

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

WRIT PETITION NO. 8370 OF 2018

Shivaji Shankar Jadhav & Anr.

... Petitioners

Vs.

Laxman Gajanan Godbole

... Respondent

.....

Mr.Ashutosh Kulkarni i/b. Mr.Vaibhav R. Gaikwad for the
Petitioners

Mr. Amol Gatne for the Respondent.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: AUGUST 08, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and decided at the stage of admission.

2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 25th July, 2018 passed by the learned District Judge, Satara below Exhibit 44 in Regular Civil Appeal No. 113 of 2017 is challenged. The petitioners are the original defendants. The

respondent is the original plaintiff.

3. In the Appeal, the learned District Judge-4, Satara by his order dated 7th December, 2017 has granted interim injunction that the respondents or any other persons on their behalf are temporarily restrained from causing interference to the peaceful and lawful possession and cultivation of the Appellant till the final decision of the Appeal. Till today, the said order is in force. Though the challenge is given to that order in Appeal before the High Court, the said order is not stayed or no interim relief is granted by the High Court in favour of the petitioners.

4. It is the case of the respondent i.e., the original plaintiff that though the order of injunction is in force, there are many instances of obstruction, disturbing the peaceful possession and cultivation of the land have taken place by the petitioners or by their agent. The instances have taken place on 20th February, 2018, 9th April, 2018 and 16th April, 2018 and, therefore, the plaintiff has filed an application, which is marked at Exhibit 44 in the Appellate Court praying that he may be given police protection for a period of 7 days for implementation of the order of temporary injunction

passed by the Appellate Court below Exhibit 9. The said application was contested by the petitioners. However, by denying all the allegations, the petitioners reiterated that they are in possession of the property. However, the Appellate Court allowed the said application and granted police protection to the plaintiff constituting a team of three female and two male constables for a period of 7 days after payment of necessary charges of protection. Hence, this Writ Petition.

5. The learned Counsel for the petitioners/defendants has submitted that the Civil Court has no power to pass an order of granting police protection especially when the other remedy like Order 39 Rule 2A of the Code of Civil Procedure, 1908 (hereinafter referred to as "the C.P.C") is available in law to the respondent. He has further submitted that still the petitioners are in possession of the land and the respondent is trying to dispossess them with the help of police protection. In support of his submission, he has relied on the judgment of this Court in the case of ***Nirabai J. Patil vs. Narayan D. Patil***¹ Hence, he prays that the impugned order be set aside.

1 2004 (1) Mh. L.J. 1058

6. The learned Counsel for the respondent/ original plaintiff has supported the order passed by the learned District Judge of the Appellate Court. There is grave and serious emergency to protect the plaintiff. He has placed reliance on the order dated 7th December, 2017 passed by the Appellate Court. He has submitted that despite the order of injunction, the petitioners are trying to obstruct and dispossess the plaintiff by taking law in hand. He has further submitted that the Appellate Court has taken appropriate view, which is not to be disturbed by this Court under writ jurisdiction. The Court has ample power under Section 151 of the C.P.C. Another remedy though available under Order 39 Rule 2A of the C.P.C., the plaintiff is not prevented from approaching the Court by moving an application under Section 151 of the C.P.C. He has relied on the contents of the application below Exhibit 44 where he has stated about grave emergency and serious challenge to the law and order made out by him. In support of his submission, he has relied on the judgment of this Court in the case of ***Ratnabai w/o. Narayanrao Naik and another vs. Satwarao s/o. Narayanrao Naik.***² He has also relied on the judgment of the

2 1995 (1) Mh. L.J. 529

Supreme Court in the case of ***Meera Chauhan Versus Harsh Bishnoi and another***³

7. Heard submission. Perused impugned order.

8. In the case of ***Nirabai J. Patil*** (*supra*), the learned Single Judge of this Court has discussed the powers of the Court under Section 151 read with Order 39 Rules 11 and 2A of the C.P.C. It is held that the grant of police aid is an extreme step and it cannot be made unless the Court is fully convinced about the existence of grave emergency such as apprehension of violence by the persons against whom the order has been passed.

9. In the case of ***Ratnabai w/o. Narayanrao Naik*** (*supra*), the respondent/ applicant made an application under Section 151 of the Code of Civil Procedure for grant of Police Aid in order to protect the applicant's possession over the disputed suit land and for implementation of the order of injunction. In the said case, the learned Single Judge of this Court has held as under :-

³(2007) 12 SCC 201

“It is impossible in the nature of the things to anticipate the difficulties or inconvenience and to make appropriate provisions in the Code or Rules. Not only the Court should have power to make orders but should have also power to implement the same”.

The learned Single Judge has observed as under :-

“The special procedure for police help would not be allowed unless there are reasonable grounds to suppose that the execution will not be effected without serious danger to public peace, because of apprehension of violence or obstruction from the judgment-debtor himself or because of the conditions of general character as such where the execution will have to be done in disturb stage”.

10. In the case of **Meera Chauhan** (*supra*), the Supreme Court has referred the case of **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal** reported in **AIR 1962 SC 527** where it is held that *“to prevent abuse of the process of the Court, this Court has held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. So also, the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure”*, which in fact in the case of

Manohar Lal Chopra (*supra*) supposed if there is any procedure laid down, then it is to be followed first and if at all exceptional circumstance is pointed out weighing the gravity of the situation, then only the Court can use the power under Section 151 of the C.P.C.

11. The ratio can be culled out from all these rulings. Though the Court has vast inherent power to pass an order to meet the ends of justice under Section 151 of the C.P.C., the Court is supposed to use the powers especially the power to grant police protection in only extreme cases, which ultimately depends on the facts of each case. When there is an application of apprehension or disobedience of the order passed by the Court on one hand and there is denial on the other hand, then the situation is word against word. Under such circumstances, the Judge needs some possible and available supporting factor to satisfy his or her conscience. It is to be verified why the parties are seeking police protection and why they have not taken necessary steps, which are laid down under the Civil as well as Criminal procedure. The remedy under Order 39 Rule 2A of the C.P.C is known to all. Under Order 39 Rule 2A of the C.P.C., the Court can attach the property so also

can send wrongdoer to the civil prison for a period of three months. Considering the seriousness of breach of the order of the Court, such rigorous penalty can be imposed by the trial Court.

12. It is true that it is not necessary for the plaintiff to limit himself to only Order 39 Rule 2A of the C.P.C., but can seek police protection under Section 151 of the C.P.C. However, it is must for the plaintiff to show that there is such grave urgency and offensive things are actually happened. Thus, some corroboration is required to satisfy conscience that the order of injunction granted by the Appellate Court is in fact breach and it is not the case of word against word. The availability of such corroboration depends on facts of each case.

13. Let me advert to the present case. In paragraph Nos. 5 and 6 of the application of the respondent/plaintiff, the apprehension so also offensive activities done by the petitioners are mentioned. On perusal of these two paragraphs, it clearly appears that if the facts are true, then the cognizable offence is made out. If it is a cognizable offence, then it is necessary for the plaintiff to approach the police further. After verifying the things, it is mandatory on the

part of the police to register case if cognizable offense is made out.

14. The learned Counsel for the respondent has submitted that prior to passing of the order of injunction; the plaintiff has approached the police thrice, however, they have ignored his complaints.

15. I do agree that such situation may take place at the police station as it is a ground reality. However, in the present case, the order of temporary injunction passed by the Appellate Court is still in force. Once, there is a complaint regarding nuisance and trespass, then it is the duty of the police to verify and protect the party, if the cognizable offence is made out and act as per the law. Under such circumstances and in the absence of such corroborative factors, I am of the view that such order of granting police protection cannot be justified. Hence, I set aside the order dated 25th July, 2018 passed by the learned District Judge, Satara with following observations :

- (i) The respondent/plaintiff may move an application under Order 39 Rule 2A of the C.P.C. before the same Court, if there is breach

of the order of injunction. Moreover, the respondent/plaintiff may approach the police, if the law and order is violated. If such acceptable corroboration is brought on record, then the plaintiff may move an application under Section 151 of the C.P.C and the Court to decide it on facts and merit accordingly.

16. Writ Petition is allowed. Rule made absolute in the above terms.

(MRIDULA BHATKAR, J.)