

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5062 OF 2015

M/s. Pallavi Gems Pvt. Ltd. and Anr.] ... Petitioners

Versus

State of Maharashtra and Ors.] ... Respondents

Mr. Rajesh Jain a/w Ms. Reshma Rankhambe i/b Legal Juris for Petitioners.

Mr. A. R. Metkari, A.G.P., for Respondent No.1.

Mr. D. R. Singh i/b R. B. Singh & Associates for Respondent Nos.2 & 3.

CORAM :- M. S. SONAK, J.

DATE :- AUGUST 26, 2015

P. C. :-

1. Rule.

2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

3. The Petitioners, original Plaintiffs in L. E & C. Suit No.85/118 of 2013, applied to the Small Causes Court ('Trial Court') for the following reliefs at the interim stage :-

“(a) that the Defendants herein be directed to deposit in this Hon'ble Court, a sum of Rs.25,000/- per month,

towards compensation, for wrongfully using, enjoying and remaining upon the suit premises viz. Flat No.501, situated on 05th Floor, Krishna Villa No.3, Shree Sai Darshan Bldg. No.3, S. V. Road, Chaple Lane, Santacruz (W), Mumbai - 400 054, from 01st January 1996, till the date of filing of the present suit, with liberty to the Plaintiffs to withdraw the amounts, on the same being deposited;

- (b) that pending the hearing and final disposal of the present suit, the Defendants herein, their family members & representatives be restrained by an order of injunction of this Hon'ble Court from creating third party rights and/or parting with possession of the suit premises viz. Flat No.501, situated on 05th Floor, Krishna Villa No.3, Shree Sai Darshan Bldg. No.3, S. V. Road, Chaple Lane, Santacruz (W), Mumbai - 400 054, in any manner;*
- (c) that pending the hearing and final disposal of the present, the Defendants herein be ordered and directed to deposit in this Hon'ble Court, a sum of Rs.25,000/- per month, towards compensation, for wrongfully remaining upon the suit premises viz. Flat No.501, situated on 05th Floor, Krishna Villa No.3, Shree Sai Darshan Bldg. No.3, S. V. Road, Chaple Lane, Santacruz (W), Mumbai - 400 054, from the date of filing of the present suit and thereafter to continue to*

deposit in this Hon'ble Court, the compensation of Rs.25,000/- per month, till the date, the Defendants remove themselves, their family members from the suit premises, with liberty to the Plaintiffs to withdraw the amounts, as and when so deposited;

- (d) that this Hon'ble Court be pleased to direct the Defendants herein to provide inspection of the documents referred to and relied upon by the Defendants in their Written Statements and also to provide copies of all such documents to the Plaintiffs herein;*
- (e) In the event of the Defendants failing to comply with the order passed in the present application, the defences of the Defendants be struck off;*
- (f) that Plaintiffs may be permitted to serve the present notice upon the Advocates for the Defendants herein;*
- (g) interim and ad-interim relief in terms of prayer clauses (a) to (f) above be granted;*
- (h) costs;*
- (i) such other and further relief as the nature and circumstance of the case may require.”*

4. The Trial Court, by its order dated 16/10/2014, has dismissed the Petitioners' application at Exh.19. From the opening line of the impugned order, it is clear that the Trial Court treated the application at Exh.19 as an application filed by the Petitioners for

'mandatory and prohibitory temporary injunction'. Besides, in para 4, the points framed for consideration were whether the Plaintiffs had made out a *prima facie* case, whether the balance of convenience lies in favour of the Plaintiffs and finally whether the Plaintiffs will suffer irreparable loss.

5. The Petitioners (Plaintiffs) instituted Misc. Appeal No.72 of 2014 before the Division Bench of the Small Causes Court ('Appeal Court') impugning the aforesaid order dated 16/10/2014.

6. The Appeal Court has made order dated 23/01/2015 ('impugned order') which reads thus :-

“Heard. Admitted only about injunction order passed below Ex.19. Issue notice to O.S. R/o. 25/2/15.

7. Mr. Rajesh Jain, learned Counsel for Petitioners, has made the following submissions in respect of this petition :-

- (a) The Appeal Court has no jurisdiction to admit only appt of the appeal and reject the rest.
- (b) The Petitioners' (Plaintiffs') application at Exh.19 was both made and treated as one under Order 39 Rule 1 and 2 of the CPC. Section 104 read with Order 43 Rule 1 (r) of CPC clearly provides for an appeal to the Appellate Court. Section 42 (1) of the Presidency Small Cause Courts Act, 1882 ('the said Act') in terms provide that an appeal shall lie from a decree or order made by the Small Causes Court

exercising jurisdiction under Section 41 to a Bench of the two Judges of the same Court. The proviso to section 42 (1), being inapplicable, there is clear failure on the part of the Appeal Court to exercise jurisdiction vested in it, at least insofar as rejection of part of the appeal is concerned.

- (c) The impugned order, to the extent it rejects part of the appeal is bereft of any reason and it clearly is a non-speaking order.

8. Mr. D. R. Singh, learned Counsel for Respondent Nos.2 and 3, on the other hand, defended the impugned order by submitting that the relief applied for by the Petitioners in the application at Exh.19 can, by no stretch, be relatable to the provisions contained in Order 39 Rule 1 and 2 of the CPC. Mr. Singh submitted that except the relief contained in prayer clause (b) i.e. for injunction, rest of the reliefs have no nexus whatsoever with the reliefs that are obtainable under the provisions of Order 39 Rule 1 and 2 of the CPC. Adverting to the provisions contained in Sections 104, 105 and Order 43 Rule 1 of the CPC, Mr. Singh submitted that no appeal lay against the Trial Court's order dated 16/10/2014 to the extent, reliefs other than those set out in prayer clause (b) of Exh.19, came to be denied to the Petitioners. Mr. Singh accordingly submitted that the Appeal Court has acted well within its jurisdiction in admitting the appeal only to the extent the order dated 16/10/2014 had declined the relief of injunction as contained in prayer clause (b) of Exh.19 and rejecting the appeal, insofar rest of the reliefs are concerned.

9. Rival contentions now fall for my determination.

10. At the outset, there is substance in the contentions of Mr.Jain that the impugned order, insofar as it rejects the appeal in respect of reliefs other than that of injunction, is a non-speaking order. As noted earlier, there is absolutely no discussion upon the issue as to why the appeal is being admitted only in part and consequently rejected insofar as the excluded part is concerned. In matter of admission of the appeal, there may not be any requirement to set out reasons, however, when it comes to rejection of an appeal or even a part thereof, there is certainly requirement to indicate reasons, howsoever brief. The duty to indicate reason is by now accepted as one of the facets of principles of natural justice. From the perusal of the impugned order, it is clear that the same is bereft of any reasons insofar as rejection of part of the appeal is concerned.

11. However, in the facts and circumstances of this case, it would not be appropriate to merely remand the matter to the Appeal Court for purposes of indicating reasons. This is because it does appear that the Petitioners, in filing Exh.19 before the Trial Court, had invoked the provisions contained in Order 39 Rule 1 and 2 of the CPC. If the Trial Court's order dated 16/10/2014 is perused, then it is clear that even the Trial Court treated the application at Exh.19 as one for '*mandatory and prohibitory temporary injunction*'. This is further evident from the contents of para 1 of the order dated 16/10/2014, wherein the Trial Court framed points for determination namely

whether the Plaintiffs had made out a *prima facie* case, whether the balance of convenience lies in favour of the Plaintiffs and whether the Plaintiffs will suffer irreparable loss if the application at Exh.19 is declined. These are well settled parameters in the matter is exercise of powers under Order 39 Rule 1 and 2 of the CPC. There is really no dispute that as against the order made under Rule 1 and 2 or Order 39 of the CPC, the appeal lies under the provisions of Section 104 read with Order 43 Rule 1(r) of the CPC. Section 42 (1) of the Presidency Small Cause Courts Act, 1882 provides that an appeal shall lie from an order made by the Small Causes Court exercising jurisdiction under Section 41 to a Bench of two Judges of the same Court, which shall not include the Judge who made such order. The proviso says that no appeal shall lie from an order made in any suit or proceeding in respect of which no appeal lies under the Code of Civil Procedure, 1908. In this case, as noted earlier, as against the order made under Rule 1 and 2 of Order 39 of the CPC, an appeal is provided under the provisions of Section 104 read with Order 43 Rule 1 (r) of the CPC. Clearly therefore, the order made by the Trial Court on 16/10/2014, was appellable under Section 42 (1) of the CPC.

12. The aforesaid discussion, may not be misunderstood to mean or imply that all the reliefs prayed for by the Petitioners in the application at Exh.19 could necessarily be granted under Order 39 Rule 1 and 2 of the CPC. The question whether the relief prayed for in application at Exh.19 can be granted under Order 39 Rule 1 and 2 of the CPC or not, is not one which calls for my determination in this

petition. In this petition, the Court is really not concerned with the relief prayed for in the application at Exh.19, but rather this Court is presently concerned with the issue as to whether the impugned order, to the extent it only partly admits the appeal, is *intra vires* or not. For this limited purpose, the reliefs in application at Exh.19 as also the opening line and points for determination in the Trial Court's order dated 16/10/2014 have been adverted to. It is accordingly made clear that this Court has not examined the matter or the issue of reliefs in the application at Exh.19 on its own merits. That will be a matter for the Appeal Court to examine in accordance with the law on its own merits.

13. There is a difference between maintainability of the appeal and denial of relief in the exercise of appellate jurisdiction. In the present case, the appeal as against the order dated 16/10/2014 was certainly maintainable. Whether reliefs prayed for in Exh.19 ought to be granted to the Petitioners in entirety or otherwise, is a matter to be decided by the Appeal Court in the exercise of its appellate jurisdiction under Section 42 (1) of the Presidency Small Cause Courts Act, 1882.

14. In conclusion, it is once again made clear that this Court has not examined the aspect of relief which the Petitioners might ultimately be entitled to obtain and consequently all contentions of all parties are left open to be decided by the Trial Court.

15. In the aforesaid circumstances, the impugned order dated 23/01/2015 made by the Trial Court, to the extent it rejects the part of the appeal instituted by the Petitioners, is set aside. The Appeal Court is directed to admit and consider the entire appeal in accordance with law and on its own merits. Rule is accordingly made absolute in terms of prayer clause (a). There shall be no order as to costs.

(M. S. SONAK, J.)