

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

WRIT PETITION NO. 3360 OF 2019

Shri Parshwanath Digamber Jain Khandelwal Maindir Trust and others

Vs.

Shri Parmanand Hukumchand Ajmera (Jain) 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. G.E. Moharir, Advocate for the petitioners.
Mr. S.P. Bhandarkar, Advocate for the respondents.

CORAM : MANISH PITALE, J.

DATED : JANUARY 24, 2020

This is a writ petition filed by the petitioners (original plaintiffs) challenging an order passed by the learned District Judge, Nagpur (Appellate Court) whereby an appeal filed by the respondent (original defendant) has been partly allowed and the Appellate Court has interfered with an order passed by the Court of Small Causes on applications for temporary injunction filed by both the rival parties.

2. The petitioners have filed the suit for ejectment and possession as also damages under the provisions of the Maharashtra Rent Control Act, 1999 before the Small Causes Court. It is the case of the petitioners that respondents are gratuitous licensees and that they need to be evicted from the suit premises.

3. The petitioners are trustees along with the trust and the premises in question are located in a temple. In the said suit, the petitioners moved an application at Exhibit 15 for temporary injunction in order to restrain the respondents from running the coaching classes in the premises within the temple, which are in possession of the respondents herein. According to the petitioners, not only was running coaching classes improper and illegal, but the persons visiting the premises for attending coaching classes were creating nuisance in the temple premises.

4. The respondents also moved an application at Exhibit 41, seeking an injunction to the effect that the petitioners be restrained from interfering with activity of respondents of running the coaching classes.

5. The Small Causes Court passed a common order dated 04.12.2018, allowing the application of the petitioners at Exhibit 15 and rejecting the application of respondents at Exhibit 41. It was held that the petitioners had made out a prima facie case in their and the balance of convenience was also in their favour. On the question of irreparable loss also, positive findings were rendered in favour of the petitioners and the said common order was passed.

6. Aggrieved by the said common order, respondents filed a composite appeal challenging the rejection of their application and the application of the petitioners being allowed.

7. By the impugned order dated 28.02.2019 the Appellate Court partly allowed the appeal. It was held that rejection of the application filed by the respondents at Exhibit 41 by the Small Causes Court was justified, but at the same time it was held that the application filed by the petitioners at Exhibit 15 could not have been allowed. Although the Appellate Court held in favour of the petitioners on the aspects of prima facie case and balance of convenience, it was found that neither petitioners nor respondents had been able to prove that they would suffer irreparable loss in the absence of order of temporary injunction. On this basis the appeal was partly allowed and even the application at Exhibit 15 filed by the petitioners stood rejected.

8. The learned counsel for the petitioners submitted that in the first place filing of such a composite appeal by the respondents to challenge the common order passed by the Small Causes Court was not proper. It was further submitted that when dismissal of the application at Exhibit 41 filed by the respondents was confirmed, meaning thereby that their prayer for restraining the petitioners from interfering with their running coaching classes was rejected, there

was no logic in rejecting the application of the petitioners at Exhibit 15. It was submitted that when findings were rendered in favour of the petitioners on the aspect of the facie case and balance of convenience, there was no reason for the Appellate Court to have reversed the finding of the Small Causes Court on the aspect of irreparable loss. It was further pointed out that the respondents had challenged the order impugned herein, insofar as rejection of their application at Exhibit 41, by filing Writ Petition No.3973/2019. It was brought to the notice of this Court that by order dated 13.06.2019, the writ petition was dismissed and the impugned order stood confirmed to the extent of rejection of Exhibit 41. On this basis the learned counsel appearing for the petitioners submits that the present writ petition deserves to be allowed.

9. On the other hand, learned counsel appearing for the respondents submitted that the very title of the petitioners was being disputed by the respondents. It is further submitted that an application for return/rejection of the plaint on the said ground had been filed, which was rejected by the Court below and it was subject matter of challenge before this Court in pending proceedings. On this it was submitted that the impugned order passed by the Appellate Court did not deserve interference.

10. Having heard learned counsel for the rival

parties, this Court is of the opinion that mere pendency of a challenge to an order rejecting the aforesaid application for return/rejection of plaint, cannot be a reason for not considering the present writ petition on its own merits.

11. A perusal of the impugned order passed by the Appellate Court shows that on the aspect of prima facie case and question of balance of convenience, the Appellate Court has confirmed the finding rendered by the Small Causes Court. The only reason for interference with the order of the Small Causes Court whereby Exhibit 15 order allowed, was that the petitioners could not demonstrate that they would suffer irreparable loss if the temporary injunction claimed by them was not granted. The reasoning of the Appellate Court is unsustainable for the reason that the petitioners had specifically shown that running of coaching classes was not only against the objects of the trust, which were for charitable and religious purposes but the running of such coaching classes was leading to nuisance within the premises of the temple. The Small Causes Court had adverted to this aspect and rendered findings in favour of the petitioners, which are not even touched by the Appellate Court while rendering its findings. The material on record clearly shows that the petitioners had made out a case in their favour for grant of temporary injunction.

12. Even otherwise, it appears to be a wholly anomalous situation that the Appellate Court confirmed the order rejecting the application filed by the respondents at Exhibit 41, whereby their prayer for restraining the petitioners from interfering with their activity of running coaching classes was rejected, while at the same time the prayer made for temporary injunction on behalf of the petitioners was also rejected. The approach adopted by the Appellate Court is wholly unsustainable, thereby demonstrating that the impugned order is rendered erroneous and unsustainable.

13 In view of the above, the writ petition is allowed. The impugned order passed by the Appellate Court is quashed and set aside and common order dated 04.12.2018 passed by the Small Causes Court is restored.

14. The writ petition is disposed of in above terms.

JUDGE