

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3314 OF 2019

Noshir Kaikhoshru Engineer
And others

...Petitioners

Versus

Mr. Kumar Subramaniam

...Respondents

....

Mr. P.S. Dani, Senior Advocate i/b. Anil D. Yadav, Advocate for the
Petitioners.

Mr. S.K. Dubey, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 18th MARCH, 2019

P.C.

1. Heard Mr. P.S. Dani, learned Senior Counsel for the
petitioners and Mr.S.K. Dubey, learned counsel for the respondent, at
length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioners, hereinafter referred to as the 'defendants', have
challenged the judgment and order dated 27.7.2018 passed by the
learned Judge, Court Room No.26 of the Small Causes Court at Mumbai
below Exhibit-9 in R.A.D. Suit No.1460/2017 as also the judgment and
order dated 4.2.2019 passed by the Appellate Bench of the Small Causes
Court at Mumbai in Misc. Appeal No.290/2018. By these orders, the

Courts below allowed the application made by the respondent, hereinafter referred to as the 'plaintiff', and restrained the defendants from obstructing ingress and outgress of the plaintiff/any other members through South East gate of building Gulshan Villa, 95-C, Bhulabai Desai Road, Mumbai – 400 036 (for short, 'Gulshan Villa'). The Courts below permitted the plaintiff to park one vehicle till the disposal of the suit.

3. In support of this Petition, Mr. Dani strenuously contended that the plaintiff was permitted to park one motor car in the compound of the building Gulshan Villa. He invited my attention to clause 4(c) of the agreement dated 6.9.1993. Clause 4(c) recorded that permission granted by the defendants to the plaintiff to park one motor car in the compound of the building shall not create any permanent right to park any car in the compound. Thus, what was given to the plaintiff was license to park one motor car in the compound of the building Gulshan Villa. He submitted that the defendants have revoked that license / permission. The Courts below were, therefore, not justified in issuing injunction.

4. Mr. Dani further submitted that in fact the license was revoked two years back. The plaintiff is not at all parking his vehicle in the compound of building Gulshan Villa for more than two years. As the license was already revoked two years' back, the Courts below were not

justified in issuing injunction permitting the plaintiff to park one vehicle.

5. Mr. Dani has invited my attention to paragraph-10 of the affidavit-in-reply filed by the defendants to the injunction application. The defendants denied that they have in any manner obstructed the ingress and egress of the plaintiff through and from the main gate of building Gulshan Villa through and from the suit premises.

6. On the other hand, Mr. Dubey supported the impugned orders. He submitted that by agreement of 6.9.1993, the defendants agreed to permit the plaintiff to park one motor car in the compound of the building Gulshan Villa. Since then, the plaintiff is continuously parking one motor car in the compound of building Gulshan Villa. He invited my attention to paragraph-9 of the plaint where the plaintiff asserted that the defendants and their lady security on 24.8.2017 at evening stood up near the main entrance gate and asked the plaintiff not to use the entrance i.e. main gate and even threatened to put lock and also asked not to use the parking. He submitted that the suit is immediately instituted on 31.8.2017. The contention of the defendants that the license was revoked two years back is, therefore, not correct. Apart from that the defendants did not issue any written notice terminating the license granted by them to the plaintiff for parking one motor car. He submitted that the Courts below, after considering the

material on record, have issued injunction and, therefore, no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the plaintiff is occupying the entire first floor of the building Gulshan Villa. From the perusal of the agreement dated 6.9.1993, it is also evident that the defendants have let out the entire first floor to the plaintiff from 1.9.1992 as a monthly tenant. On 6.9.1993, the parties executed the agreement. Mr. Dani submitted that clauses (a) to (d)(vii) are the terms and conditions of the tenancy. In particular, clauses-3 & 4 are the permissions given by the defendants which includes the permission to park one motor car in the compound of the building Gulshan Villa. In other words, he submitted that clauses-3 & 4 do not form part of tenancy conditions between the parties. A perusal of the last page of the agreement dated 6.9.1993 where the plaintiff has signed shows that he confirmed the correctness of the tenancy terms as set out above. Thus insofar as the plaintiff is concerned, he does not accept the contentions of the defendants that clauses 1(a) to 1(d)(vii) are the only terms and conditions of the tenancy and that clauses-3 & 4 are merely permissions. On the contrary, the plaintiff claims that clauses-3 & 4 are also part of the terms and conditions of the tenancy. *Prima facie* this is a matter of evidence.

8. Insofar as the trial Court is concerned, in paragraph-7 the learned trial Judge has referred to the agreement of 1993. In paragraph-8, the learned trial Judge observed that no documentary evidence is produced by the defendants to show that the allotment made by an agreement was withdrawn in the year 2016. In paragraph-9, the learned trial Judge dealt with the decision of Division Bench of this Court in **Morarji Gokuldas Deoji Trust & others Vs. Madhav Vithal Kudwal, 1983(1) Bom. C.R. 272** and held that the decision is not applicable in the present case.

9. As far as the Appellate Court is concerned, in paragraph-13 the Appellate Court also dealt with the decision in **Morarji Gokuldas Deoji Trust** (supra) and observed that the facts in that case and the facts in the present case are entirely different. In the case of **Morarji Gokuldas Deoji Trust** (supra), the landlord had not given consent to park the vehicle to the tenant, however, in the present case there is written agreement between the landlord and the tenant giving permission to the tenant to park the vehicle in the compound of the building Gulshan Villa. The Appellate Court, therefore, held that the said decision is not applicable.

10. Insofar as the contention of the defendants that the facility to park the vehicle in the compound is withdrawn is concerned, the Appellate Court observed in paragraph-14 that this is a matter of trial.

Thus, after considering the merit on record, the Courts below have concurrently held that the plaintiff is entitled to injunction restraining the defendants from obstructing ingress and egress of the plaintiff/any other members through South East gate of building Gulshan Villa. The Courts below also permitted the plaintiff to park one vehicle till the disposal of the suit.

11. In the case of **Wander Limited and another Vs. Antox India Private Limited, 1990 (Supp.) SCC 727**, 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.”

12. 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 Courts below exercised the discretion arbitrarily or capriciously or perversely or that the Courts below had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This Court will not reassess the material and seek to reach a conclusion different from the one reached by the courts below if the one reached by that courts below is reasonably possible on the material. This Court would normally not be justified in interfering with the exercise of discretion 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 courts below reasonably and in a judicial manner the fact that this Court would have taken a different view may not justify interference with the exercise of discretion by the Courts below. Hence, Petition fails and the same is dismissed. Needless to observe that the trial Court will decide the suit on its own merits in accordance with law uninfluenced by the observations made in the impugned orders as also in this order. Order accordingly.

(R. G. KETKAR, J.)