

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2339 OF 1997
WITH
WRIT PETITION NO.2340 OF 1997

Qureshi Builders ... Petitioners
Vs.
Noorbanu widow of Lal Mohamed Karim Bux
Chundrigar and others ... Respondents

Mr. Prasad B. Kulkarni for Petitioners.
Mr. Abhijit Singh i/b. Mr. Anil R. Mishra for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JULY 13, 2018

P.C. :

Heard Mr. Kulkarni, learned Counsel for the petitioners and
Mr. Singh, learned Counsel for the respondents in both the Petitions.

2. Writ Petition No.2339 of 1997 takes exception to the judgment and order dated 05.03.1997 passed by the Appellate Bench of the Small Causes Court in Appeal No.17 of 1997. By that order, the Appellate Court allowed the appeal preferred by the respondents and set aside the order dated 04.10.1996 passed by the learned Judge, Court Room No.34 of the Small Causes Court at Bombay (Bandra Bench) in Injunction Notice No.1762 of 1995. The Appellate Court discharged the notice. Aggrieved by this decision, petitioners instituted the above Writ Petition. By order dated 07.05.1997, Petition was admitted by issuing Rule and interim relief was refused. Subsequently, petitioners took out Civil Application No.4223 of 1999, inter alia praying for following reliefs:

“(a) Pending the hearing and final disposal of this application, respondents, their agents, servants, contractor or any other person claiming through them be restrained by an order injunction from making any construction and extending

the existing structure admeasuring about 31 x 16 standing on CTS No.1436/1 to 3 in any manner whatsoever;

(b) That pending the hearing and final disposal of the writ petition the respondents, his agents, servants, contractor or any other person or persons claiming through or by them be restrained from disturbing the possession of the present petitioner over CTS No.1436 in any manner whatsoever;

(c) Pending hearing and final disposal of the writ petition, the respondents, agent, servant contractor or persons claiming through or by them be restrained by an order of injunction from creating any third party rights or inducting any third person or party in and parting with possession of the property bearing CTS No.1436/1 to 3 of village Malvani, Marve Road, Malad (West), Mumbai;

(d) Pending the hearing and final disposal of the writ petitioner, the respondents, agent, contractor, person or persona claiming through or by them, be restrained by an order of injunction from disturbing the present petitioners and / or from interfering with present petitioners' construction which is being put up in accordance with the sanctioned plan dated 4-1-1999 Exh.A hereto on CTS No.1435, 1437 and 1438 in any manner whatsoever or from claiming any right, title or interest in respect thereof;

(e) That this Hon'ble Court be pleased to expedite the hearing of the Writ Petition No.2339 of 1997 and be pleased to give a fix date of hearing for the same;

(f) Pending the hearing and final disposal of this application the respondents, his agent, servant, contractor or person or persons claiming through or by them be restrained by an order of injunction from creating any third party interest or parting with possession of and in respect of CTS No.1436/1 to 3 as well as from disturbing the present petitioners from putting up any construction in accordance with sanctioned plan at Exh.A hereto as well as further be restrained from making any unauthorized construction over CTS No.1436/1 to 3 of village Malwani, Marve Road, Mala (West), Bombay;

(g) Ad-interim reliefs in terms of prayers (a) to (f) be granted to the petitioners;

(h) Cost of this Civil Application be provided for. ”

3. By consent of the parties, Civil Application was disposed of on 06.08.1999 and prayers (a), (c) and (d) of the Civil Application were granted with clarification.

4. The order impugned in this Petition is interlocutory order. By order dated 06.08.1999, by consent of the parties, interim relief in terms of prayer clauses (a), (c) and (d) of Civil Application No.4223 of 1999 was granted. Interim order is operating for almost 19 years. In view thereof, in my opinion, the following order will meet the ends of justice:

- (i) Rule is made absolute in terms of order dated 06.08.1999;
- (ii) During the pendency of the Suit, there shall be interim order in terms of prayer clauses (a), (c) and (d) of Civil Application No.4223 of 1999 with clarification;
- (iii) As the Suit is pending since 1995, the learned trial Judge is requested to dispose of the Suit within one year from production of the authenticated copy of this order;
- (iv) All contentions of the parties are expressly kept open.

5. In view of the order dated 06.08.1999 passed in Civil Application No.4233 of 199 in Writ Petition No.2340 of 1997 to the effect that “in view of the order passed in C.A.No.4223 of 1999 in W.P.No.2339 of 1997, no orders are necessary in this C.A.”, no separate order is necessary in Writ Petition No.2340 of 1997 and Rule is made absolute in the aforesaid terms.

6. Petitions are disposed of accordingly.

(R. G. KETKAR, J.)