

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8629 OF 2017

Ms. Kanan Farshuram Raval And Lrs. ...Petitioners
Versus
Hasmukh Kirtilal Shah And Ors. ...Respondents

Mr.Jayesh Bhatt for the Petitioners.

Mr.Reshant Shah i/by Lex Conseiller for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 29th AUGUST 2017

P.C.

1. Rule. Rule made returnable forthwith by the consent and at the request of the learned counsel for the parties.

2. Mr.Bhatt, the learned Counsel for the petitioner makes a statement that the petitioner does not press this petition insofar as the reliefs set out in Clauses 2,3 and 5 of the impugned order dated 10th December 2014 made by the learned Trial Judge are concerned. This statement is obviously without prejudice to the rights and contentions of the petitioner to contend otherwise in the pending suit. He however, submits that the relief in terms of Clause (4) of the order dated 10th December 2014 is rather wide and capable of

abuse. He therefore, submits that relief in terms of Clause (4) of the order dated 10th December 2014 warrants interference.

3. Clause No.4 of the order dated 10th December 2014 reads thus :-

“4. The defendant is hereby temporarily restrained from creating any sort of nuisance to the plaintiff in any manner till disposal of the suit.”

4. *Prima-facie*, the relief as granted does appear to be widely worded. However, the Appellate Court at paragraph No.18 of its judgment and order dated 27th March 2017 has recorded that there are allegations that the petitioners throw garbage outside the suit premises to block the passage and cause nuisance by doing latrine and urine outside the suit premises or otherwise throw water on the door of other premises around the suit premises. The Appeal Court has also made reference to recordings by way of CD's and CCTV Footages in relation to the conduct of the petitioner.

5. Mr.Bhatt, the learned counsel for the petitioner submits that all such allegations are false and the petitioner has never indulged in any such acts. In any case and without prejudice, he

says that the petitioner will file an undertaking before the learned Trial Judge that she will not indulge any of such alleged acts.

6. The petitioner to file such an undertaking, without prejudice to specific contentions that such allegations are false, within a period of four weeks from today. Upon filing of such undertaking the clause (4) of the impugned order shall be construed in the light of such undertaking. The width of the relief contained in Clause (4) as aforesaid, shall stand proportionately restricted. However, it is made clear that in case, it is found that the petitioner has breached the without prejudice undertaking or in case, no such without prejudice undertaking is filed within four weeks from today, then, this petition shall be deemed to have been dismissed with cost assessed at Rs.5,000/-.

7. Rule is disposed of in the aforesaid terms.

(M. S. SONAK, J.)