

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M.A No.42 of 2021

Nasim Akhtar Khan S/o Late Gyasuddin Khan, Aged About 62 Years R/o Mig 1/49 Maharana Pratap Nagar, Korba, Police Chowki Rampur, P.S. City Kotwali, District Korba (Chhattisgarh) Presently R/o Qr.No. 22, Sector-07 Type 2a Balco Nagar Korba, Tahsil And District Korba Chhattisgarh
---- Appellant

Versus

1. Municipal Corporation Korba, Through The Commissioner, Municipal Corporation, Saket Bhawan, Korba, P.S. Kotwali, Tahsil And District Korba Chhattisgarh
2. Sarju Singh S/o Late Mukhdev Singh, Aged About 78 Years R/o Mig 01/37, Maharana Pratap Nagar, Kosabadi Extension, Korba, Tehsil And District Korba Chhatti (Dead)
-----Respondents

For Appellant:	Shri Surfaraj Khan, Advocate.
For Respondent No.1:	Shri Pankaj Agrawal, Advocate.
For Respondent No.2:	Shri Ashutosh Shukla, Advocate.

Single Bench:Hon'ble Shri Deepak Kumar Tiwari, J
Order on Board

10.11.2021

1. With the consent of learned Counsel for the parties, the Appeal is heard finally.
2. This Miscellaneous Appeal has been preferred under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 (for short 'the CPC') against the order dated 01.11.2021 passed by the 1st Additional District Judge, Korba, District Korba (CG) in Civil Suit No.63-A/2019, whereby the application for grant of temporary injunction filed by the Appellant/Plaintiff under Order 39 Rules 1 & 2 CPC has been rejected.
3. Brief facts of the case are that the Appellant/Plaintiff has filed the suit under Section 307(5) of the Chhattisgarh Municipal Corporation Act,

1956 (for short 'the Act of 1956') seeking stay of notice dated 12.04.2019 issued by Respondent No.1-Municipal Corporation permanently.

4. The Appellant has pleaded that he has purchased House No.49, MIG 1, Maharana Pratap Nagar, Korba, District Korba (CG). He has further pleaded that he has earlier filed a Writ Petition bearing Writ Petition (C) No.1552/2019 stating that he has been served with the notice issued by the Municipal Corporation for constructing his house illegally over and above the sanctioned map of his plot bearing house No.49, MIG-1, Korba, whereby he has been directed to remove the illegal construction within 24 hours, otherwise the same shall be demolished. In the said Petition, it was directed that Section 307 (5) of the Act of 1956 provided a remedy that in case a person is aggrieved about the contravention of any provision of Act or by-laws of the said Act, then he may file a Civil Suit before the District Judge for grant of injunction, therefore, the said suit has been filed and an interlocutory application under Order 39 Rules 1 & 2 of the CPC was also filed and after hearing, vide impugned order, the trial Court has dismissed the same.

5. Learned Counsel for the Applicant submits that the impugned order is perverse and is not sustainable under the law as the Appellant is the owner of the house in question and if the demolition activities are carried out without adjudication of the Civil Suit, then the same will become infructuous.

6. It is averred that a demolition should be a last resort and if it falls within the compoundable limits, then it should not be directed to be demolished. Therefore, it is prayed that the impugned order may be set aside and accordingly, temporary injunction may be granted in his favour.

7. The question for determination in this Appeal is “whether the trial Court has passed the impugned order after considering all the aspects under Order 39 Rules 1 & 2 CPC and whether the said order is liable to be interfered with ?”

8. I have heard learned Counsel for the parties and perused the impugned order as also the documents annexed herewith.

9. The trial Court has observed in paragraph-13 of the impugned order that Respondent No.1 has taken an action against the Appellant as he has constructed stairs over the drain meant for the use of general public. It has also been observed further that after filing of the Civil Suit, the Appellant/Plaintiff has adopted delaying tactics and sought adjournments for hearing.

10. In paragraph-7 of the impugned order, it has been specifically stated that Respondent No.2 has already died and an application has been preferred before the trial Court for bringing his legal representatives on record to pursue the Appeal further, but before this Court, Respondent No.2, who is a dead person has been made a party.

11. Section 198 of the Act of 1956 enables the Municipal Corporation for removal of unauthorized building over drains etc. So, the trial Court, after dealing with all the aspects of demolition and on finding that no *prima facie* case of balance of convenience or irreparable loss is made out against the Appellant, refused to grant injunction by using its discretionary powers and rejected his application.

12. In view of above, I do not find any infirmity in the findings recorded by the trial Court so as to call for any interference in this Appeal, as the same has been exercised after sound judicial discretion in refusing to grant

interim injunction pending the suit.

13. Looking to the facts and circumstances of the case, the Appellant/Plaintiff is granted 45 days' time to remove the unauthorized structure over the drains, if any, failing which, the Municipal Corporation is at liberty to take appropriate legal action in accordance with law.

14. Accordingly, this Miscellaneous Appeal is disposed of at the motion stage.

15. This order shall not come in the way of deciding the Civil Suit on merits.

Sd/-
(Deepak Kumar Tiwari)
JUDGE

Priya