

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1105 OF 2014

Sujata Kisan Hasabe

.. Petitioner

vs.

Amitesh R. Patil

.. Respondent

Mr. Tushar Sonawane for the Petitioner.

Mr. A.M. Kulkarni a/w. Mr. Akshay Shinde for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 20 JULY 2016.

P.C. :-

1] Rule. With the consent of learned counsel appearing for the respondent, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 18 December 2013 made by the Ad-hoc District Judge-I, Sangli allowing the appeal instituted by the respondent (original plaintiff) in Regular Civil Suit No. 3 of 2012.

3] The Civil Judge, Junior Division, Vita (Trial Court) by order dated 4 May 2012 had declined prohibitory as well as mandatory injunction to the respondent-plaintiff during pendency of the suit. In Miscellaneous Civil Appeal No. 104 of 2012, instituted by the respondent-plaintiff, the Ad-hoc District Judge-1, Sangli (Appeal Court) has made the following order:

ORDER

“Appeal is allowed.

Impugned Order passed by Ld. Lower Court is hereby set aside.

Respondent, her servant, agent, power of attorney are hereby restrained not to interfere in the possession of plaintiff in the encroached area.

The plaintiff is entitled for the relief of mandatory injunction, as per prayer in respect of encroached area found in his Revision Survey No. 316/3

Order accordingly.”

4] This Court, on 30 January 2014, whilst issuing notice before admission to the respondent, had directed the parties to maintain *status quo*.

5] Mr. Tushar Sonawane, learned counsel for the petitioner, has submitted that the Appeal Court, whilst allowing the appeal, has failed to take into consideration the law laid down by the Hon'ble Apex Court in the case of ***Wander Ltd & Anr Vs. Antox India Pvt. Ltd. - 1990 (Supp) SCC 727***. He submitted that there was no case made out for grant of any prohibitory injunction, much less, for the grant of temporary mandatory injunction. Learned counsel submitted that in the present case respondent-plaintiff had failed to make out any *prima facie* case and the balance of convenience was also not in favour of grant of any interim reliefs. For these reasons, learned counsel submitted that the impugned order warrants interference.

6] The learned counsel appearing for the respondent, has submitted that the Appeal Court has rightly come to the conclusion that the petitioner has encroached upon the respondent's property and on the said basis issued directions to the petitioner to refrain from interfering with the suit property and further by means of a temporary mandatory injunction, directed the petitioner to remove the encroached portion and restore the possession thereof to the respondent. Learned counsel for the respondent submitted that the Appeal Court has neither erred in principle nor is there any perversity in the record of findings of fact. For this reason, the learned counsel for the respondent urged that the present petition be dismissed.

7] Upon perusal of the record as well as the impugned order, I am satisfied that this was not a fit case for grant of temporary mandatory injunction. At the highest, the Appeal Court considering the facts and circumstances on record, could have issued a temporary prohibitory injunction restraining the petitioner from interfering with the suit property and further, for maintaining *status quo* in relation to any proposed construction activity therein. However, this was not a fit case for grant of temporary mandatory injunction and directing restoration of the possession to the

respondent. The relief of temporary mandatory injunction is virtually the final relief which has been claimed in the suit by the respondent.

8] There is no bar to a Court granting mandatory injunction at the interim stage. However, for grant of such extraordinary relief, the plaintiff is required to make out a case of substantially higher degree than a mere *prima facie* case. In this regard, reference can be usefully made to the decision in the case of ***Dorab Cawasji Warden Vs. Coomi Sorab Warden and ors.*** - AIR 1990 Supreme Court 867, wherein, the Hon'ble Apex Court, has referred to certain guidelines which have evolved in the matter of grant of interlocutory mandatory injunctions. At paragraphs 14 and 15, the Hon'ble Apex Court has observed thus:

“14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case

that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion”.

9] Further, since 30 January 2014, the *status quo* is in operation. The learned counsel for the respondent points out that even during pendency of the appeal before the Appeal Court, there was a *status quo* in operation. The suit in the present case, was instituted in the year 2012. Therefore, the interests of justice will be well served, if prohibitory temporary injunction granted by the Appeal Court is upheld and *status quo* is directed to be maintained till the final disposal of the suit. However, the relief of temporary mandatory injunction granted by the Appeal Court in the impugned order is required to be interfered with and vacated. Accordingly, the impugned order to the extent, it grants the relief of temporary mandatory injunction is hereby vacated.

10] Rule is partly made absolute to the aforesaid extent. There shall temporary prohibitory injunction as granted by the Appeal Court in the impugned order. Further, the parties are directed to maintain *status quo* in relation to the suit property. However, the order with regard to temporary mandatory injunction is hereby vacated. The Trial Court is directed to dispose of the suit on merits, as expeditiously as possible and in any case within a period of one year from today.

11] In disposing of the suit on merits, the Trial Court need not be influenced by the observations made by any of the Courts, including this Court at the stage of decision on interim reliefs. All contentions of all parties are kept open for decision by the Trial Court.

12] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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