

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3901 OF 2017

Bindu Gandhi (deceased) through LRs

And another.

...Petitioners

Versus

Mehroo Rajeshwar Bali

And another

...Respondents

....

Mr. Sukand R. Kulkarni, Advocate for the Petitioners.

Ms. Ranjana Parikh, Advocate for Respondent No.1.

Mr. Abhijeet A. Devkhile, Advocate for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 26th JUNE, 2019

P.C.

1. Heard Mr. Sukand Kulkarni, learned counsel for the petitioners, Ms. Ranjana Parikh, learned counsel for respondent No.1 and Mr. Abhijeet Devkhile, learned counsel for respondent No.2, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'defendants No.1 & 2', have challenged the order dated 25.10.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in Misc. Appeal No.325/2006. By that order, the Appellate Court allowed the appeal preferred by respondent No.1, hereinafter referred to as the 'plaintiff', and set aside the order dated 2.5.2006 passed by the learned trial Judge

below Exhibit-5 in R.A.E. Suit No.146/256 of 2005. The Appellate Court allowed the application Exhibit-5 and issued injunction restraining defendants No.1(a) to 3 from demolishing and/or carrying out any additions and alterations of permanent nature in the suit premises, changing its user from residential to commercial and from transferring, alienating or parting with the possession of the suit premises till disposal of the suit.

3. In support of this Petition, Mr. Kulkarni submitted that defendants No.1 & 2 have produced communication dated 1.1.1994 addressed by Rustom B.K. Kuka, father of the first respondent/plaintiff giving no objection to defendants No.1 & 2 for making alterations in the suit premises without disturbing the main structure of the building. He gave no objection for sub-letting the flat to any or associated companies or relatives of defendant No.1 and also gave no objection for converting the flat for commercial user.

4. Mr. Kulkarni invited my attention to the discussion of the Appellate Court about the letter dated 1.1.1994 in paragraphs-14, 15, 21, 22, 24, 25, 26, 27, 28 and 29. He submitted that the observations made by the Appellate Court in respect of the letter dated 1.1.1994 may come in the way of defendants No.1 & 2 at the time of trial. On instructions, he, therefore, submitted that if it is clarified that these observations are *prima facie* and tentative, he is not pressing this

petition.

5. In view thereof, it is made clear that the observations made in the impugned order are *prima facie* and tentative. The learned trial Judge will decide the suit on the basis of evidence on record and in accordance with law uninfluenced by the observations made in the impugned order. Even otherwise, in view of decision of Apex Court in **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, it cannot be said that the Appellate Court committed any error in passing the impugned order.

6. In the case of **Wander Limited** (supra), the Apex Court in paragraph 14 has observed as under :

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion.”

7. Applying the tests laid down by the Apex Court in **Wander Limited's** case (supra) to the facts of the present case, it cannot be said that the Appellate Court was not justified in interfering with the trial Court's order. The trial Court has exercised the discretion arbitrarily and perversely. The trial Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. As the discretion exercised by the trial Court has not been exercised reasonably and in a judicial manner, the Appellate Court was justified in interfering with the trial Court's order.

8. Subject to above, the petition fails and the same is dismissed as not pressed. Order accordingly.

9. At this stage, Ms. Parikh submits that the sole plaintiff is 78 years old and is suffering from terminal disease. She was facing cross-examination for five years. She, therefore, submitted that the learned trial Judge may be directed to dispose of the suit in a time bound manner. In view thereof, liberty is reserved to respondent No.1/orig.plaintiff to make an application before the trial Court for disposal of the suit in a time bound manner. If such an application is made, the learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)