

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.2649 OF 2016

Farouk Merwan Irani

.. Petitioner

Versus

Abbas Ali Talebi and others

.. Respondents

Mr. Mayur Khandeparkar i/by Ms. Kavita A. Shah, for the Petitioner.

Mr. Raghavan Sarthy i/by Thodur Law Associates, for the Respondent
Nos.2 to 4.

CORAM : R.M. SAVANT, J.

DATE : 22nd FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 05.01.2016 passed by the Learned Judge of the Small Causes Court, Mumbai, by which order, the application Exh.140 filed by the original Defendant Nos.2 to 4 came to be partly allowed and the following directions came to be issued :-

“1. Application is partly allowed.

2. Senior Inspector of Worli Police Station is directed to provide necessary police aid for implementation of order dated 31.10.2013 passed in Misc. Appeal No.197 of 2013 on payment of necessary charges by defendants.”

Before issuing the said directions, the Trial Court in paragraph 16 has

observed that no case for action under Section 39 Rule 2A of the CPC is made out against the Petitioner/original Plaintiff. Thereafter in paragraph 19, it has been observed that there is no material on record to show that Plaintiffs have committed breach or disobedience of the order. The direction to grant police aid has been issued purely on the basis of the police complaint made by the Defendants that the Plaintiffs i.e. the Respondents in the said application obstructed implementation of the order passed by the Trial Court on 31.10.2013 and abused the manager of the Defendants.

2. After arguing for sometime, the Learned Counsel appearing on behalf of the Petitioner Mr. Mayur Khandeparkar on instructions of the Advocate on record Ms. Kavita A. Shah states that the Petitioner has no objection to the work permitted by the said order dated 31.10.2013 being carried out, but should be overseen by an Architect on the panel of the High Court so as to assuage any apprehension that the Respondent Nos.2 to 4 herein i.e. the original Defendant Nos.2 to 4 would have in respect of the work not being allowed to be carried out.

3. Upon this, the Learned Counsel Mr. Raghavan Sarthy appearing for the Respondent Nos.2 to 4 on instructions states that he has no objection to an Architect being appointed for overseeing the work

being permitted to be carried out by order dated 31.10.2013 and that the Respondent Nos.2 to 4 would not seek the police aid. In view of the said statement made by the Learned Counsel, it is not necessary for this Court to consider the impugned order dated 05.01.2016 on merits. The impugned order would accordingly stand set aside. However, the following directions are issued :-

- I) The Respondent Nos.2 to 4 i.e. the Defendant Nos.2 to 4 would be entitled to carry out the works which are mentioned in sub-clauses (a), (b), (c) and (d) of clause (3) of the order dated 31.10.2013.
- II) An Architect on the panel of this Court would oversee the work being carried out by the Respondent Nos.2 to 4 i.e. the Defendant Nos.2 to 4 who would do so through an agency appointed by them. The name of the Architect to be communicated to the Small Causes Court by the Learned Prothonotary and Senior Master of this Court during the course of the present week. Copies of the said letter may be handed over to the Learned Counsel appearing on either side to be produced before the Small Causes Court, Mumbai.

III) Fees of the Architect would be borne by the Respondent Nos.2 to 4 i.e. the Defendant Nos.2 to 4 herein.

IV) The Learned Counsel for the Petitioner i.e. the Plaintiff assures this Court that the Plaintiff would permit the works as envisaged by the order dated 31.10.2013 to be carried out and there would be no obstruction. Statement accepted.

4. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]