

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 760 OF 2017

1. M/s Raghuveer Agencies Pvt. Ltd.
Through its Authorised Signatory
Mr. Kamalkant Gopalrao Deshmukh
age 50 years, occ. service
having its office at
Adalat Road, Aurangabad.
2. M/s Pagaria Auto
Through its Authorised signatory
Mr. Dilip Bhatia, age adult
occ. service, having its office at
Adalat road, Aurangabad.
3. M/s Talwalkar Health Club
Through its Manager
Occ. service, adult,
having its office at
Adalat Road, Aurangabad.
4. Future General Insurance Company Ltd.
Through its Branch Manager
Occ. service, adult,
having its registered office at
Adalat Road, Aurangabad.

.. PETITIONERS

VERSUS

1. Mr. Santosh s/o Anantrao Jagtap
age 38 years, occ. business
r/o Nawabpura, Aurangabad.
2. Aurangabad Municipal Corporation,
Through its Commissioner,
Municipal Corporation
Aurangabad.
3. ICICI Bank Ltd.
Through its Branch Manager
Having its office at Adalat Road,
Aurangabad.
4. Manmandir Travels
Through its Manager
Having its office at Adalat Road,
Aurnagabad.

.. RESPONDENTS

Mr. R. R. Totla, advocate for petitioners.

Mr. D.P. Palodkar, advocate for respondent no. 1.

Mr. S.G. Chapalgaonkar, advocate holding for Mr. Mandar Deshmukh, advocate for respondent no. 2.

Mr. U.N. Shete, advocate for respondent no. 3.

Mr. B.N.Kate, adovcate for respondent no. 4.

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CORAM : S. B. SHUKRE, J.

DATE : 19th JANUARY, 2017.

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. What is questioned in this petition is the legality and correctness of the order dated 07.01.2017 passed in Misc. Civil Appeal No. 151/2016 by the learned District Judge-4, Aurangabad, granting temporary injunction against the petitioners as well as respondent no. 2, Municipal Corporation, Aurangabad.

4. The dispute is between respondent no. 1 and respondent no. 2. At the base of such dispute, also lie complaints made by petitioners in respect of various illegalities allegedly being committed by respondent no. 1 in operating the contract of collection of charges for user of parking space allotted to him by respondent no 2. This contract was awarded by respondent no. 2 to respondent no. 1 on 2nd April, 2016. It was for only one year and was in operation till 31st March, 2017. Under this contract, subject to the terms and conditions mentioned therein, respondent no. 2 –

Corporation permitted respondent no. 1 to collect charges for using parking space situate off Adalat Road, in front of District Court, Aurangabad. Clauses 4 and 5 of this contract stipulate that respondent no. 2 would have a right to terminate the contract prematurely, if any complaints were received and a dispute on account of those complaints was created. After some period of time from the date of award of the contract, some persons made complaint to the Corporation as well as police authorities that the acts of respondent no. 1 were offending. Ultimately, an enquiry was held in which, respondent no. 1 was given an opportunity to present his stand, which opportunity was availed of by him through his authorised representative. After considering the complaints and submissions of those interested in cancellation of the contract as well as respondent no. 1, respondent no. 2 Corporation found that circumstances existed which justified invocation of its powers under clauses 4 and 5 of the contract and accordingly, by order passed on 06.06.2016, respondent no. 2 cancelled the contract prematurely.

5. Being aggrieved by such premature termination of contract, respondent no. 1 filed civil suit being Regular Civil Suit No. 56/2016 seeking declaration that termination of contract was illegal and thus void. Respondent no. 1 also sought perpetual injunction restraining respondent no. 2 from cancelling the contract in an illegal manner. In this suit, respondent no. 1 also made petitioners as party respondents. He filed application vide Exh. 5 seeking temporary injunction against respondent no. 2 as well as these petitioners. They were sought to be temporarily

restrained from cancelling the subject contract.

6. On merits of the application vide Exh. 5, the learned Civil Judge found that no case was made out warranting grant of temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure and therefore, rejected the application by order passed on 29.08.2016. This order was carried in appeal by respondent no. 1 and the appeal was registered as Misc. Civil Appeal No. 151/2016. After hearing the rival parties, the learned District Judge, by order passed on 07.01.2017, upset the findings recorded by the learned Civil Judge and, granted application vide Exh. 5 in terms that defendants i.e. respondent no. 2 and petitioners be temporarily restrained from causing obstruction and interference in any manner from collecting parking charges by respondent no. 1 and also, from causing any obstruction or interference in the enjoyment of the property under subject contract. This order provided a reason for petitioners to approach this Court by filing present writ petition.

7. Learned counsel for petitioners submits that the impugned order is against well settled principles of law in as much as it violates the mandate of Order 39 Rules 1 and 2 of the Code of Civil Procedure, section 14(a) & (c) and section 41 (b) & (h) of the Specific Relief Act. He points out that from the order passed on 14.06.2016 that, when the suit was filed, the contract had already been terminated and, there was no question of filing any application under Rule 2 of Order 39 of the Code of Civil Procedure. He further submits that the subject contract was of such a nature as to make

available the remedy in the nature of compensation in terms of money to the aggrieved party. Therefore, he submits that no temporary injunction order could have been passed by the learned District Judge.

8. Learned counsel for petitioners places reliance upon the cases in the matter of Wander Ltd. and another Vs. Antox India P. Ltd. reported in **1990(Supp) Supreme Court Cases 727**, Airport Authority of India Vs. Dilbagh Singh reported in **1997 (40) DRJ** and Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Co. and others reported in **(1995)5 Supreme Court Cases 545**.

9. Mr. Shete, learned counsel for respondent no. 1 submits that the suit as filed by respondent no. 1 fell within the scope and ambit of Rule 2 of Order 39 of the Code of Civil Procedure as the injunction sought was to prevent injury being continuously caused to respondent no. 1 by illegal breach of the contract. He also submits that the injury being suffered by respondent no. 1 is of such a nature as would not be amenable to compensation in terms of money. He submits that the order of termination of contract has not been issued in public interest by respondent no. 2. He also submits that respondent no. 2 Corporation has not challenged the impugned order and therefore, petitioners would have no locus to challenge the order of learned District Judge to the extent it operates against respondent no. 1.

10. The principles governing grant of temporary injunction are now well

settled. For grant of temporary injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure, it would be necessary for the Court to consider three factors; existence of prima facie case, balance of convenience and irreparable loss. In the case of *Wander Ltd. and another* (supra), the Hon'ble Apex Court has held that the relief of temporary or interlocutory injunction is discretionary in nature and its main purpose is to protect plaintiff against any injury by violation of his rights, for which, he cannot adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. This law has been followed by the learned Single Judge by High Court of Delhi in the case of *Airport Authority of India* (supra). These principles have been reiterated by the Hon'ble Supreme Court in the case of *Gujrath Bottling Co. Ltd. and others Vs. Coca Cola and others* (supra).

11. Now, if we look at the prayer made in the application vide Exh. 5, it can be seen that the prayer indicates that the application itself had been rendered infructuous. Admittedly, the subject contract was cancelled on 06.06.2016 and yet, without seeking any interim stay upon the effect and operation of the order of cancellation of contract or any restoration of the status quo ante, a prayer was made for temporarily restraining respondent no. 2 and other defendants from cancelling the subject contract. Such a prayer therefore, could not have been granted by the learned District Judge. The impugned order, nowhere states that cancellation of the subject contract was prima facie illegal or that, the order passed in that regard by respondent no. 2 was required to be stayed in its effect and operation. Even

then, the learned District Judge went ahead and passed the impugned order restraining petitioners and respondent no. 1 from enjoying the property under the subject contract and collecting parking charges.

12. Provisions of Rule 2 Order 39 of the Code of Civil Procedure appear to have been invoked by the learned District Judge in allowing the application vide Exh. 5. But, in the instant case, the contract had already been cancelled and as such, there was no question of preventing defendants from committing any breach of the contract. Nowhere in the pleadings of the plaint or application Exh. 5, any reference has been made about suffering of any other kind of injury by respondent no. 1. Therefore, the provisions of Rule 2 Order 39 of the Code of Civil Procedure could not have been invoked in passing the impugned order.

13. On perusal of the impugned order, it appears that the provisions of section 14 of the Specific Relief Act, particularly clauses (a) and (c), have not been considered by the learned District Judge. Learned counsel for petitioner is right in submitting that the subject contract being determinable in its nature and the injury being capable of compensated in terms of money, the learned District Judge could not have passed the order of temporary injunction. Clause (h) of section 41 of the Specific Relief Act also does not appear to have been considered by the learned District Judge while passing the order of injunction. The contract is obviously of the nature a breach of which is capable of being compensated in terms of money. The learned District Judge has observed in the impugned order that if

injunction as prayed for is not granted, it would result in causing irreparable loss to respondent no. 1. The learned District Judge however, has not elaborated his idea of irreparable loss in such a case. Besides, the contract had also come to an end and, the only remedy available to respondent no. 1, was in the nature of damages and nothing more. This aspect has also not been considered by the learned District Judge. Rather I would say, the learned District Judge has passed the impugned order completely against the provisions of law and settled principles as laid down in the cases earlier referred to.

14. Perusal of the impugned order also gives rise to some startling facts. The learned District Judge in the impugned order has made several observations which are clearly against the facts available on record and, about which, there is no dispute between the parties. The learned District Judge in paragraph no. 16 of the impugned order has observed that petitioners made complaint on 25.04.2016 to the Commissioner of the Corporation mentioning that they were ready to pay the amount if they were allowed to use the premises. Perusal of complaint dated 25.04.2016 however, shows the position to be entirely opposite. Further observations, not supported by the record, have been made in paragraph no. 15 of the impugned order.

15. The above discussion would show that in passing the impugned order, the learned District Judge has committed patent illegalities, has thrown to winds the settled principles of law and has also committed

perversity by presuming in favour of respondent no. 1 facts not borne out from the record. Such an order, therefore, must go.

16. As regards the objection about tenability of this petition, I would say that there is no substance in this argument. The impugned order effectively operates against all the defendants including respondent no. 2 thereby giving rise to right to all or any of the defendants to question the order. That apart, there is a larger public interest involved in such matters and the petitioners, being members of public, would certainly have interest in a case like this wherein the issue of harm caused to public interest has been raised.

17. In the circumstances, writ petition is allowed with costs. Impugned order is hereby quashed and set aside. Rule made absolute in above terms.

18. Parties to act upon authenticated copy of this order.

(S. B. SHUKRE)
JUDGE