

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 375 OF 2019

1. Mohd. Abdul Bari S/o Mohd. Abdul Hadi,
Age 45 years, Occu. Service,
R/o : Lotakaranja, Near Beef Market,
Aurangabad
2. Mohd. Abdul Aziz S/o Mohd. Abdul Hadi,
Age : 42 years, Occu : Business,
R/o : Lotakaranja, Near Beef Market,
Aurangabad
3. Mohd. Abdul Alim S/o Mohd. Abdul Hadi,
Age : 40 years, Occu. : Business,
R/o : Lotakaranja, Near Beef Market,
Aurangabad

.. Petitioners
(Orig. Defendants)

Versus

Daulatkhan S/o Ahmedshaha Khan,
Age : 72 years, Occu. : Business,
R/o : M.H. No. 1-22-73, Shop No.7 and
Workshop Juna Bazar, Aurangabad

.. Respondent/
(Orig. Plaintiff)

...
Mr. S.V. Adwant, Advocate for petitioners
Mr. K.C. Sant, Advocate for respondent
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14-01-2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. After hearing learned counsel for petitioners and learned counsel for respondent, succinctly stated, it appears to be position, respondent has instituted proceedings for injunction in respect of property described in plaint claiming the same to be tenanted comprising shop bearing no. 7 and adjacent land having area around 2400 square feet.

3. The plaintiff, appears to claim that he is paying rent in respect of said two properties at the rate of 400/- per property and further that he is running furniture shop bearing name 'Wood Land Furniture' and has also a workshop over the same. His case also appears to be that the property has been rented out to him by one Maheboobnisa and has been running the business for over 30 years. In support of his contentions, he purports to place reliance on certain documents claiming those to be depicting rent receipts as also some certificates issued under the State enactment and some electricity bills.

4. Whereas the case of petitioners-defendants is, a bogus claim has been raised under the suit. The documents on which reliance has been placed are fabricated and forged. Claim in respect of the area of 2400 square feet being tenanted property, is absolutely untenable. It is their case that apart from the

documents being fabricated and forged, it would emerge, those would not relate to suit property at all. It is being claimed that certificates also do not relate to suit property and would bear that it is some other property. It is, thus, being claimed on behalf of defendants that the plaintiff cannot be said to have *prima facie* case, balance of convenience in his favour and irreparable loss would be caused to him, and the two courts this far, have failed to appreciate the stark hollowness in the claims of plaintiff. It is submitted that it is a case where this court should indulge into request in writ petition.

5. Submission on behalf of the plaintiff is, trial court in temporary injunction application as well as appellate court in miscellaneous civil appeal have appreciated the matter as it deserved and in the context as required. There are documents submitted which relate to suit property, however, the defendants purport to deny those contentions. As such, the situation would entail opportunity to plaintiff to support his claim. While the petitioners-defendants submit that it is obvious on face of record that the claim is bogus and untenable and thus plaintiff is not entitled to temporary injunction.

6. While such are the submissions advanced on behalf of defendants and plaintiff in present writ petition, perusal of the

order of trial court dated 10-09-2018, particularly paragraphs no. 10 and 11 thereof and observations of appellate court as appearing under impugned order dated 29-11-2018 would evince that both courts have concurrently considered that plaintiff would have *prima facie* case and circumstances would show that balance of convenience lies in his favour and may suffer loss which would be irretrievable. Appellate court, to certain extent has dealt with contentions of parties in quite some details.

7. In the circumstances, it does not appear that this court in its discretionary powers should take any meddlesome approach while appreciation by courts hitherto does not appear to be so grossly deficient and much less defective at this stage of the matter.

8. Writ petition, therefore, is not being entertained and is dismissed, leaving all the points open for parties in the suit. Rule is discharged.

9. The suit is stated to be at the stage of framing of issues. Having regard to the same, it appears to be expedient that trial court proceeds with the suit as expeditiously as possible and dispose of the same within a period of three (3) months from the date of receipt of writ of this order.

10. Observations made hitherto by trial, appellate as well as by this court shall have no influential value in decision on merits in the suit.

[SUNIL P. DESHMUKH]
JUDGE

arp/