

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2776 OF 2015
IN
FIRST APPEAL No. 922 OF 2015

Maki Arjundas Shroff and Ors. ...Applicants
Vs.
Durga Mohan Co-op. Hsg. Soc. Ltd. ...Respondents

Shri Rajesh Kachare a/w. Ashish Ghadge i/b. Tamhane & Co.
for the Applicants
Mr. Kishor Patil i/b. Rajeev . Mathkar for Respondents

CORAM: K.K. TATED, J.

DATED : JUNE 26, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this civil application, the Applicants-Original Plaintiffs are seeking an order of injunction restraining the Respondent-Original Defendant from disturbing their right to display hoarding on terrace of the building viz. Durga Niwas and Mohan Mahal situated on suit property as described in Exhibit 'A' to the Plaint.
3. The learned counsel Mr. Rajesh Kachare for the Applicants submits that the Applicants filed S.C. Suit No. 4767 of 2003 before the Bombay City Civil Court at Bombay for various reliefs including declaration that the Applicants have right to display their hoarding on the terrace of the said building. He

submits that the Trial Court failed to consider the fact that as per the agreement dated 16th April, 2016, the Applicants have right to display their hoarding as owners of the said property. He submits that the suit property was constructed by the Applicants only. He further submits that during the pendency of the suit, there was injunction against the Respondents/Defendants from obstructing the Applicants' rights to display the hoarding on the terrace of the said building. In support of his contention, he relied on the order dated 9th May, 2012 [Coram:R.G. Ketkar, J.] in Appeal from Order (ST) No. 11181 of 2012 with Civil Application No.11184 of 2012. He submits that in view of this fact, during the pendency of the First Appeal, this Hon'ble Court be pleased to allow the present civil application. He submits that if the civil application is not allowed, irreparable loss would be caused to the Applicants. He submits that the Applicants have good chance of success in the present proceeding.

4. On the other hand, learned counsel Mr. Kishor Patil for the Respondents vehemently opposed the present civil application. He submits that the Respondents filed their affidavit in reply dated 19th October, 2015. He submits that after dismissal of the S.C. Suit No. 4767 of 2003, the Respondents started using the said terrace of the building for their hoarding. He further submits that though the suit was dismissed by the Trial Court in 2015, thereafter interim relief was not granted in favour of the Applicants either by this trial Court or by the Hon'ble Court and, therefore, there is no

question of allowing this civil application at this stage. He submits that the respondent society filed Dispute Case No. CC /II/17 of 2001 before the Second Co-operative Court at Mumbai for declaration, injunction and recovery of amount. He submits that on the basis of pleadings of both the parties, the co-operative court framed following issues :

- “(1) Whether the disputants prove that this Hon'ble Court has jurisdiction to entertain the present case?
- (2) Whether the disputants prove that they have shown any proper cause of action for the present case?
- (3) Whether the opponent proves that they have got right to display signboards, posters, cinema advertisements and receive rents?
- (4) Whether the disputants prove that they are entitled for the reliefs as prayed for in the present case?
- (5) What order and Award?”

He submits that after hearing both the sides, the Co-operative Court allowed the disputed filed by the Respondents and restrained the Applicants-Original Plaintiffs from using the third floor of the building for displaying hoarding. He relies on the operative part of this order, which reads thus:

“ORDER

- 1) Dispute is allowed with costs.
- 2) It is hereby declared that opponent is not entitled to fix metal grill and grills on the landing of staircase at 3rd floor of building of disputant society and prevent free access of the common terrace to the members.

3) It is hereby declared that opponent is not entitle to grant licenses or permission to any one to put hoardings and advertisement on the building of the disputant society.

4) Opponent is hereby restrained from putting obstacles on common staircase of the building of the society preventing free access to the members of the society.

5) Opponent is hereby restrained from granting permission or licence to any third party to display hoarding or advertisement in the property of disputant society.

6) Opponent is hereby directed to pay the disputant society a sum of Rs.11,640/- being arrears of society's dues as on 31/12/2000 with interest @ 21% p.a. from the date of filing of dispute till its realization.

7) Award be drawn up accordingly.”

On the basis of these submissions, the learned counsel for the Respondents submits that there is no substance in this civil application, hence, the same is required to be dismissed with costs.

5. I heard both the learned counsels at length. Admittedly, in the present proceeding after dismissal of the suit by the trial Court, interim relief was not continued. Though the civil application filed by the Applicants before this Court on 21st

July, 2015, they never moved for ad-interim relief in the present matter. Apart from that the Trial Court on its own merits held that the Applicants have no right, title and interest to put hoarding on the terrace of the said premises. The trial court also considered the agreement dated 16th April, 2016 while passing the impugned judgment and decree. Apart from that the co-operative Court vide its judgment and order dated 29th March, 2012 restrained the Applicants from putting their hoarding. The said order was not challenged by the Applicants in higher Court.

6. In view of this fact, I do not find any reason to entertain this present civil application. Hence, following order:

- (a) Civil Application stands rejected.
- (b) No order as to costs.

(K. K. TATED, J.)