

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13887 OF 2016

Mehabub Nabilal Nanniwale and another ... Petitioners
Vs.
Liyakat Nabiso Nanniwale and others ... Respondents

Mr. R. M. Momin i/b. Mr. Sharif Najma Jamil for Petitioners.
Ms A. R. Baxi for Respondents.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 15, 2017

P.C. :

Heard Mr. Momin, learned Counsel for petitioners and Ms Baxi, learned Counsel for respondents at length. Rule. Ms Baxi waives service for respondents. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 05.08.2016 passed by the learned District Judge-3, Sangli in Miscellaneous Civil Appeal No.136 of 2016. By that order, the learned District Judge allowed the appeal preferred by the respondents, hereinafter referred to as 'plaintiffs', and quashed and set aside the judgment and order dated 05.07.2016 passed by the learned Joint Civil Judge, Junior Division, Miraj below exhibit-36 in Regular Civil Suit No.184 of 2015. The learned District Judge issued injunction restraining defendants from demolishing any portion of the suit property or making any construction thereon as also from creating third party interest.

3. In support of this Petition, Mr. Momin submitted that the learned

trial Judge rejected the application filed by the plaintiffs for injunction restraining defendants from carrying out any construction thereby changing the nature of the suit property. He invited my attention to the prayers made in the application. Plaintiffs did not pray for injunction restraining defendants No.1 and 2 from creating third party interest. However, while allowing the Appeal, the learned District Judge has issued that injunction as well.

4. He submitted that plaintiffs instituted Suit in the year 2015. The application for interim relief is filed on 28.06.2016. He submitted that pending application exhibit-5, there was no ad-interim order. On 28.06.2016, the learned trial Judge merely issued show cause notice to defendants No.1 and 2 and did not grant any ad-interim order. Building proposal was submitted to the Sangli, Miraj and Kupwad Municipal Corporation on 16.04.2016. The Corporation after obtaining the opinion of the legal advisor, gave building permission by imposing condition to the effect that the construction carried out shall be subject to the outcome of the Suit. He further submitted that while allowing the appeal, the learned District Judge did not give any reasons. He, therefore, submitted that the impugned order deserves to be set aside.

5. On the other hand, Ms Baxi supported the impugned order. She submitted that the learned District Judge has considered the documents in paragraphs 6 and 7 and observed that the submissions advanced by on behalf of the plaintiffs prima facie appear sound and accordingly allowed the appeal.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraphs 13 to 17, the learned District Judge has referred to the principle governing interference in a discretionary order. The

learned District Judge has also referred to the decision in the ***Printers (Mysore) Private Limited Vs. Pothan Joseph***, AIR 1960 SC 1156, wherein the Apex Court has observed thus,

“... it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts and has adopted an unjudicial approach then it would certainly be open to the appellate court and in many cases it may be its duty to interfere with the trial court's exercise of discretion. In cases falling under this class the exercise of discretion by the trial court is in law wrongful and improper and that would certainly justify and call for interference from the appellate court.”

7. There can be no two opinion as regards the principal enunciated in paragraphs 13 and 17 of the impugned order. The question is whether in the facts and circumstances of the present case, the appellate Court has applied those principles. After perusal of the impugned order, I am satisfied that the only reasons that are found in the impugned order are in paragraph 11, which read thus,

“11. Taking into consideration the submissions made across the bar, I am of the view that the issue pertaining to the right, title, possession etc. over the suit property are required to be decided on merits. While considered the interim relief, without going into mini trial, prima facie, the submissions made on behalf of plaintiffs appear sound to my mind. If the defendants are permitted to carry out construction, it would multiply litigations. More so, the permission granted by the Corporation is subject to outcome of RCS No.184/2015. Hence, prima facie, parties need to maintain status quo till final decision of RCS No.185/2015.”

8. In my opinion, the said reasons can hardly be said to be reasons more so when the appellate Court is upsetting the trial Court's order. As the order is without any reasons, it cannot be sustained and as such, is liable to be set aside and accordingly it is set aside. Miscellaneous Civil Appeal is restored to the file of the District Court.

9. Having regard to the fact that the impugned order was passed on 05.08.2016 and the said order was not stayed by this Court, it is clarified that clause [3] of the operative part of the impugned order, which is to the following effect, shall be treated as ad-interim order pending the appeal:

“[3] The respondents/original defendants are directed not to demolish any portion of the suit property nor to make any construction therein, they should also not create any third party rights over the suit property till the final decision of the suit.”

10. Continuation of this ad-interim order shall not be construed as an expression of merits either way. Parties agree that they will appear before the learned District Judge on 22.02.2017 and for that purpose, no fresh notice be issued to them. The learned District Judge is requested to dispose of the appeal as expeditiously as possible and preferably within 2 weeks from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab