

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9862 OF 2014

Suresh Bhiva Kavalkar ... Petitioner
Vs.
Satish Ankush Sawant ... Respondent

Mr. Shishir S. Manjrekar for Petitioner.
Mr. P. J. Thorat for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 20, 2016

P.C. :

Heard Mr. Manjrekar, learned Counsel for petitioner and Mr. Thorat, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and order dated 11.12.2012 passed by the learned Judge presiding over Court Room No.21 of the Court of Small Causes at Bombay below exhibit-11 in R.A.D.Suit No.31/43 of 2011 as also the judgment and order dated 03.05.2014 passed by the Appellate Bench of the Small Causes Court in Miscellaneous Appeal No.55 of 2013. By these orders, the Courts below rejected the application exhibit-11 filed by the plaintiff praying for injunction restraining the defendant from parting with possession of the suit premises and / or creating any third party interest in the suit premises being workshop / premises situate at the back side of Krishna Krupa Building, Gokhale Road (North), Datdar, Mumbai 400 015; for injunction restraining defendant to execute the agreement for development in respect of the suit premises / workshop; for injunction restraining the defendant from handing over the possession of the suit premises to the developer for the purpose of development.

3. In support of this Petition, Mr. Manjrekar submitted that on 03.04.2005, plaintiff was unlawfully dispossessed. Immediately, he had filed criminal case against the defendant. The charge-sheet is also filed in that case and the said proceedings are pending. On 27.09.2011, public notice appeared in Maharashtra Times for redevelopment of the suit premises. Plaintiff has, therefore, instituted Suit for declaration of his tenancy rights in the suit premises; for possession of the suit premises and for perpetual injunction restraining the defendant from parting with possession of the suit premises and / or creating any third party interest in the suit premises and from executing agreement for development in respect of the suit premises.

4. Pending the Suit, plaintiff took out application exhibit-11, which is rejected by the impugned orders. He submitted that plaintiff has filed the Suit with promptitude and also has taken out an application for interim relief. The Courts below were not justified in rejecting the application only on the ground of delay on the part of the plaintiff in approaching the Court.

5. On the other hand, Mr. Thorat supported the impugned orders. He has taken me through the orders passed by the Courts below and submitted that no case is made out for interfering with the impugned orders.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is matter of record that plaintiff has instituted Suit in the year 2011 inter alia contending that his possession was forcibly taken by the defendant on 03.04.2005. He has also placed on record copy of the complaints made to the Police Station as also the

copy of the charge-sheet filed against the defendant. The Suit for declaration of tenancy rights is filed sometimes in December, 2011. The application for interim relief is filed in May, 2011. In paragraph 17, the appellate Court observed that relief of temporary injunction is an equitable relief. Plaintiff has approached the Court after 7 years of the alleged dispossession. The delay in not approaching the Court for claiming interim relief is sufficient or fatal to discard the claims of plaintiff for temporary injunction. In the case of **Mandali Ranganna Vs. T. Ramchandra, (2008) 11 SCC 1**, the Apex Court observed in paragraphs 21 and 22 thus,

“21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.”

7. Applying the tests laid down to the facts of the present case, I do not find that any case is made out for interfering with the impugned orders. At the same time, in the event of plaintiff succeeding in the Suit, the learned trial Judge will pass appropriate order and that defendant will be bound by the outcome of the Suit. Subject to this clarification, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)