

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

WRIT PETITION NO. 6245/2019

M/s. Sachin and Sachin Corporation, A partnership firm, through its Managing partner
Rajkumar S/o. Pralhadrao Meshram,

..VS..

State of Maharashtra, through Collector, Amravati and others.

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

Court's or Judge's orders

Mr. H.A. Biherani, Advocate for the petitioner.
Mr. N.R. Patil, A.G.P. for the respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : 13th September, 2019

Heard.

The petitioner has filed civil suit praying for declaration that the notice dated 15th March 2017 issued by the respondent/Corporation and the consequential action taken by the respondent (Corporation) of taking over the possession of the suit property is illegal and in breach of the terms of the lease-deed dated 06th July 1992. The petitioner/plaintiff has also prayed for decree for mandatory injunction directing the Corporation to restore possession of the resort (suit property) to the plaintiff.

In this civil suit, the plaintiff had filed an application under Order 39 Rules 1 and 2 read with Sections 94 and 151 of the Code of Civil Procedure praying for temporary injunction restraining the defendant/Corporation from creating any third party interest in the suit property till the decision of the civil suit. By order dated 02nd May 2018,

the trial Court dismissed the application praying for temporary injunction, recording that the plaintiff failed to prove *prima facie* case, that it would suffer irreparable loss in case temporary injunction as sought is not granted and that the plaintiff also failed to prove that balance of convenience lies in its favour.

Being aggrieved by the order passed by the trial Court, the plaintiff had filed appeal under Order 43 Rule 1(r) of the Code of Civil Procedure which is dismissed by the District Court.

Various submissions are made by the learned advocate for the petitioner and learned A.G.P. for the respondent. It is not in dispute that on the date of filing of the civil suit, the plaintiff was not in possession of the suit property. In paragraph No.11 of the judgment, learned District Judge has recorded that the appellant (present petitioner) has not shown bonafides regarding payment of arrears. The facts on record show that there had been repeated demands by the Corporation regarding rent/occupation charges. At the time of hearing of this petition also, it was asked as to whether the petitioner is willing to deposit the amount of arrears of rent/occupation charges. According to the Corporation, an amount of Rs.98,00,000/- is due against the petitioner. The learned advocate for the petitioner opposed the claim of the Corporation that an amount of Rs.98,00,000/- is payable by the petitioner. However, it is reflected from the record that amount of Rs.47,20,672/- towards rent interest, and *prima facie* appears to be payable by the petitioner to the respondent/Corporation and an amount of Rs.50,97,583/-

towards minimum guarantee is receivable by the Corporation as per the lease-deed.

On instructions, learned advocate for the petitioner stated that it is not possible for the petitioner to deposit the amount unless possession is restored to it.

After going through the order and judgment passed by the subordinate Courts, I find that the subordinate Courts have rightly dealt with the controversy and have not committed any error by refusing temporary injunction as sought by the petitioner. After considering the conduct of the petitioner, I am not inclined to show any indulgence in the extraordinary jurisdiction.

Hence, the petition is **dismissed** with costs of quantified at Rs.25,000/- (Rs. Twenty Five Thousand only).

The petitioner shall deposit the amount of costs Rs.25,000/- (Rs. Twenty Five Thousand only) with the Registry of this Court till **15th October 2019**.

On deposit of the amount, it be given to the Office of the Government Pleader.

JUDGE