

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5341 OF 2015

Ankush Dnyandev Dange ... Petitioner
Vs.
Narhari Ganpati Londhe and others ... Respondents

Mr Avinash B. Avhad for Petitioner.
Mr. S. T. Bhosale for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 2ND JULY, 2015

P.C. :

Heard Mr. Avhad, learned Counsel for petitioner and Mr. Bhosale, learned Counsel for respondent No.1.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 28.04.2015 passed by the learned District Judge-4, Solapur in Civil Miscellaneous Appeal No.29 of 2015. By that order, the learned District Judge allowed the Appeal and quashed and set aside the judgment and order dated 16.02.2015 passed by the learned Civil Judge, Junior Division, Madha in Regular Civil Suit No.161 of 2006. The learned District Judge dismissed the application at exhibit-24.

3. In support of this Petition, Mr. Avhad submitted that in paragraph 3 of the plaint, plaintiff asserted that defendants No.1 and 2 as also defendants No.3 and 4 are causing obstruction to the plaintiff. He submitted that after filing of the Suit, defendants did not cause any obstruction. In 2015, again defendants started causing obstruction. In paragraph 3 of the application for injunction at exhibit-24, plaintiff has specifically asserted about the obstruction caused on 03.01.2015 and

06.01.2015. Under these circumstances, application at exhibit-24 was taken out on 16.01.2015. The learned trial Judge allowed the application. However, by the impugned order, the learned District Judge dismissed the application exhibit-24. He submitted that in paragraph 17, the learned District Judge observed that plaintiff has made inconsistent statements. In paragraph 2 of the plaint, it is asserted that road is sanctioned by the Tahsildar, Madha after inquiry in the year 1993. He submitted that this is factually incorrect and contrary to record. The Tahsildar has held that the road is in existence. On the other hand, Mr. Bhosale supported the impugned order.

4. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the petitioner has instituted Suit for perpetual injunction in the year 2006. In paragraph 3, the plaintiff has alleged obstruction caused by defendants No.1 to 4 as also issuance of notice by plaintiff on 10.04.2006. However, the plaintiff did not take out application for injunction in the year 2006. Plaintiff has taken out application for injunction on 16.01.2015 citing instances of obstruction of 03.01.2015 and 06.01.2015. The learned District Judge observed that in the plaint, plaintiff has referred to instances of obstruction. However, he did not file application for interim injunction. He also considered submission of the plaintiff that recurring cause of action is accrued, and therefore, plaintiff can file application for injunction at any point of time. The learned District Judge held that since the obstruction was caused in the year 2006, and the application is filed in the year 2015 that itself is sufficient ground for not granting injunction as the injunction was not operating against the defendants from filing of the Suit till passing of the impugned order on 16.02.2015. I do not find that the approach of the learned District Judge is erroneous in any manner

whatsoever. At the cost of repetition, the Suit is instituted in the year 2006 for perpetual injunction. Even though in the Suit, plaintiff has made reference to two to three instances of causing obstruction by the defendants, the plaintiff filed application for interim injunction in the year 2015.

5. In the case of *Wander Limited and another Vs. Antox India Private Limited*, **1990 (Supp.) SCC 727**, the Apex Court in paragraph 14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Limited Vs. Pothan Joseph*, (1960) 3 SCR 713, (SCR 721)

“....These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. V. Jhanton*, 1942 AC 130' ... the law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

6. Applying the above tests, it must be held that the learned trial Judge did not properly exercise discretion while granting injunction. The discretion exercised by the learned trial Judge is arbitrary, capricious and perverse. The learned trial Judge failed to appreciate that the Suit was filed in the year 2006 for perpetual injunction and application was not filed immediately in the year 2006 and was filed in 2015. In view

thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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