

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

**CIVIL REVISION APPLICATION ST. NO. 15095 OF 2018
WITH
CIVIL APPLICATION ST. NO. 15096 OF 2018
IN
CIVIL REVISION APPLICATION ST. NO. 15095 OF 2018**

Mrs. Namita Sinha
Age about 53, Occ. Business
203, "A" Wing, 2nd Floor,
Supreme City, Hiranandani Gardens,
Powai, Mumbai - 400 076

...Applicant

Versus

1. Rent Assets Initiatives Pvt. Ltd.,
having its office at 205, B Wing,
2nd Floor, Floral Deck Plaza Off.
SEEPZ, Andheri (East),
Mumbai – 400 093
2. Mr.Boman Jehangir Yezdani,
Director- Rent Assets Initiatives Pvt. Ltd.,
205, B Wing, 2nd Floor,
Floral Deck Plaza Off. Seepz,
Andheri (East), Mumbai 400 093
3. The Commissioner of Police,
Mumbai.
4. The Senior Inspector of Police
Powai Police Station,
Mumbai 400 076.

5. The Hero Finance Corpn.,
34, Community Centre,
Basanti Lok, Vasant Vihar,
New Delhi –110 057
Represented by its Managing Director
6. Saravanan,
Branch Manager,
The Hero Finance Corpon.,
Vatika Building Centre,
7th Floor, 'B' Wing,
Supreme Business Park,
Hiranandani Garden,
Powai, Mumbai – 400 076.
7. Economic Offence Wing,
Near Gole Market,
Near R K Ashram Metro Station,
Mandir Marg, Delhi – 110 001.
8. The Additional Commissioner of Police/
The Deputy Commissioner of Police,
Economic Offences Wing,
Gurugram, Haryana.
9. Economic Offences Wing,
Ground Floor, Annexe 2 Building,
Police Commissioner Office,
Crawford Market, Mumbai – 400 001.
10. The Joint Commissioner of Police,
Economic Offences Wing,
Office of the Commissioner of Police,
Crawford Market, Mumbai 400 001.

...Respondents

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Mr. Mathew Nedumpara a/w. Ms. Rohini M. Amin for the Applicant.

Mr.Karl Tamboly a/w. Ms.Samrudhi Chotani for Respondent Nos. 1 and 2.

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**CORAM: MRS.MRIDULA BHATKAR, J.
RESERVED ON : 20 JUNE, 2018
PRONOUNCED ON : 13 JULY 2018**

JUDGMENT

1. This Civil Revision Application is directed against the order dated 4th May, 2018 passed by the learned Judge, City Civil Court at Bombay thereby refusing to register the Notice of Motion.

2. The learned counsel for the Applicant has submitted that the Applicant, who is the plaintiff, has filed Suit No. 2306 of 2016 for declaration and injunction before the City Civil Court at Mumbai. In the said suit, the plaintiff has taken out Notice of Motion (L) No.1957 of 2018. While entertaining the said Notice of Motion, the learned Judge of the Trial Court has refused to register clause nos. (b) and (c) and directed to register the said Notice of Motion to the extent of prayer clause nos. (a), (d) and (e). Hence, this Civil Revision Application.

3. The following reliefs were refused for registration of the Notice of Motion by the learned Judge of the Trial Court :

“(b) grant ad-interim injunction restraining and prohibiting Defendant Nos. 7 to 10 from arresting the Plaintiff or her family members or business associates and staff or from proceeding under the Code of Criminal Procedure, 1973 or Indian Penal Code, on the above cause of action, as the matter is sub-judice falling within the exclusive civil jurisdiction of this Hon'ble Court.

(c) To grant an ad-interim injunction in favour of the Plaintiffs and against the Respondents restraining and prohibiting the Respondents particularly Respondents No. 7 to 10 its agents, servants, men, privies, goons, goondas, musclemen, bouncers etc, from in any manner interfering with the absolute estate, right, title, ownership, possession and enjoyment thereof or in any manner, committing any waste or damage or trespass or alienation thereof of the Equipments, by sale, transfer, lease, assignment, as also to grant an ad-interim injunction pendente lite”.

4. The learned counsel for the Applicant has submitted that the Trial Court has passed non-speaking order, as no reasons are given for rejecting the reliefs, which are mentioned at clause nos. (b) and (c). He has further submitted that such reliefs are very much maintainable, as there is no provision of injunction in the Code of Criminal Procedure, 1973. The bar in Section 41 of the

Specific Relief Act, 1963 (hereinafter referred to as “the said Act”) is not absolute to grant injunction that a party should not institute or register any criminal proceedings. He has further submitted that passing the order of refusal to register the said Notice of Motion on those counts of reliefs is illegal. He has further submitted that the Civil Court has powers under Order 27A of the Code of Civil Procedure, 1908 (hereinafter referred to as “the C.P.C.”), which are equivalent to Articles 226 and 227 of the Constitution of India. The Civil Court has very vast powers, which cannot be underestimated. He has further submitted that the Trial Court has committed error in not considering the statute as a whole. The Specific Relief Act, 1963 should have been understood as a whole and not only one Section i.e., 41(d) is to be picked up and applied. Section 41(d) of the said Act cannot be interpreted in narrow compass. He has further submitted that the order is challenged under Section 115 of the C.P.C and revisional jurisdiction under Section 115 of the C.P.C. is larger than the jurisdiction of Articles 226 and 227 of the Constitution of India. Before independence under Government of India Act, the Civil Court enjoyed power to declare the Act of Parliament illegal. He has further submitted that Order 27A of the C.P.C. and Articles 226 and 227 of the Constitution of India were

subsequently enacted by the frame sets of the Constitution. He has relied on paragraph 3 of the Civil Revision Application, as he said that the plaintiff has asked for substantive remedies which fall exclusively in the realm of civil law and no criminal offence under the Indian Penal Code is attracted. He has further submitted that while interpreting Section 41(d) of the said Act, the plaintiff has to follow the golden rule of interpretation by giving liberal interpretation to the words. The interpretation which is benevolent and relief oriented is to be adopted by the Court and, therefore, the order passed by the Trial Court is to be set aside.

5. Per Contra, the learned counsel for Respondent Nos. 1 and 2 has submitted that the order passed by the Trial Court is illegal. He supported the order passed by the Trial Court. He has further submitted that the Notice of Motion was fixed for hearing on 13th June, 2018 and it is yet to be heard.

6. The theoretical submissions made by the learned counsel for the Applicant in respect of interpretation of statute cannot be disputed, as there are settled principles of law. The Civil Court has vast powers to deal with all the matters of civil nature unless

they are expressly or impliedly barred. The Specific Relief Act, 1963 includes two important Sections i.e., 38 and 41.

7. Section 38 of the said Act speaks about perpetual injunction when can be granted and Section 41 of the said Act limits the power of the Court to grant injunction and injunction can be granted in certain circumstances. Thus, there are specific provisions under the said Act.

8. Section 41 (d) of the said Act reads as follows :

“(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter”.

9. The submission of the learned counsel for the Applicant that Section 41 (d) of the said Act is leniently interpreted is not correct. A person has right to institute a criminal proceeding against other persons and such right cannot be curtailed by order of injunction. This is settled and accepted jurisprudence and thus, the Trial Court has rightly considered the limitation of granting injunction under Section 41 (d) of the said Act. The

order cannot be said cryptic, but it is briefed and reasoned order. No illegality is found in the order dated 4th May, 2018 passed by the learned Judge, City Civil Court at Mumbai. Hence, Civil Revision Application is dismissed. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)