

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.24056 OF 2016
IN
CIVIL APPLICATION (ST) NO.24058 OF 2016
IN
APPEAL FROM ORDER (ST) NO.24056 OF 2016

Shanti Kamal CHS Ltd and ors Appellant.
V/s.
Surendra Attamanand Anchrekar and anr Respondents

Mr. Ranjit Thorat, Senior Advocate, i/by Rahul Karnik, for the Appellant.
Mr. Ashutosh Khandeparkar, a/w Ms. Ujwala Bane, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 29TH AUGUST, 2016.

P.C. :

1. Heard learned Senior Counsel for appellant and learned counsel for respondent.
2. The appeal is taken up for final hearing at the stage of admission itself, considering very short issue involved therein.
3. The appellant is a Co-operative Housing Society. It is aggrieved by order of ad-interim injunction, passed by the City Civil Court, Mumbai on 26.8.2016 thereby allowing prayer clause (b) of the Notice of Motion, moved by respondent herein. The said prayer clause reads as

under :-

“(b) Pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain the defendants, their agents and servants or any person or persons acting on their behalf by way of temporary order of injunction of this Hon'ble Court and restrain the Defendants, their agents and servants or any person acting on behalf of defendants and/or claiming through them from demolishing and/or obstructing the erection the suit structure and further not to threaten the plaintiff and interfere in plaintiffs work in carrying on their painting and idol making business in Tarpaulin suit structure/shed area admeasuring 60” x 20” situated at Bhai Balmukund Marg adjoining to Shanti Kamal Tower, near, Chinchpokali, Mumbai 400 012.”

4. It is submitted by learned counsel for appellant that on account of holidays falling on 27th and 28th August, 2016, the appellant is not having certified copy of the order passed by the learned Judge. However, they are informed that, by this order, they are restrained from demolishing or obstructing the erection of the suit structure and further not to threaten respondent or interfere in respondent's work of carrying on painting and idol making business in tarpaulin suit structure a shed admeasuring 60' x 20' situate at Bhai Balmukund Marg, adjoining to Shanti Kamal Tower, near Chinchpokali, Mumbai 400 012.

5. It is submitted by learned counsel for appellant that if respondent is permitted to make construction or erect pendol for the purpose of painting and idol making business, then it will obstruct ingress and egress of the members of the society, especially the movement of the vehicles in case any emergency. It is urged that already one shed is erected by the respondent and now he wants to erect another shed, which is definitely going to cause obstruction to the movements of the vehicles which vehicles will be blocked as a result of the erection of the said additional structure and hence it is urged that the impugned order passed by the trial Court, needs to be quashed and set aside.

6. Per contra, learned counsel for respondent, has submitted that after obtaining due permissions not only from the Municipal Corporation but also from the Traffic Department and the Police, respondent is going to erect this structure. It is further submitted that since the year 2006, respondent is erecting structure at the time of Ganpati festival for the purpose of painting and idol making business. Every time due permissions as required are obtained. It is urged that permissions are granted by the statutory authorities like Municipal Corporation, police and the traffic department only after satisfying that erection of the pendol will not cause any obstruction either to the traffic or ingress and egress of the members of the society or any other

pedestrians. It is submitted that despite such permissions and respondent following due process of law for erecting such structure, the members of the appellant society started causing obstruction thereto, respondent was constrained to approach trial Court and obtained relief of injunction. It is urged that in view of the Ganapati festival being just a week ahead, it is utmost necessary for respondent to carry out work of painting and idol making by erecting this pendol. The trial Court has after considering all these permissions and finding prima facie case being made out by respondent, granted relief of ad-interim injunction and hence no interference is warranted therein. Further it is submitted that this structure will not cause any obstruction either to the ingress and egress of the members of above society or even to the regular traffic. In the photograph (marked as Annexure "A" for identification), which is produced by learned counsel for appellant, attempt is made by learned counsel for respondent to indicate by pen that the area which proposed structure will occupy does not block the entrance of the society members in any way. Moreover, it is also not coming on the road, so as to block regular traffic or obstruct the pedestrian.

7. Learned counsel for appellant, in support of his submission has relied upon the authority of our own High Court, in **Sanjay Jagannath Surve -vs- State of Maharashtra, BCR 2009 LAWS (BOM) 559**, to submit

that the structure of any shed cannot be permitted at the entrance and exit of the society so as to cause obstruction to the members of the society or vehicular traffic.

8. With the assistance of learned counsel for appellant and respondent, I have gone through the documents which are produced on record, which are mainly permissions, which respondent has obtained from the competent authority like Municipal Corporation, police department and the traffic department since the year 2006 till this order seeking permission to erect said pendol for the purpose of doing work of painting and making of the idols. Needless to state that till this year, appellant society has never obstructed to erection of such pendol which is sought at the same place where since 2006 pendol or shed was being erected. It is also needless to state that when the statutory authorities like Municipal Corporation, traffic department and police are giving permissions since 2006, till this year, then they are taking necessary precautions and also only after ascertaining that the proposed erection of the shed does not cause any obstruction to the ingress and egress in the society or vehicular traffic. Moreover, necessary terms and conditions are also imposed while granting such permission. It is not the case of the appellant that respondent has at any time committed breach of those conditions or this time he is likely to commit breach of those conditions.

9. In addition thereto, the photograph which is produced on record by the appellant goes to reveal that there are three gates to the society of the appellant and proposed construction or erection of the shed is not at all blocking any of those three gates. It is adjacent to the compound wall and not blocking access to the society members or vehicular traffic as such. Moreover, necessary conditions can also be imposed on the respondent to ensure that by his proposed erection of the pendol or shed, no vehicular traffic is affected and to that extent he takes necessary precaution and care. As a matter of fact when the traffic department has granted this permission, it must be that they had ascertained that erection of the pendol on the proposed site, does not cause any vehicular obstruction or block in such situation. In my considered opinion, when respondent is going to undertake erection of the shed after following due process of law like obtaining requisite permissions and when admittedly appellant is causing obstructions to the erection of such pendol, the trial Court has rightly granted relief of ad-interim injunction restraining appellant from doing so. At this stage, therefore, I do not find any interference is warranted in the impugned order of the trial Court.

10. It is, however, clarified that the construction of the proposed shed should not cause any obstruction in the vehicular traffic. Respondent

shall take that precaution.

11. The appeal, therefore, holds no merit Hence stands dismissed.

12. In view of disposal of appeal itself, Civil Application (ST) No.24058 OF 2016 stands disposed of.

13. The parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]