

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 963 OF 2015****ALONGWITH****CIVIL APPLICATION NO.1180 OF 2015****IN****APPEAL FROM ORDER NO. 963 OF 2015****ALONGWITH****APPEAL FROM ORDER (ST) NO. 34143 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO.34144 OF 2015****IN****APPEAL FROM ORDER (ST) NO. 34143 OF 2015****Nelson Albert D'cruz & Anr.****..... Appellants****VERSUS****M/s.Grace Infracon****..... Respondent**

Mr.R.A.Thorat, Senior Advocate, a/w. Ms.Yogita Deshmukh for the Appellants.

Mr.Vishal Kanade, i/b. Mr.Anwar Landge for the Respondent.

CORAM : R.D. DHANUKA, J.**DATED : 17th DECEMBER, 2015****P.C.**

Admit. Respondent waives service.

2. Heard finally at this stage.

3. The appellants (original defendant) has filed Appeal from Order No.963 of 2015 inter alia impugning the order dated 1st July, 2015 passed by the learned trial judge refusing to grant ad-interim relief in terms of prayer clause (a) of the notice of motion filed by the respondent (original plaintiff) thereby granting injunction against the appellant, their family members, accomplice, servants, agents, assigns and persons claiming through or under him restraining one and all of them from

entering forcibly and illegally into the suit premises and/or interfering with the peaceful and exclusive possession and enjoyment of the plaintiff in respect of the suit premises from where the working as well as business of Parivar Computerized Weigh Bridge was being run.

4. Insofar as Civil Appeal (St) No. 34143 of 2015 is concerned, the appellant has impugned the order passed by the learned trial judge on 3rd December, 2015 in Notice of Motion No.1884 of 2015 thereby allowing the notice of motion filed by the original plaintiff thereby passing an order for police aid and assistance and implementation of the order dated 1st July, 2015 and permitting the plaintiff to carry out fencing of the suit premises so as to protect the possession of the plaintiff in view of the ad-interim injunction order dated 1st July, 2015.

5. There is no dispute that the respondent had purchased the property bearing CTS No.732, 732/1 to 15 admeasuring 1003.25 sq.mtrs. from one Mr.Ramu Dhotre vide deed of conveyance dated 28th December, 2013. There is no dispute that the appellants (original defendants) have purchased the property bearing CTS No.737/1/2/3 from the erstwhile owner under a deed of conveyance. The present dispute is in respect of area admeasuring 30 x 30 sq.ft. of which the respondent claims to be the owner and on which the weigh bridge is constructed and which is alleged to be run by his licensee Mr.Abdul Rehman Masuldar.

6. Mr.Thorat, learned senior counsel for the appellants invited my attention to the consent terms filed between the respondent herein and the erstwhile owner Mr.Ramu Dhotre and also a deed of conveyance executed between those parties. It is the case of the appellants that under the said consent terms entered into between the respondent herein and the erstwhile owner of the plot bearing CTS no.732,

732/1 to 15, there existed a weigh bridge on portion of the said land which was removed by the erstwhile owner. He submits that in the deed of conveyance executed between the respondent and the said Mr.Ramu Dhotre, there was a clause that the said weigh bridge was already removed by Mr.Ramu Dhotre.

7. It is the case of the appellants that after removal of the said weigh bridge from the suit property by the erstwhile owner thereof, the said licensee approached the appellants for constructing a similar weigh bridge on the portion of the plot owned by the appellants. It was however the case of the respondent herein that since the appellants herein were obstructing the access and were creating hindrances in approaching the suit plot which belongs to the respondent, the respondent had filed a police complaint against the appellants herein. The respondent accordingly filed a suit for injunction against the appellants herein.

8. It is submitted by the learned senior counsel that since there was a provision in the deed of conveyance that the said weigh bridge was already removed by the erstwhile owner, the respondent could not claim any ownership in respect of the said weigh bridge. He submits that the weigh bridge was thereafter on the plot of the appellants and thus no suit for injunction could be filed. He further submits that the learned trial judge has also made observations about the alleged access from the plot of the appellants to the plot of the respondent though there was no such pleading in the plaint filed by the original respondent.

9. Insofar as second notice of motion filed by the respondent and the order passed thereon by the learned trial judge on 3rd December, 2015 is concerned, it is submitted by the learned senior counsel that there was no prayer in the plaint for permitting fencing of the suit plot. He submits that the learned trial judge could

not have passed an order for providing a police protection by exercising powers under section 151 of the Code of Civil Procedure. He submits that by allowing the respondent to provide fencing on the disputed plot in respect of which the appellants claimed right insofar as weigh bridge is concerned, learned trial judge has passed a decree of sub-division of the plot at this stage. He submits that in the written statement filed by the appellants, it was their case that the said weigh bridge was subsequently constructed on their plot by the same licensee and on the date of filing of the suit by the respondent, the said weigh bridge was not in existence on the suit land.

10. Insofar as documents referred to and relied upon by the learned trial judge from the plaint produced by the respondent is concerned, it is submitted that none of the document would indicate that the said weigh bridge continued to be on the suit plot. He submits that the learned trial court did not take into consideration the provisions in the deed of conveyance that the said weigh bridge was already removed by the erstwhile owner.

11. Mr.Kanade, learned counsel for the respondent herein on the other hand invited my attention to the averments made in the plaint and also the documents forming part of the record before the learned trial judge and would submit that though there was a recital in the deed of conveyance that the weigh bridge was removed by the erstwhile owner, the said weigh bridge continued to be in existence even after the execution of the said deed of conveyance and the same licensee who was allowed to conduct that weigh bridge had carried out business by erstwhile owner was allowed to conduct the said business by the plaintiffs as a licensee. In support of this submission, the learned counsel invited my attention to various certificates issued by the authority under the provisions of Shops and

Establishment Act and also some of the electricity bills issued in respect of the suit premises showing the consumption of the electricity and showing the user of the weigh bridge on the suit premises.

12. Insofar as the reliefs granted in the second notice of motion is concerned, it is submitted by the learned counsel that since the appellants continued to obstruct the entry of the respondent inspite of the ad-interim injunction granted by the learned trial judge by parking some of the cars and also physically obstructing the access of the respondent, the respondent was required to file a police complaint against the appellants and in these circumstances applied for police protection and for permission to place fencing on the suit land. He submits that under section 151 of the Code of Civil Procedure, the court has ample power to enforce the orders passed by court and while considering such request, has ample power to pass an order for providing police protection. Insofar as relief of putting up fencing granted by the learned trial judge is concerned, learned counsel submits that if this court comes to the conclusion that the said relief could not have been granted by the learned trial judge at this stage, the court may pass an appropriate order in that regard.

13. In rejoinder, Mr.Thorat, learned senior counsel for the appellants submits that even the documents produced by the respondent would not indicate that the original licensee who was running the said weigh bridge on the suit plot was continuing the said activity of weigh bridge.

14. A perusal of the record prima facie indicates that in the deed of conveyance entered into between the respondent and the erstwhile owner of the plot bearing CTS. No.732, 732 (1 to 15) there was a provision that there was a existing weigh

bridge on portion of the said land on which the business was being carried out by the licensee and the said weigh bridge was removed by the erstwhile owner.

15. The question that arose before the trial court was whether inspite of such recital in the deed of conveyance whether the suit licensee continued the said weigh bridge on the suit plot which is claimed to be owned by the respondent herein. A perusal of the impugned order passed by the learned trial judge indicates that the learned trial judge has considered several documents produced by the respondent including the certificate issued by the authority under the provisions of Shops and Establishment Act and also the electricity bills. It was the positive case of the respondent in the plaint that after executing the deed of conveyance between the respondent and the said Mr.Ramu Dhotre, the said weigh bridge continued to be in existence on the suit plot and the earlier licensee who was conducting the business of the weigh bridge on the said plot continued to be a licensee of the respondent and the said business continues. In view of such averments made by the respondent, the learned trial judge in my view was right in taking a prima facie view after considering the documents produced by the parties that the said weigh bridge continued to be in existence on the suit plot and is in operation.

16. A perusal of the documents produced by the respondent before the trial court prima facie indicates that the weigh bridge was in existence on the suit plot prior to the date of execution of the conveyance and even thereafter. The registration certificate issued by the authority under the Bombay Shops and Establishment Act, 1948 indicates that the same was issued in the name of Mr.Abdul Rehman Masuldar the licensee. The nature of the business shown in the said certificate as 'weigh bridge'. The last certificate produced on record before the learned trial judge and for perusal of this court is the certificate dated 18th January 2014 which

also shows the name of Mr.Abdul Rehman Masuldar and nature of the business shown as weigh bridge. A perusal of the electricity bills produced by the respondent also prima facie indicates that the consumption of electricity on the suit land and the purpose shown as weigh bridge.

17. As against these documents produced by the respondent for consideration of the learned trial judge, as far as appellants are concerned, the appellants have only made simplicitor averments in the written statement that after conveyance was executed by and between the respondent and the said Mr.Ramu Dhotre, the said Mr.Abdul Rehman Masuldar approached the appellants for constructing a similar weigh bridge on the plot owned by the appellants. The appellants could not demonstrate before the learned trial judge and even before this court though an opportunity was given to show that the weigh bridge was constructed on their plot. The defendants have not filed any affidavit of the said Mr.Abdul Rehman Masuldar in support of their plea that the original weigh bridge on the suit property was demolished and thereafter new weigh bridge was constructed on the plot owned by the appellants.

18. A perusal of the impugned order also indicates that the learned trial judge has also considered the photographs and the police complaint filed by the respondent and also the police complaint showing that inspite of the order passed by the learned trial judge granting ad-interim injunction, the defendants were obstructing the access of the plaintiffs.

19. A perusal of the plaint clearly indicates that it was the case of the respondent that the appellants have obstructed the entry of the respondent. I am thus not inclined to accept the submission of the learned senior counsel for the appellants

that there was no plea of the respondent in the plaint that the access of the respondent was obstructed and that the respondent was using access from the plot of the appellants. In my view, there is thus no infirmity in the ad-interim order passed by the learned trial judge insofar as the order which is subject matter of the Appeal from Order No.963 of 2015 is concerned.

20. Insofar as order dated 3rd December, 2015 passed by the learned trial judge in the second notice of motion is concerned, a perusal of the said order prima facie indicates that inspite of the ad-interim order passed by the learned trial judge, which order was not stayed by this court, the appellants continued to obstruct the access of the respondent. The learned trial judge has considered the complaint recorded by the police in the impugned order by the plaintiffs.

21. This court in case of *Nirabai J.Patil vs. Narayan D.Patil, AIR 2004 Bom.225* has held that civil court which had passed an order of temporary injunction takes a view that there is no power vested in the Court to direct the police to grant assistance for enforcing or for implementation of the order of temporary injunction, the very purpose of granting order of temporary injunction may be frustrated in a given case. This court has taken a view that the view taken by the learned trial judge that there is no provision for police and for execution of the interim order is totally incorrect. This court has taken a cognizance of the powers of court under section 151 of the Code of Civil Procedure to pass an order directing that the police help should be made available provided facts of the case warrant passing of such order.

22. A perusal of the record prima facie indicates that though there was no stay of the ad-interim order granted by the learned trial judge, the appellants continued to

be obstruct the access of the respondent in violation of the ad-interim injunction granted by the learned trial judge. The learned trial judge has also considered the photographs produced and the police complaint filed by the respondent while passing order for providing police protection. In my view the appellants had created such a situation which impressed the learned trial judge to exercise powers under section 151 of the Code of Civil Procedure for providing the police protection to the respondent so that the order passed by the learned trial judge granting ad-interim injunction was complied with and not violated by the appellants. In my view the order passed by the learned trial judge thus in providing police protection was fully justified in the facts and circumstances of this case was in consonance with the principles of law laid down by this court in case of *Nirabai J.Patil (supra)*. The said judgment applies to the facts of this case.

23. Insofar as the reliefs granted by the learned trial judge allowing the respondent to put fencing on the suit plot is concerned, in my view Mr.Thorat, learned senior counsel for the appellants is right in his submission that such reliefs could not have been granted at this stage. In my view since the learned trial judge had granted police protection to the respondent and order of injunction, there was no justification for passing an order for providing fencing on the suit land. I am thus inclined to accept the submission of the learned senior counsel for the appellants and to set aside that part of the impugned order in the order dated 3rd December, 2015 passed by the learned trial judge. It is ordered accordingly. It is however made clear that if the appellants commit any further obstruction in implementing the order passed by the learned trial judge and creates any hurdle, the respondent would be at liberty to seek further appropriate reliefs against the appellants in that regard.

24. The appellants would be at liberty to file affidavit-in-reply before the learned trial judge within four weeks from today. Copy of such affidavit-in-reply shall be served upon the respondent's advocates simultaneously. The learned trial judge shall make an endeavour to dispose of the notice of motion expeditiously and not later than six months from today.

25. Both the appeals from order are disposed of in the aforesaid terms. In view of the disposal of the appeals from order, the civil applications filed by the appellants do not survive and are accordingly disposed of. No order as to costs.

[R.D. DHANUKA, J.]