the plaintiff Advocate Shri. Bemarker and the learned counsel for the defendant, Advocate Shri. Agrawal. I also read the points of hearing filed by the defendant which is at Exh.15.

It is contention of the plaintiff that the defendant is the owner of agricultural land i.e. Kh.No.136, admeasuring 2.75 H.R. situated at village Chehali. This is hereinafter referred as the suit property.

According to the plaintiff, the plaintiff is the tenant of the defendant. The plaintiff and the defendant executed one job work agreement on 02.09.2016. The plaintiff is the tenant of the defendant since 01.02.2016. The plaintiff is in occupation and possession over the suit property since the year 2016 as per the job work agreement.

It is the agreement in between the plaintiff and the defendant that the defendant is engaged in Organic Fertilizer Sale-purchase with storage in the suit property. The defendant is running a company of fertilizer. As per the job work agreement, it is agreed that the defendant shall allow plaintiff to put raw material upon the suit premises and shall invest sum of Rs.5,00,000/- towards operational expenses in the suit premises for the purpose of converting the same into finished goods. The tenancy of the agreement shall be effective from 01.07.2017 till 31.06.2020 or at any extended period as per the mutual understanding of the parties. However, the defendant sent a letter to the plaintiff on 15.01.2018 and requested to vacate the suit premises on the ground that she want to sale the suit premises in order to complete loan liability.

The learned counsel for the plaintiff Advocate Shri. Bemarkar argued that the defendant mortgaged the suit premises to some bank. The plaintiff is in continuous, peaceful and uninterrupted possession of the suit premises since the date of tenancy and the defendant has no right to evict and dispossess the plaintiff from the suit property without following due process of law as contemplated under the Maharashtra Rent Control Act, 1999. However, the

defendant is attempting to take forcible possession of the suit premises from the plaintiff. Therefore, he prayed to grant temporary injunction against the defendant.

2] Today, the learned counsel for the defendant was absent when called. However, I read the points of hearing filed at Exh.15. According to the defendant, the suit is not maintainable. The defendant is really in need of suit premises, and therefore, issued notice on 15.01.2018 to the plaintiff for vacating the suit premises. However, the plaintiff refused for the same. In reply at Exh.14, the defendant admitted that there is an agreement in between the plaintiff and the defendant. The defendant mentioned that the defendant executed job work agreement in the form of tenancy agreement with the plaintiff. The defendant also issued letter on 15.01.2018 to the plaintiff and informed that she is need of suit premises to settle certain financial issues, being the land lady, she is entitled and free to sell the suit property and for that purpose, eviction of the property is necessary. Therefore, the defendant prayed to reject the application.

3] The following points arose for my determination and I recorded my findings against each of it which are as

under :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the applicant/plaintiff established <i>prima facie</i> case in his favour ?	:- Yes.
2. Whether balance of convenience lies in favour of the applicant/plaintiff ?	:- Yes.
3. Whether the applicant/plaintiff will suffer irreparable loss if injunction is not granted ?	:- Yes.
4. What order ?	-As per final order.

REASONS

4] In order to prove the claim, the plaintiff is relied upon some documents i.e. job work agreement dated 01.07.2017, the letter of termination of tenancy dated 15.01.2018 and notice to the defendant dated 27.01.2018. The defendant has not filed any relevant documents for her defence.

5] In order to decide this application, it is necessary to see as to who is in the possession over the suit property. According to the plaintiff, as per the job work agreement dated 01.07.2017, the plaintiff is in occupation and

possession over the suit premises. The plaintiff is putting his raw material over the suit premises as per the agreement. The tenancy of the agreement is effective from 01.07.2017 till 31.06.2020. As per the reply at Exh.14, the defendant admitted that there is job work agreement in between the plaintiff and the defendant and the plaintiff is in the possession over the suit premises. The plaintiff is doing his business of fertilizer. No any terms and conditions of the agreement is infringed by the plaintiff.

AS TO POINT No.1 to 3 :-

6] In order to prove the contention of the plaintiff, the plaintiff filed some documents to show that there is tenancy in between the plaintiff and the defendant. The defendant also admitted job work agreement. According to the plaintiff, the plaintiff is in possession of the suit premises and the defendant has admitted it. Therefore, on perusal of entire record along with relevant documents as well as reply at Exh.14 filed by the defendants, it is prima facie, appears that the plaintiff is in possession of the suit premises as per job work agreement dated 01.07.2017. I also perused the job work agreement which is placed on record. As per the job work agreement, the agreement is effective from 01.07.2017

till 31.06.2020. It can be extended as per mutual understand of the parties also. However, the defendant issued letter on 15.01.2018 to the plaintiff and directed to vacate the suit premises. However, as per reply at Exh.14 and the application at Exh.5, it is found that the plaintiff is in the possession over the suit premises on the basis of job work agreement. Therefore, at this stage, it is necessary to protect the possession of the plaintiff over the suit premises. It is also found that the plaintiff came with clean hands. The plaintiff established prima facie case against the defendants. If the injunction will not be granted in favour of the plaintiff, then there would be irreparable loss to the plaintiff which cannot be compensated in terms of money. Therefore, balance of convenience also lies in favour of the plaintiff. I found substance in this application. Therefore, I am of the opinion that it is necessary to protect the possession of the plaintiff upon the suit premises till the final decision of the suit. Hence, I answered to the point Nos.1 to 3 as affirmative. Accordingly, I proceed to pass the following order.

ORDER

1. The application is allowed.
2. Defendant or any other person is temporarily restrained from dispossessing the plaintiff from

the suit premises in respect of agricultural land bearing Kh.No.136, admeasuring 2.75 H.R. situated at village Chehali, Tah. Mouda, Distt. Nagpur till the final decision of this suit.

3. The parties to bear their own costs.
4. Both the parties to take note of it.

Mouda. (D.D. Fulzele)
Dt.19.03.2018. Civil Judge (Jr.Dn)
Mouda.

CERTIFICATE

I affirm that the contents of this P.D.F. File are same word to word as per original judgment.

Name of Steno :- R.K. Shriwastava.