

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6221 OF 2014

Abida Razak Shaikh & Ors. .. Petitioners
Vs.
Sabhajeet S.Sharma & Anr. .. Respondents

Mr.Rohan Cama a/w Mr.Sagar Talekar i/by M/s.Prime Legem for the petitioners.

Mr.Bholaprasad Shukla for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 10th August 2015

P.C.

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the order dated 13th February 2014 passed by the Bombay City Civil Court rejecting the notice of motion filed by the petitioners herein for recall of the order dated 16th April 2012 passed in Notice of Motion No.2587 of 2011 by this Court by which this Court had passed an ex parte order against the petitioners and had granted injunction.

2. Rule. Respondents waive service. By consent of parties, petition is heard finally.

3. The respondents/original plaintiffs had filed a suit against the petitioners/original defendants under Section 6 of the Specific Relief Act, 1963 claiming dispossession of the respondents from the suit property on 27th February 2011 without due process of law. The said suit appeared before this Court at the ad-interim stage. On 23rd September 2011, learned counsel for the petitioners had made a statement

before this Court that all the petitioners had entered into a Memorandum of Understanding with third parties for sale of the suit property. This Court directed the petitioners to furnish details of the transaction including copies thereof to the respondents within one week from the date of the said order. By the said order, this Court had granted liberty to the respondents herein to apply for ad-interim orders after amending the plaint and/or notice to the third parties and directed that the notice of motion to be heard in normal course.

4. The respondents thereafter filed a Chamber Summons (1827 of 2011) inter alia praying for impleading M/s.Renovators Constructions as a party-defendant to the suit. By an order dated 5th March 2012, this Court dismissed the chamber summons on the ground that even assuming that the defendants had dispossessed the plaintiffs and thereafter inducted the proposed defendant, no purpose would be served by allowing the amendment as no relief was claimed by the plaintiffs against the proposed defendant. It is held that mere impleading the proposed defendant without seeking any reliefs would not serve any purpose. It is not in dispute that after dismissing the said chamber summons, the respondents herein filed another Chamber Summons (539 of 2012) inter alia praying for amendment in the cause title of the plaint and once again sought relief for impleading the said M/s.Renovators Constructions as a party-defendant to the suit. It is not in dispute that the said chamber summons filed by the respondents for impleading the said M/s. Renovators Constructions is pending.

5. Notice of motion filed by the respondents thereafter appeared before this Court when the petitioners were absent. No

affidavit-in-reply was filed. On 16th April 2012, this Court allowed the said notice of motion in terms of prayer clause (a) and granted injunction against the petitioners from creating any third party rights. In so far as the prayer for appointment of the Receiver is concerned, the respondents herein did not press the said relief.

6. The petitioners filed a Notice of Motion (1373 of 2012) inter alia praying for recall of the order passed by this Court on 16th April 2012 on the ground that the said order was an ex parte order. The suit along with interlocutory proceedings thereafter were transferred to the Bombay City Civil Court.

7. Mr.Cama, learned counsel appearing for the petitioners invited my attention to various documents including the electricity and telephone bills relied upon by the respondents. It is submitted that the electricity bill which was relied upon by the respondents shows that the same was a dummy bill. He submits that the respondents had also produced a copy of the telephone bill which bill is not of the land line. My attention is also invited to the sketch certified by the Survey Department showing the plot in question as an open plot of land.

8. Learned counsel for the petitioners submits that in view of the complaint filed by the petitioners, the respondents had applied for anticipatory bail before this Court. My attention is invited to the order passed by this Court on 18th June 2014 in Anticipatory Bail Application No.175 of 2014 in which this Court made various observations about the conduct of the respondents and has observed that various documents relied upon by the respondents were fabricated.

9. Mr. Shukla, learned counsel appearing for the respondents, on the other hand, made an attempt to defend the order passed by the learned Trial Judge and submits that since this Court had passed the order on merits and the notice of motion filed by the petitioners for recall of the said order has been rejected after rendering various reasons by the learned Trial Judge, the petitioners could not have filed this writ petition. He submits that a remedy of the petitioners would be by way of an appeal against the said order and not by way of the writ petition.

10. A perusal of the record indicates that the petitioners had not filed any reply before this Court and were absent when the matter was called out. This Court heard the respondents and took a prima facie view in the matter that the respondents were dispossessed by the petitioners and accordingly granted injunction against the respondents. A perusal of the order passed by this Court indicates that the respondents had not disclosed to this Court that the respondents had taken out second chamber summons after rejection of the first chamber summons by this Court and the same was pending.

11. A perusal of the order passed by this Court on 23rd September 2011 in the notice of motion filed by the respondents clearly indicates that this Court had granted liberty to the respondents to apply for ad-interim orders after amending the plaint and/or notice to the third parties. It is not in dispute that the second chamber summons filed by the respondents was pending when the notice of motion was heard by this Court. A perusal of the electricity bill produced on record by the respondents prima facie indicates that the said bill was a dummy bill.

The Sketch produced on record for consideration of this Court which was issued by the City Survey Officer shows that the plot of land which is subject matter of the suit was an open plot of land. A perusal of the order passed by the Trial Court indicates that though the learned Trial Judge has referred to some of the documents which were relied upon by the respondents to which my attention is invited by the learned counsel for the petitioners, the learned Trial Judge has not dealt with those documents merely on the ground that the suit was for restoration of the possession of the suit property having been filed under Section 6 of the Specific Relief Act, 1963. The learned Trial Judge, in my view, has not gone into the issue whether it could be demonstrated by the respondents after referring to the documents filed by both the parties, whether the respondents were in fact in possession of the suit property on the date of alleged dispossession.

12. A perusal of the order passed by this Court in the anticipatory bail application filed by the respondents also clearly indicates that this Court had made prima facie observations about the documents relied upon by the respondents to the effect that the same were fabricated. In my view, the petitioners have thus made out a case for interference with the order passed by the learned Trial Judge. In my view, the interest of justice would be met with if the order passed by this Court on 16th April 2012 is treated to be an ad-interim order against the petitioners herein and if the said notice of motion bearing No.2587 of 2011 is heard by the learned Trial Judge afresh without being influenced by the observations made by this Court in the said order dated 16th April 2012 and the observations made by the learned Trial

Judge in the impugned order dated 13th February 2014 which is subject matter of this petition.

13. I therefore pass the following order :-

- a) The impugned order dated 13th February 2014 passed by the learned Judge, City Civil Court, Greater Bombay is set aside;
- b) The order dated 16th April 2012 passed by this Court in the Notice of Motion No.2587 of 2011 shall be treated as ad-interim order in terms of prayer clause (a) of the notice of motion;
- c) Both the parties are permitted to file additional affidavit if necessary, with the leave of the learned Trial Judge within four weeks from today;
- d) Learned Trial Judge is requested to dispose of the notice of motion expeditiously and may make an endeavour to dispose of the notice of motion within three months from the date of the first hearing;
- e) Learned Trial Judge is also directed to dispose of the Chamber Summons No.539 of 2012 within one month from today;
- f) Rule is made absolute in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.