

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

WRIT PETITION NO.11129 OF 2021

**PRAKASH RAMESH MITRE AND ANOTHER
VERSUS
MOTIRAM NAYANNA ALIAS NANAYYA MITRE**

...
Advocate for Petitioners : Mr. S. G. Chapalgaonkar
Advocate for Respondent : Mr. M. M. Patil (Beedkar)
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 15th SEPTEMBER, 2022

PER COURT :

1. Petitioners are aggrieved by order dated 15/06/2019, passed by learned Civil Judge, Senior Division, Parbhani, below Exhibit-36 in Special Civil Suit No.51/2016, thereby refusing interim injunction prayed by them. The said order is confirmed by learned District Judge-3, Parbhani, in Regular Civil Appeal No.51/2019.

2. Facts which are not in dispute are:-

Special Civil Suit No.51/2016 is filed by respondent/plaintiff seeking recovery of possession of 300 Sq. Feet area out of property bearing plot No.82, Survey No.8, Municipal House No.4-7-1, situated at Mahaveer Nagar, Purna, from petitioners/defendants. The said suit was contested by petitioners/defendants by filing written statement and counter claim. In counter claim, defendants have prayed relief of declaration

that they are owner and possessor of plot No.82 total admeasuring 50 x 50 to the extent of ½ portion towards East side admeasuring East-West 25 ft. and South-North 50 ft.

3. In the suit, defendants filed application Exhibit-36 seeking injunction thereby directing plaintiff to reconnect electricity supply to disputed premises by a direction to M.S.E.D.C.L. office to give new electricity connection to the disputed premises.

4. Said application was opposed by plaintiff being not maintainable, by contending that M.S.E.D.C.L., Purna, has refused to give N.O.C. to defendants and the said order ought to have been challenged. Plaintiff, therefore, prayed for rejection of the said application. Defendants claim to be owners of suit premises and they have filed counter claim for declaration of ownership. Since defendants are claiming to be owners of suit premises, they cannot claim for restoration of amenities/tenancy. There is no provision to issue such direction as claimed in the application.

5. Trial Court rejected the application holding that suit is filed by plaintiff for possession. In appeal preferred by defendants, appellate Court has confirmed the order holding that electricity connection was disconnected by plaintiff on 14/04/2016 and complaint in that behalf was filed with Police Station, Purna, on 28/04/2016. Though defendants filed complaint, they have not filed any suit and it is only after plaintiff filing suit, application is moved

belatedly after filing counter claim. Even the application for restoration of electricity supply was filed after two years of disconnection of electricity. There is no prayer made in counter claim in respect of disconnection. Previous application for the same relief is rejected. Appellate Court further held that defendants, on the basis of so-called partition, can apply to electricity board, if at all, they really want to have separate electricity connection and remedy is available to them under relevant law. Hence, appellate Court was of the view that no interference is required in the trial Court's order.

6. I have heard rival submissions of learned advocate for petitioners and learned advocate for respondent. Perused the grounds raised in writ petition memo and citations relied upon.

7. It is not in dispute that electricity connection of petitioners/defendants is disconnected by respondent/plaintiff in the year 2016. Defendants have placed reliance on partition deed executed on 25/10/1998, wherein it is mentioned that electricity connection shall be common. Record further reveals that for disconnection of electricity criminal complaint was moved by petitioners to concerned police station. Even the petitioners applied for electricity connection, however, the same is denied to them as 'no objection' is not given by respondent/plaintiff.

8. The Hon'ble Apex Court in ***Criminal Appeal No.810/2022 in Special Leave Petition (Crl.) No.8917/2019 (Dilip (Dead) through L.Rs. Vs. Satish and Others)*** has held:-

"It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question"

9. Electricity is basic amenity and the petitioners cannot be deprived of the same. It is a matter of record that though petitioners applied for new electricity connection, the same is refused for want of 'no objection certificate' from respondent.

10. Learned advocate for petitioners has rightly relied on decision in ***Baban Narayan Landge Vs. Mahadu Bhikaji Tonchar and Others, 1989 Mh.L.J. 146***, wherein it is held:-

"2. In my view, answer to this question has to be recorded in the affirmative. Here are my reasons : The subject of temporary injunction is mainly covered by Order 39, Rules 1 and 2, Code of Civil Procedure. In cases not covered by those provisions, an appropriate temporary injunction can be granted also in exercise of inherent power of a Court under Section 151, Code of Civil Procedure. After all Order 39, Rules 1 and 2 are not exhaustive of the circumstances under which interim injunction can be granted. The controversy on that aspect of the matter is set at rest by a majority decision of the Supreme Court in the leading case of Manoharlal v. Seth Hiralal, AIR 1962 SC 527. But that apart the language employed in those two Rules is clearly wide enough to

include an order in the form of a mandatory injunction and admits of no exception with reference to a point of time to which it can be made. Injunctions are a form of equitable relief and they have to be adjusted or moulded in aid of equity and justice to the facts and circumstances of each particular case. Jurisdiction is thus undoubted even under Order 39, Rules 1 and 2. Even If it cannot be granted under the said Rules, Section 151, is the source of such jurisdiction. I see no reason to lay down an absolute proposition and forge unnecessary and unjustified fetters on the power of the equity Courts to grant appropriate relief even in a well deserving case and reduce its position only to a willing but helpless spectator - a situation not warranted by our equity jurisprudence.

3. Undoubtedly, power to issue mandatory injunction at an interlocutory stage is not to be exercised lightly or commonly. Ordering maintenance of status quo as on the date of the suit as an interim measure is rare and rarer still is the order of maintenance of status quo as on the date anterior to the institution of suit. But existence of jurisdiction and its proper exercise are two distinct topics.

4. Precedents where such injunctions are granted are not many but they do exist. In the case of Goverdhan Singh v. Mulkh Raj, AIR 1973 Jammu & Kashmir 63, the power of the Civil Court to grant interim mandatory injunction ordering the defendant-landlord to reconstruct the demolished wall and to make the premises habitable was recognised. In the case of Ganpathi Reddy v. Duvvuri Chinnapa Reddy, 1977 (1) Andhra Weekly Reporter 62, power to issue mandatory temporary injunction ordering reopening of a sluice through which bath water passed in the lane which was closed three months prior to the date of the suit was recognized. It is observed.

"The main grievance of the learned Advocate for the petitioners was that a mandatory injunction cannot be granted so as to restore the status quo prior to the institution of the suit, but there is no such limitation on the Court's power to grant a mandatory injunction of that nature in as appropriate case, particularly when the states

quo ante has been altered shortly prior to the suit and that Act itself was the direct and proximate cause as a result of which the suit cause to be filed".

5. My attention was drawn by the learned counsel for the applicant to the case of *Rasul Karim V. Pirbhai Amirbhai*, AIR 1914 Bom 42, in which it has been held that power to issue mandatory injunction is not within the ambit of Order 39, Rule 1. In that case even the power of a mofussil Court in India to issue such mandatory injunction was doubted. But that is no more a good law. Very soon the said view met with disapproval in the case of *Champsey Bhimji & Co. V. Jamna Flour Mills Co. Ltd.*, AIR 1914 Bombay 195. The case of *Malla Suranna V. Kalla Somulu*, AIR 1969 A.P. 368, on which reliance has been placed also does not seem to lay down any proposition leading to absence of jurisdiction. It is merely observed :

"It is no doubt plain that such a mandatory injunction can be granted to restore the status quo existing on the date of the suit."

So is the proposition about the case of *Ms. Magnum Films V. Golcha Properties Pvt. Ltd.*, AIR 1983 Delhi 392, which says :

"A temporary mandatory injunction as was held by me in Baldev Raj. V. Savitri Bai , 1981 Rajdhani L.R. 367 : AIR 1982 NOC 49, can be issued only in case of extreme hardship and compelling circumstances and mostly in those cases when status quo existing on the date of the institution of the suit is to be restored."

The above observations relate only to the proper exercise of jurisdiction and not to its existence.

6. Now about exercise of the jurisdiction. There are two essential pre-requisites. First is that such power is not to be exercised unless the Court feels a high degree of assurance that at the trial a similar injunction would in all probabilities be granted and secondly, irreparable injury will be caused if thing complained of is allowed to continue until the final decisions."

11. In the light of aforesaid ratio, relief of injunction which is in the form of equitable relief, has to be adjusted and moulded in aid of equity and justice and in the facts and circumstances of each case. If injunction cannot be granted under Order 39, Rules 1 and 2, it can be granted under Section 151 of the Code of Civil Procedure. Even *status quo* prior to the institution of suit can be restored.

12. In that view of the matter, so far as objection of respondent about maintainability of temporary injunction application filed by petitioners with a prayer in respect of disconnection is concerned, the same cannot be accepted and trial Court can grant relief in favour of petitioners by invoking inherent powers under Section 151 of the Code of Civil Procedure.

13. In the peculiar facts of the present case, the trial Court as well as the appellate Court have failed to consider extreme hardship faced by petitioners by disconnection of their electricity supply. Both the Courts have failed to appreciate grievance of petitioners in proper perspective and have erroneously rejected prayer of petitioners. Therefore, the impugned orders cannot be sustained and they are liable to be quashed and set aside.

15. In the result, following order :

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 15/06/2019, passed by learned Civil Judge, Senior Division, Parbhani, below Exhibit-36 in Special Civil Suit No.51/2016 and the impugned order dated 30/08/2021, by passed learned District Judge-3, Parbhani, in Regular Civil Appeal No.51/2019, are quashed and set aside.
- (III) Application Exhibit-36 in Special Civil Suit No.51/2016 is hereby allowed.
- (IV) Taking into consideration the fact that suit is of the year 2016, the same is expedited. Trial Court shall decide the suit within a period of one year from the date of receipt of writ of this order. Parties shall cooperate.

(NITIN B. SURYAWANSHI, J.)