

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 439 OF 2015
IN
NOTICE OF MOTION (L) NO. 537 OF 2015
IN
SUIT (L) NO. 191 OF 2015
WITH
NOTICE OF MOTION NO. 1416 OF 2015
IN
APPEAL NO. 439 OF 2015**

Faiyaz Rangwala & Anr. .. Appellants
versus
Sarabjeet Singh Gopal Singh Baweja & Anr. .. Respondents

Mr. P. Sancheti – Senior Advocate with Mr. Nitin G. Raut, Mrs. G. P. Vas, Ms Jovanka Pereira and Ms Sunita i/b. P. Vas & Co. for Appellants.

Mr. Pradeep Thorat with Shamina Taly, S. Sridhar i/b. Mr. S. P. Khedekar for Respondent No. 1.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 21 SEPTEMBER 2016

P.C.:

1] This appeal is directed against the judgment and order dated 15 June 2015 made by the learned Single Judge disposing of notice of motion (l) no. 537 of 2015 in suit (l) no. 191 of 2015.

2] By the impugned judgment and order dated, the following interim relief has been granted to the respondents (plaintiffs) :

“ 18. Hence the following order :

- 1. The defendant shall inform the plaintiff which specified area on which one floor of the suit building shall be*

provided to the plaintiff aggregating to 181.41 sq. mtrs. aside from the aforesaid offer of the defendant on the ground floor, first floor, 4th floor and the terrace of the said building.

- 2. The defendant shall not sell any of the constructed premises until such area is specifically carved out, kept aside for the plaintiff and informed to the plaintiff.*
- 3. The defendant shall be entitled to sell any of the remaining premises after the area of the plaintiff's entitlement is specified.*
- 4. Parties shall have liberty to apply in terms of the above entitlement/ reservation of area.*
- 5. Notice of Motion is disposed off accordingly.*
- 6. This order is stayed for 2 weeks. However the defendant shall not sell any part of the suit premises to any third party or encumber, alienate and create third party rights in any premises."*

3] Mr. Sancheti, learned counsel for the appellants submitted that the appellants have already agreed to reserve for the total area of 333.34 sq. meters in place of the precise entitlement of the plaintiff under supplementary agreement dated 17 March 2011. Mr. Sancheti submitted that there is no requirement under the agreement to provide additional area 181.41 sq. meters, which is now directed to be demarcated and reserved, in the impugned order. Mr. Sancheti submitted that the appellants are misinterpreting clause (7) of the supplementary agreement. For all these reasons, Mr. Sancheti submitted that the impugned judgment and order warrants interference.

4] This appeal is against the interlocutory order. The scope of such appeal is discussed by the Supreme Court in the case of **Wander Ltd.**

& Anr. vs. Antox India P. Ltd.¹ In paragraphs 9 and 14, the Supreme Court has observed thus :

"9. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated

"...is to protect the plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience lies".

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the

¹ 1990 (Supp) SCC 727

settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. V. Potha Joseph: (SCR 721)

"... These principles are well established, but as has been observed by Viscount Simon in Charles Oseinton & Co. v. Jhanaton (1942 AC 130) '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'".

The appellate judgment does not seem to defer to this principle."

5] The aforesaid position has been reiterated by the Supreme Court in the case of **Mohd. Mehtab Khan & Ors. vs. Khushnuma Ibrahim Khan & Ors.**² (paragraphs 20 to 22).

6] Applying the aforesaid principles, we are unable to detect any jurisdictional error, error of principle or for that matter perversity in the making of the impugned judgment and order. The impugned judgment and order records that at least *prima facie* there is an arguable case on the aspect of additional area of 181.41 sq. meters. If this area is not

² (2013) 9 SCC 221

directed to be reserved, then even if the plaintiffs ultimately succeed in the suit, it will be impossible to restore such area to them. There is possibility of multiplicity of proceedings as well. Viewed from this perspective, it cannot be said that any case is made out to interfere with the impugned order.

7] For the aforesaid reasons, we dismiss this appeal. There shall be no order as to costs.

8] In view of disposal of the appeal, notice of motion no. 1416 of 2015 does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)

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