

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10650 OF 2018

HABIB KHAN BISMILLA KHAN AND ANOTHER
VERSUS
MUNICIPAL CORPORATION AURANGABAD AND ANOTHER

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Advocate for Petitioners : Shri Natu Sharad V.
Advocate for Respondent 1 : Shri Chapalgaonkar S.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 08, 2018
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PER COURT :-

1. The petitioners seek leave to delete respondent No.2. Deletion is permitted at the risk of the petitioners.

2. The petitioners are the plaintiffs in RCS No.45 of 2017, who are aggrieved by the following orders:-

(a) Order dated 20.4.2018, rejecting application Exhibit 25, by which the plaintiffs have sought leave to amend.

(b) Order dated 20.6.2018 passed below application Exhibit 48, by which, the plaintiff had sought leave to re-erect the temporary shade, which is subject matter of the suit, that has been removed during the pendency of the suit.

3. I have heard the strenuous submissions of the learned Advocate for the petitioners and the learned Advocate appearing on behalf of the Corporation.

4. I find from the record that the Corporation had moved for demolishing the temporary shade erected by the plaintiffs, which was used as a shop, allegedly unauthorizedly. The plaintiffs contend that without the said shop, they cannot operate their business. Nevertheless, as the suit was intended to protect the so called shop, its demolition during the pendency of the suit had prompted the plaintiffs to move an application for adding of a prayer in the suit to the extent of seeking restoration of the said shop, if the suit is allowed.

5. The learned Advocate for the Corporation has strenuously defended the said order and has prayed for the dismissal of the petition with costs. Contention is that the demolition of the shop, which was unauthorizedly erected would lead to a fresh cause of action and the amendment would alter the nature of the suit.

6. I find that the trial Court has lost sight of the fact that the suit was lodged for protecting the said shop, whether temporary or otherwise. If that is demolished or dismantled during the pendency of the suit, the plaintiffs would be rendered remediless, if the suit is

ultimately allowed because the prayer for restoration of the shop would not be found in the prayer clause, which, as a necessary consequence can be granted by the trial Court.

7. In so far as the order dated 20.6.2018, below Exhibit 48 for re-erection of the shop is concerned, learned counsel for the plaintiffs submits on instructions that pursuant to the impugned order and observations made therein, the plaintiffs have already approached the Municipal Commissioner for seeking permission to re-erect the shop. This petition is, therefore, not pressed to that extent and stands worked out.

8. In order to avoid multiplicity of litigation and since it is a prayer which is based on subsequent events during the pendency of the suit, I find that the trial Court has erred in passing the impugned order. As such, the said order dated 20.4.2018, below Exhibit 35, is quashed and set aside. Exhibit 35 is allowed and the plaintiffs are permitted to add the prayer and the proposed paragraph accordingly on/or before 30.10.2018. Consequentially, the amended plaint will also be deposited on 30.10.2018 before the trial Court.

9. In the result, this petition is partly allowed in terms of the above stated order below Exhibit 35.

10. Needless to state, the observations in this order are only on the basis of the possibility of the plaintiffs getting a favourable order and shall not be interpreted as a view expressed by this Court in favour of the plaintiffs.

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Kishanrao
Losarwar

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(RAVINDRA V. GHUGE, J.)

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