

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

930 WRIT PETITION NO. 7799 OF 2020

1. Ramesh S/o. Yashwant Khedkar,
Age. 68 years, Occ. Agri.,
2. Satish s/o. Yashwant Khedkar,
Age. 65 years, Occ. Agri.,
3. Prashant S/o. Satish Khedkar,
Age. 36 years, Occ. Agri.,

All R/o. Bhokar, Tq. Shrirampur,
Dist. Ahmednagar.

...Petitioners.

Versus

Anil s/o. Sitaram Khedkar,
Age. 58 years, Occ. Agri.,
R/o. Bhokar, Tq. Shrirampur,
Dist. Ahmednagar.

...Respondent.

Advocate for Petitioners : Mr. R.R. Karpe.
Advocate for Respondent : Mr. S.S. Kulkarni.

**CORAM : MANGESH S. PATIL, J.
DATED : 02.12.2020**

Judgment :

Heard.

2. Rule. Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The respondent is the original plaintiff who has filed a suit for perpetual injunction, firstly restraining the petitioners / defendants from obstructing his possession in the suit property and secondly restraining them from destroying a south-north road / way being used by him for going to the suit property. He preferred an application for temporary injunction Exhibit 5 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, in terms of the main relief. The learned Civil Judge by the order dated 14.01.2020 allowed the application and granted temporary injunction in terms of both the main reliefs.

4. It appears that on 20.01.2020, the respondent preferred another application Exhibit 56 purportedly under Section 151 of the CPC seeking police aid to enable him to enforce the order of temporary injunction. The petitioners opposed the application *inter alia* on the ground that it was not maintainable and there was no cause of action. They also pointed out the order on temporary injunction was already challenged in Miscellaneous Appeal No. 1/2020 which was still pending. By the impugned order the learned Civil Judge allowed the application Exhibit 56 as prayed for. Hence, this Writ Petition.

5. The learned Advocate Mr. Karpe vehemently submits that the order for temporary injunction was under challenge, rather the time to prefer the appeal was still to expire, still the respondent filed the application Exhibit 56 without any rhyme or reason just to complicate the matters. There was hardly any time between the date of the order of the temporary injunction and the date of the filing this application Exhibit 56 so as to draw any inference about the petitioners having obstructed the respondent in breach of the order of temporary injunction.

6. He would then submit that the respondent has been bent upon to harass the petitioners. He simultaneously has preferred another application under Order XXXIX Rule 2-A of the CPC alleging breach of the temporary injunction order. This conduct of the respondent clearly smacks of an ulterior motive to harass the petitioners.

7. The learned Advocate would then submit that the relief of providing police aid by resorting to section 151 of the CPC is regulated by settled principles. It is only in case of grave emergency in order to protect the majesty of the Court that such an order is expected to be passed under the inherent powers. Without there

being any such occasion the learned Civil Judge by the impugned order has readily accepted the request of the respondent. The learned Advocate Mr. Karpe would then rely upon the decision in the case of **Nirabai J. Patil Vs. Narayan D. Patil, 2004 (1) Mh.L.J. 1058**, and particularly the observations made therein referring to the earlier decision of this Court in the case of **Ratnabai Narayanrao Naik and Another Vs. Satwarao Narayanrao Naik, 1995 (1) Mh.L.J. 529**.

8. The learned Advocate Mr. Kulkarni for the respondent supports the impugned order. He submits that the learned Civil Judge has considered all the facts and law and for the reasons mentioned has taken a plausible view which need not be interfered with in exercise of writ jurisdiction. He would point out that the learned Civil Judge has considered the fact that though the order granting temporary injunction was appealed against there was no stay to its operation. Learned Civil Judge has also referred to the stand of the informant about the incident of obstruction in breach of temporary injunction was videographed and was secured in a pen-drive. The learned Civil Judge also noticed that even the petitioners filed a pen-drive containing the video recording regarding removal of bushes from the suit property. The learned Civil Judge personally viewed both these

recordings in presence of the parties and their advocates. It is only after going through these clips that the learned Civil Judge has taken a reasonable view drawing an inference about the alleged breach and obstruction.

9. The learned Advocate would further point out that the learned Civil Judge has also considered the ratio of this Court laid down in the case of **Nirabai J. Patil** (supra) and has rightly concluded that police protection was necessary to preserve majesty of the Court and its order of granting temporary injunction by resorting to the provision of Section 151 of the CPC.

10. I have carefully gone through the papers. Needless to state that since the petitioners are invoking the writ jurisdiction of this Court the scope of the scrutiny would be limited.

11. It is a matter of record that the order of temporary injunction has been passed in favour of the respondent after hearing both the sides. It has been challenged in the form of Miscellaneous Civil Appeal by the petitioners however its operation has not been stayed.

12. As far as the controversy regarding the actual obstruction is considered, there was a material before the learned Civil Judge in the form of video recordings produced by both the sides and it is only after going through the video recordings in presence of the parties and their learned Advocates that he has concluded that there was a substance in contention of the respondent about the petitioners having obstructed him in breach of the order of temporary injunction. This being a conclusion touching the facts, this Court cannot sit in appeal while exercising the writ jurisdiction.

13. Suffice for the purpose to observe that the order of temporary injunction though has been challenged before the appellate Court its operation has not been stayed.

14. True it is that soon after passing of the order granting temporary injunction within a period of 8 to 10 days the respondent preferred the application on which the impugned order has been passed. It is not the period but the circumstances which would matter. If the learned Civil Judge has gone through the material to arrive at a conclusion that even during this short span the petitioners had obstructed the respondent in breach of the temporary injunction,

period within which the relief of police protection was sought is inconsequential.

15. As far as legal aspect is concerned, as has been laid down in the case of **Nirabai J. Patil and Ratnabai Narayanrao Naik** (supra), the powers under Section 151 of the CPC are to be invoked in case of grave emergency. The learned Civil Judge in the impugned order has referred to these decisions and has pointed out as to how the circumstances are serious enough and give rise to such an emergent situation which enabled him to exercise inherent powers of under Section 151 of CPC. If on the basis of the material before him he has reached a plausible conclusion, this Court cannot intervene.

16. Considering the reasons given by the learned Civil Judge while exercising inherent powers while passing the impugned order, in my considered view this is not a fit case where this Court should step in and exercise the writ jurisdiction. The Writ Petition is dismissed. Rule is discharged.

17. At this juncture learned Advocate Mr. Karpe for the petitioners points out that the learned Civil Judge on their request has stayed

execution and operation of the impugned order till yesterday and the same arrangement may be continued for a period of two weeks to enable them to approach the Supreme Court.

18. Learned Advocate Mr. Kulkarni for the respondent opposes the request.

19. Since operation of the impugned order was suspended till yesterday, the same arrangement shall continue for a period of two weeks from today.

(MANGESH S. PATIL, J.)