

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO. 3973/2019**

Parmanand H. Jain & ors.

..VS..

Prashwanath D. Jain & ors.

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri A.S. Bhendarkar, Advocate for the petitioner(s)  
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**CORAM : Z.A.HAQ, J.**  
**DATED : 13/06/2019**

Heard.

The respondents have filed the civil suit against the petitioners praying for decree for ejectment, possession and other ancillary reliefs. The plaintiffs had also filed the application praying for injunction restraining the defendants from conducting coaching class or tuition class within the suit premises. This application was allowed by the trial Court. In this civil suit, the petitioners – defendants had filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure. This application was dismissed by the trial Court by the order dated 04/12/2018.

Both these orders were challenged by the defendants by filing appeal under Order 43 Rule 1 (r) of the Code of Civil Procedure. The appeal is partly allowed by the learned District Judge by the impugned judgment. The learned District Judge has set aside the order passed by the trial Court granting temporary injunction in favour of the plaintiffs and against the defendants. The learned District

Judge has maintained the order passed by the trial Court by which the application filed by the defendants praying for temporary injunction came to be dismissed.

Various submissions are made to show that the defendants are entitled for temporary injunction. It is submitted that the defendants are in possession of the suit premises and had been running the coaching / tuition classes, and therefore prima facie case is established by the defendants and balance of convenience also lies in favour of the defendants and if temporary injunction is not granted, the defendants will be put to irreparable loss and injury.

After hearing the learned advocate for the petitioners, I find that the main issue which requires consideration is whether the defendants can invoke the jurisdiction of the Court under Order 39 of the Code of Civil Procedure to seek injunction against the plaintiffs. Order 39 Rule 1 of the Code of Civil Procedure reads as follows:-

***“1. Cases in which temporary injunction may be granted:-*** Where in any suit it is proved by affidavit or otherwise –

*(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors,*

*(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in*

*relation to any property in dispute in the suit,]  
the Court may by order grant a temporary injunction to  
restrain such act, or make such other order for the purpose  
of staying and preventing the wasting, damaging,  
alienation, sale, removal or disposition of the property [or  
dispossession of the plaintiff, or otherwise causing injury  
to the plaintiff in relation to any property in dispute in the  
suit] as the Court thinks fit, until the disposal of the suit  
or until further orders.”*

As per Order 39 Rule 1 (b) and Order 39 Rule 1 (c) of the Code of Civil Procedure, the Court can pass restraint order against the defendant and grant injunction in favour of the plaintiff. Order 39 Rule 1 (a) of the Code of Civil Procedure confers jurisdiction on the Court to pass restraint order if any property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree. Thus, Order 39 Rule 1 (a) of the Code of Civil Procedure can be invoked by any party to the suit whether plaintiff or defendant, but to restrain the other party from wasting, damaging or alienating any property to the civil suit, or wrongfully selling that property in execution of decree.

After examining the provisions of Order 39 Rule 1 of the Code of Civil Procedure, I find that the defendants cannot seek injunction against the plaintiffs in the nature of restraint order as sought by the defendants in the present case. The defendants cannot seek injunction against the plaintiffs restraining the plaintiffs from interfering with peaceful and lawful affairs of the tuition class run by the

defendants in the suit premises. Order 39 Rule 1 (a) does not confer jurisdiction on the Court to pass such restraint order in favour of the defendants and against the plaintiffs.

At this stage, the learned advocate for the petitioners – defendants submitted that in any case, to subserve the ends of justice, the trial Court should have exercised its inherent jurisdiction under Section 151 of the Code of Civil Procedure and should have protected the defendants by granting temporary injunction as prayed for by them. This submission also cannot be accepted in view of the settled law that if the Code of Civil Procedure confers jurisdiction on the Court to deal with certain contingencies, then inherent jurisdiction under Section 151 of the Code of Civil Procedure cannot be exercised to grant that relief.

In view of the above, I am not inclined to consider the prayer made by the petitioners in this petition.

The writ petition is **dismissed**. No costs.

**JUDGE**

*Ansari*