

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application [CAA] No.55 of 2019
in
Appeal Against Order Stamp No.17882 of 2019

Shri Jumma Khan Pathan & others

vs.

State of Maharashtra, through District Collector, Chandrapur & others

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*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

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Court's or Judge's Orders

*Shri Mahesh Rai, Advocate for the Applicants-Appellants.
Mrs. Swati Kolhe, A.G.P. for Respondent Nos.1 & 2.*

CORAM: S.M. MODAK, J.
DATE : 29th AUGUST, 2019.

Heard the learned Counsel for the applicants and the learned Assistant Government Pleader for respondent Nos.1 & 2.

R.C.S. No.164/2012 filed by the plaintiffs was dismissed for default on 26/08/2014 by the Civil Judge Senior Division, Warora. Earlier to that, temporary injunction application was directed to be decided along with the suit as per the order dated 15/10/2013. It was due to not arguing it after giving several chances. The applicants-plaintiffs have sought for permanent injunction restraining the defendants from demolishing their shops. It is on the basis of the notice dated 20/06/2012. The suit was restored by the trial Court as per the order dated 08/11/2017. It is important to note that the defendants have not taken any action on the basis of suit notice of the year 2012. It may be due to the prohibitory orders passed by the trial Court or for want of taking further decision. Now, respondent No.2

has issued fresh notices dated 08/04/2019 and 07/06/2019 asking the plaintiffs for removal of their shops. The notices mention about absence of any prohibitory order by the Court.

The applicants want to challenge the order dated 15/10/2013, by which, temporary injunction application was directed to be heard along with suit. It is true that once the suit is restored, all orders passed therein also get restored. There is a delay of 2142 days in challenging the said order. Unless and until this delay condonation application is allowed, the appeal against the order cannot be numbered. It is very true that the applicants can ask for the injunction also in delay condonation application till the time the appeal is admitted. But, I think that issuance of notices dated 08/04/2019 and 07/06/2019 have given a fresh cause of action to the applicants. Even though, the applicants want to challenge the order dated 15/10/2013, at that time, notices dated 08/04/2019 and 07/06/2019 were not issued. By this proceeding, the applicants also want that the said notices be stayed. The applicants cannot ask for such relief for the first time before this Court. The applicants have mixed up these two issues. If they could have asked for only relief of setting aside the order dated 15/10/2013 (could not have asked for staying the effect of notices dated 08/04/2019 and 07/06/2019), their application could have been entertained. Hence, for this reason also, this application cannot be entertained.

The learned Counsel for the applicants submitted about remedy to approach the trial Court on

the basis of these two notices. It is also submitted that these two notices be stayed for certain period. It is opposed on behalf of the respondents by the learned Assistant Government Pleader. I think, on the basis of these two notices, the applicants have got two remedies. First to file an application in the pending suit or to file a fresh suit. The applicants may choose the option which they want. I am inclined to stay the operation of the two notices dated 08/04/2019 and 07/06/2019 for a period of 3 weeks from today. I have granted stay, because earlier respondents have not taken any action. Hence, the order.

ORDER

1. The application is disposed of in view of the above direction.
2. The effect and implementation of notices dated 08/04/2019 and 07/06/2019 be stayed for a period of three weeks from today.
3. The applicants may move the trial Court in either of the way, as observed above.
4. The applicants to intimate the respondents about this order.
5. In view of the fact that the application is disposed of, the appeal against order is also disposed of

JUDGE