

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

Writ Petition No.4352 of 2018
(Deepak Dasharathrao Fender .vs. Dr. Gopal s/o Natthu Sarve and
another)

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

Mr. N.B. Kalwaghe, Advocate for Petitioner.
Mr. Shashikant Borkar, Advocate for Respondent Nos. 1 & 2.

CORAM : Manish Pitale, J.
DATED : February 13, 2019.

By this writ petition, the petitioner (original plaintiff) has challenged order dated 26.06.2018 passed by the Court of 2nd Joint Civil Judge, Senior Division, Bhandara (trial court) whereby an application for grant of temporary injunction (Exh.5) filed in Special Civil Suit No.59 of 2017 was rejected.

2. The case of the petitioner is that due to illegal dispossession by the respondents (original defendants) from the suit shop on 13.12.2017, he was constrained to file the aforesaid suit before the trial Court under Section 6 of the Specific Relief Act, 1963. It was alleged by the petitioner that he was forcibly dispossessed from the suit shop by the respondents due to which he had approached the police authorities and that first information report was registered. In the said suit, the petitioner filed an application for temporary injunction praying for a direction to restrain the respondents from

demolishing the suit shop or making construction around the suit shop and further for a temporary mandatory injunction to repair northern wall of the suit shop, which according to the petitioner, had been damaged by the respondents. A further direction was sought that a receiver be appointed and the petitioner be put in possession of the suit shop as agent of the receiver. On 22.12.2017, the trial court passed an order of status quo till the appearance of the respondents.

3. The respondents appeared in the trial Court and resisted the aforesaid application, claiming that they had purchased the suit shop along with the other constructed portion of property located in Gurunanak Ward, Shastri Nagar, Bhandara. According to the respondents, the suit shop and the surrounding structure were in dilapidated condition and that when steps were being taken for demolishing the same, the petitioner obstructed them and that the claims made by the petitioner were baseless.

4. By impugned order dated 26.06.2018, the trial Court rejected the application of the petitioner, mainly on the ground that in an earlier suit filed by the original owner of the property in question, which included disputed shop, it was stated that the said owner was in possession and that there was some doubt about the rent agreement dated 23.12.2015 on which the petitioner was relying.

5. The learned counsel appearing for the parties

before this Court have advanced arguments on the basis of respective stands of their clients. While the learned counsel appearing for the petitioner has relied upon a licence issued by the competent authority pertaining to the suit shop, claiming that the said document was enough to show that the petitioner was indeed in possession of the suit shop on 13.12.2017 and that he was forcibly dispossessed, the learned counsel appearing for the respondents has relied upon a document also dated 13.12.2017, which was a complaint submitted by them to the Police Station stating that there were certain anti-social elements who were disturbing them from demolishing the property including the suit shop.

6. In writ jurisdiction, this Court would not enter into factual enquiry in order to examine the veracity of claims made by the rival parties. Nonetheless, it has come on record that on 22.12.2017 the trial Court had granted status quo in favour of the petitioner. But, the application for temporary injunction filed by the petitioner stood rejected by the impugned order passed by the trial Court on 26.06.2018. This Court issued notice in the present writ petition for final disposal on 24.07.2018, but no interim order was granted by this Court.

7. A statement is made, on instructions by the learned counsel for the respondents, that as on today the suit shop has been demolished. In these circumstances, the learned counsel for the petitioner

submits that the interest of the petitioner ought to be protected by giving appropriate directions to the respondents.

8. The suit filed under Section 6 of the Specific Relief Act, 1963, by its very nature is such that it needs to be taken up on merits and decided at the earliest. In the facts and circumstances of the present case, it is all the more urgent that the trial Court takes up the suit itself and decides it on merits, particularly when it is the grievance of the petitioner that he was forcibly dispossessed on 13.12.2017. It is relevant that in the suit filed by the petitioner under Section 6 of the aforesaid Act, an alternative prayer for damages has also been made by him. Therefore, in the facts and circumstances of the case it appears that the interest of justice would be met by directing the trial Court to immediately decide the suit filed by the petitioner at the earliest so that appropriate relief can be granted to the petitioner on the basis of evidence and material that comes on record. The learned counsel for the petitioner has prayed that a direction be given to the respondents to restrain them from carrying out any construction where the suit shop was located. In the facts and circumstances of the present case, this Court does not think it appropriate to grant such relief, particularly when the suit itself is pending before the trial Court.

9. Hence, this writ petition is disposed of with a direction to the trial Court to decide the suit filed by the petitioner under Section 6 of the aforesaid Act, at the

earliest and in any case within a period of three months from today.

JUDGE

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