

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

10. WRIT PETITION NO. 6968 OF 2018

1. Komalbai W/o Shahaji Wadkar,
age 49 years occup. household

2. Shahaji S/o Shrirang Wadkar,
age 55 years occupation Driver

Both R/o Ramgaon Taluka Ausa Dist. Latur,
at present R/o Ulhas Nagar, Akash Colony,
Gaikwad Pahad, Ulhas Nagar (Thane-Mumbai)

3. Sumanbai W/o Narayan Shinde,
age 53 years occupation household

4. Narayan S/o Bapurao Shinde
age 58 years occupation agriculture

5. Vijaykumar S/o Narayan Shinde,
age 25 years occupation agriculture

Nos. 3 to 5 R/o Wanjarwada
Taluka Nilanga Dist. Latur.

...Respondents

VERSUS

1. Vishwanath S/o Nagu Kadam,
age 79 years occupation agriculture

2. Pundlik S/o Nagu Kadam,
age 68 years occupation agriculture

3. Kondiba S/o Nagu Kadam,
age 61 years occup. Agriculture

Nos. 1 to 3 R/o Wanjarwada
Taluka Nilanga Dist. Latur

...Respondents

*Mrs. Madhaveshwari Thube-Mhase, Adv., i./by Lex Aquila for
petitioners
Mr. G.K. Sontakke, Adv., with Mr. P.G. Sontakke, Adv. for
respondents*

CORAM : N.J. JAMADAR, J.

DATE : 22nd March, 2021

ORAL ORDER :

The challenge in this petition is to an order dated 6th of February 2018 on an application (Exhibit No. 55) preferred by the petitioners-defendants to dispose of Misc. Judicial Case No. 26/2011, filed by the respondents-original plaintiffs in Regular Civil Suit No. 46/2009, alleging breach of the interim injunction order passed by the Court, under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908 (Code).

2. The substance of the application was that initially, in Reg. Civil Suit No. 46/2009, the trial Court has passed an order of temporary injunction, below Exh.5, on 8th of October 2009. The challenge thereto by the petitioners-defendants before the District Judge in Misc. Civil Appeal No. 33/2009 came to be negated by the judgment and order dated 13th November 2009. The petitioners-defendants invoked the writ jurisdiction of this Court by filing Writ Petition No. 8450/2009. However, the writ petition also came to be dismissed.

3. The petitioners-defendants claimed that the respondents-plaintiffs taking undue advantage of the order of interim injunction dated 8th of October 2009, preferred Misc. Judicial Case No. 26/2011 alleging breach of the said order under Order XXXIX Rule 2-A of the Code. Eventually, the suit - Reg. Civil Suit No. 46/2009 came to be dismissed and the counter claim filed by the petitioners-defendants was allowed by the judgment and order dated 15th of March 2017.

4. The petitioners, thus, preferred the instant application (Exh.55) in Misc. Judicial case No. 26/2011 for dropping the said proceeding. The respondents/plaintiffs resisted the said application. By the impugned order the learned Joint Civil Judge)(J.D.), Nilanga, was persuaded to reject the prayer to drop the proceeding holding *inter-alia* that the question as to whether the petitioners-defendants committed breach of the injunction order, while it was in force, warrants determination. Being aggrieved, the petitioners are before this Court.

5. Heard the learned Counsel for the petitioners. It was urged that since the suit for specific performance of contract of re-conveyance and perpetual injunction instituted by the

respondents/plaintiffs came to be dismissed and it was held that the petitioners are in possession of the suit property, and the defendants to the counter claim-respondents herein were restrained from causing obstruction to the possession of the plaintiffs to the counter-claim (petitioners herein) over the counter claim property, without following due process of law, there is no justification for proceeding with the application alleging breach of injunction order, under Order XXXIX Rule 2-A of the Code.

6. The learned Counsel for the petitioners placed a strong reliance on the judgment of the Supreme Court in the case of ***Kanwar Singh Saini Vs. High Court of Delhi, 2012 (4) Supreme Court Cases 307***, wherein, it was *inter alia* held that an application under Order XXXIX Rule 2-A of the Code lies only where disobedience/ breach of an injunction granted or order complained of was one that is granted by Court under Order XXXIX Rules 1 & 2, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, an interim order merges into the final order and the Court cannot entertain an application under Order XXXIX Rule 2-A. An application under Order XXXIX Rule 2-A is maintainable only during the pendency of the suit in case the interim order passed by the Court or undertaking given by the party is violated.

7. The aforesaid pronouncement was made in the backdrop of the fact that, in the case before the Supreme Court, an application initiating action for contempt under Order XXXIX Rule 2-A of the Code was taken out after the so called statement/undertaking given by the appellant/defendant culminated into decree of the Civil Court. In the said case, there was no order of interim injunction passed under Order XXXIX Rules 1 & 2 of the Code, of which the breach was alleged. In that backdrop, the Supreme Court held that the proper remedy was not action for contempt but the proceeding for execution of the said decree.

8. In the case at hand, indisputably interim injunction granted by the Court by order dated 8th of October 2009 was confirmed upto this Court. The application alleging breach of the said order, being Misc. Judicial Case No. 26/2011, was filed on 10th of March 2011. Undoubtedly, the suit itself came to be dismissed on 15th of March 2017. The question, which would crop up for consideration in the said proceeding, which alleges breach of injunction order, would be, whether the petitioners-defendants willfully disobeyed the order of interim injunction while it was in force. Eventually, the Court may come to the conclusion that the

petitioners have not committed breach of the said order. However, the fact that the suit, in which initially order of interim injunction was passed, came to be later on dismissed, by itself, cannot be a ground to drop the proceeding, which alleges the breach of the said order while it was in force. It is trite that till the order is in force, it commands obedience. It does not matter that the order eventually turned out to be erroneous or even without jurisdiction. Even if the injunction order is subsequently set aside, the breach or disobedience does not get erased. A useful reference can be made to the judgment of the Supreme Court in the case of ***Samee Khan Vs. Bindu Khan, AIR 1998 Supreme Court 2765.***

9. In the aforesaid view of the matter, this Court is not inclined to entertain the petition.

10. The petition accordingly stands dismissed.

(N.J. JAMADAR)
JUDGE