

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3727 OF 2016**

Mrs. Rasila Jyotindra Vora & Ors.

...Petitioners

Versus

Neel Sadan Apartments

Through Manager: Maj.Gen.S.C.N.Jatar,

President.

...Respondent

Mr. M.K.Irani, i/b. Mr. Ashok B. Tajane, for the petitioners.

Mr.Rakesh P. Saroj,for the respondent

CORAM : SMT. SADHANA S.JADHAV, J.

DATE :22nd November, 2017.

P.C. :

1. Heard. Rule. Rule made returnable forthwith with consent of the parties.
2. The present petitioners happen to be the defendants in RCS No.121 of 2012. The suit was for permanent injunction restraining the present petitioners from bringing their vehicles into the compound of the Condominium situated at Neel Sadan Apartments which is established under the provisions of Maharashtra Apartment Ownership Act, 1970.
3. The learned 23rd Joint Civil Judge, Junior Division, Pune, by an order dated 28.8.2014, had decided the application below Exhibit 5 and

had passed the following order :-

“1. The application is partly allowed in following terms.

2) Defendants are hereby temporarily restrained from bringing any kind of transport vehicles in the narrow pathway between wings `A' and `B' of plaintiff condominium situated at 1426, Sadashiv Peth, Pune 411 030 and causing any sort of damage and/or loss to the pathway between wings `A' and `B' and causing any nuisance to the residents/apartment's owners of plaintiff condominium in between 1.30 p.m. to 3.00 p.m. and after 6.00 p.m. till final disposal of the suit.”

4. The order dated 28.8.2014 was not challenged either by the plaintiff or the defendants and hence it attained finality. It appears that on 24.5.2015, the plaintiff had passed a resolution to the effect that the petitioners herein shall be restrained from bringing his vehicles inside the gate of the condominium. The petitioners, therefore, were constrained to file an application seeking mandatory injunction for restoring their right of access to the premises bearing Shop No.A-8, in the narrow pathway between Wings `A' & `B' of the plaintiff Condominium situated at 1426 Sadashiv Peth, Pune 411 030. The said application was heard on merits and was rejected by the 14th Joint Civil Judge, Junior Division, Pune, vide order dated 9.10.2015. Hence, this Writ Petition.

5. It is the contention of the petitioners that the petitioners have a godown at Shop bearing No.A-8, which is situated at the end of Wings `A' and `B' and also have a shop at A-2 which is facing the public road. The petitioners have placed on record the photographs which show that the gates were closed and thereby no access was given to the petitioners pursuant to the order passed on 28.8.2014. It is the contention of the petitioners that they had abided by the order passed below Exhibit 5 and therefore, had not challenged the same. It is further submitted that it was incumbent upon the plaintiff also to abide by the said order.

6. The learned counsel for the respondents submits that the plaintiff had passed a resolution on 24.5.2015 subsequent to the earlier order passed below Exhibit 5 and that the plaintiff Condominium and its members were bound to follow the bye-laws and resolutions issued therein. It was the specific contention of the petitioners that the plaintiff had locked the main gate and the keys were distributed amongst the plaintiff and a few other members and the keys were not given to the defendants and, therefore, the petitioners had prayed for mandatory injunction. The learned Court has considered that it is binding on the members as per Rule 42 of the bye-laws of the Condominium to follow the resolution which was

subsequent to the order passed by the Court. It is specifically submitted before the lower Court that access was not denied but access of diesel vehicles carrying goods was prohibited by the plaintiff. The Court has observed that the defendants have not prayed for modification of the order below Exhibit. The application was rejected on 9.10.2015.

7. It is the contention of the learned counsel for the respondents that by bringing any diesel vehicles, the petitioners have created nuisance in the society. It is also submitted that the petitioners are bound to abide by the Resolution dated 24.5.2015 and hence prayed that the petition be dismissed.

8. In fact, it was incumbent upon the plaintiff to approach the Civil Judge, Junior Division, Pune, seeking modification of the order or bringing the resolution to the notice of the Court by filing a proper application before the Court seeking modification. It is not known as to how the defendants would seek modification of the order below Exhibit 5. The petitioners had abided by the said order. It is submitted by the petitioners that they are not carrying heavy vehicles, but carrying the goods through a 3-wheeler

rickshaw which requires less space. It is also submitted that the Condominium has singled out the petitioners for reasons best known to them. As on today, the learned counsel for the petitioners submits that the petitioners would abide by the order dated 28.8.2014 and further undertake that the vehicles would be taken to Shop No.A-8 only for the purpose of unloading the goods and thereafter the said vehicles would not be parked between Wings `A' & `B' during any time of the day.

9. In view of this submission, the order dated 9.10.2015 deserves to be set aside. The petitioners shall not transport the goods only between 1.30 p.m. to 3 p.m. and after 6 p.m. During the rest of the day, the petitioners shall take the vehicle inside the gate only for the purpose of unloading the goods and shall not continue to park the vehicle in front of Shop bearing No.A-8. The petitioners shall make any other alternative arrangement but abide by this order which is in continuation of the order dated 28.8.2014 passed by the 23rd Joint Civil Judge, Junior Division, Pune.

10. The Petition is allowed in the above terms. Rule is made absolute accordingly.

(SMT. SADHANA S.JADHAV, J.)