

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 956 OF 2016**

Iman Foundation Trust
through Trustee and Ors.

..Petitioners

Vs

State of Maharashtra and Ors.

.. Respondents

Ms. Neeta Karnik, Advocate i/b Rajesh P. Mudholkar, for
Petitioners.

Ms. M.S.Bane, 'B' Panel Counsel for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 25/01/2016

PC:

1. Heard Ms. Neeta Karnik, learned counsel for the petitioners and Ms. M.S.Bane, learned A.G.P. for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 16.1.2016 passed by the learned Civil Judge, Sr.,Dn., Thane below Application under section 80 of C.P.C. By that order, the learned trial Judge rejected the application made by the petitioners for dispensing with the period of two months prescribed in Section 80(1) of C.P.C. before instituting the suit challenging the order and action of officers of State Government.
3. Rule. Ms. Bane waives for the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

4. Ms. Karnik submitted that the petitioners intended to institute suit challenging order dated 4.11.2015 passed by Sub Divisional Officer, Thane (for short, 'S.D.O') passed under section 34 of the Maharashtra Land Revenue Code, 1966 (for short 'Code') and for perpetual injunction restraining the respondents, hereinafter referred to as 'defendants', from dispossessing them from the property in dispute. She submitted that earlier the petitioners filed application on 17.12.2015 for dispensing with notice under section 80 of C.P.C. On 19.12.2015 the learned trial Judge rejected the application and directed the petitioners to follow proper recourse of law of Section 80 and directed Assistant Superintendent (Jud.) to return the plaint and documents to the plaintiffs as per rules.

5. Ms. Karnik submitted that accordingly the plaint was returned to the petitioners for issuing notice under section 80 of C.P.C. On 12.1.2016, Talathi, Sajja Dahisar issued notice to the petitioners, inter-alia, informing them that by order dated 4.11.2015 passed by S.D.O Thane, the property in dispute is resumed by the State Government. If any right of the petitioners is violated they have to approach the appropriate court in terms of condition no.2 of order dated 4.11.2015 for establishing their rights. She submitted that immediately on 13.1.2016 the petitioners issued notice to the respondents-defendants under

section 80 of C.P.C. On 16.1.2016, they filed application for dispensing with period of two months prescribed under section 80(1) of C.P.C. on the ground that they have to obtain urgent interim reliefs from the Court. By the impugned order, the learned trial Judge rejected the application, mainly, on the ground that provision of Section 80(1) of C.P.C. does not give any right to applicants to file suit until expiration of two months. In other words, the learned trial Judge declined to waive the period of two months prescribed in section 80(1). Ms Karnik submitted that the petitioners have also taken out application for interim injunction along with the plaint. The petitioners apprehend that on the basis of order dated 4.11.2015, they might be dispossessed from the property in dispute. In view of this urgency, the learned trial Judge ought to have dispensed with the period of two months prescribed in Section 80(1) of C.P.C.

6. On the other hand, Ms. Bane supported the impugned order. She submitted that earlier the plaintiffs filed similar application which was rejected by the trial Court on 19.12.2015. There is no change in circumstances after rejection of that application on 19.12.2015. Though the petitioners issued notice on 13.1.2016, within two days they have moved application for dispensing the period of two months prescribed under section 80(1) of C.P.C. She, therefore, submitted that no case is made out

for interfering with the impugned order.

7. 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 earlier the petitioners filed application on 17.12.2015 for dispensing with notice under section 80 of C.P.C. On 19.12.2015, the learned trial Judge rejected the application and directed the petitioners to issue notice under section 80. The learned trial Judge also ordered return of Plaint. In paragraph 2 it was observed thus ;

“2. Considering the relief sought by the plaintiffs/applicants, there are no urgency in the matter. Therefore, notice as required under section 80 of the Code of Civil Procedure can not be dispensed with. Hence, the application stands rejected. I, therefore, pass the following order.”

8. It is not in dispute that thereafter on 12.1.2016 Talathi, Sajja Dahisar informed the petitioner to vindicate their rights by approaching the Civil Court as per condition no.2 of order dated 4.11.2015. In view thereof, on 13.1.2016 the petitioners issued notice under section 80 to the respondents. On 16.1.2016, the petitioners filed application for dispensing with period of two months prescribed under section 80(1) of C.P.C. Ms Karnik, upon taking instructions from Razi J. Khan, states that the petitioners have taken out application for interim order. She has tendered photocopy of identity card of Razi Jafar Khan issued by Commissioner of Income Tax, Allahabad, which is taken on record

and marked "X" for identification. She submitted that the plaintiffs apprehend that on the basis of the order dated 4.11.2015, they will be dispossessed from the property in dispute. As against this, Ms. Bane submitted that in the relevant revenue record, name of the State Government is already recorded. In other words, she disputed the factum of possession of the petitioners. It is not necessary to go into this controversy at this stage. Suffice it to observe that the petitioners have made out urgency for dispensing the period of two months as prescribed under section 81(1) of C.P.C. Perusal of the impugned order, the learned trial Judge, though has preferred to this factual aspect in paragraphs 2, has not dealt with this aspect at all. In my opinion, the petitioners have made out urgency. Having regard to the fact that they have already issued notice under section 80 on 13.1.2016, the learned trial Judge ought to have dispensed with the period of two months prescribed under section 80 (1) of C.P.C.

9. In view thereof, the impugned order cannot be sustained and is liable to be set aside, thereby, allowing the application made by the petitioners on 16.1.2016 (Exhibit-H, pages 51 to 54 of this petition). The Court will now accept Plaint as well as application for interim relief and proceed with the matter in accordance with law. It is made clear that I have not examined

merits of the application for injunction.

10. Rule is made absolute accordingly with no order as to costs.

Parties including trial Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)