

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

958 CRIMINAL WRIT PETITION NO. 1375 OF 2022

NAMDEVRAO S/O DHONDBARAO KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Petitioner : Mr. B. R. Waramaa
APP for Respondents : Mr. M. M. Nerlikar
.....

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 19 OCTOBER 2022

ORAL JUDGMENT (PER :- MANGESH S. PATIL, J.)

1. Rule. Rule made returnable forthwith.
2. We have heard learned Advocate Mr. Waramaa for the petitioner and the learned APP.
3. The petitioner is claiming the following relief :

“(A) By issuing Writ of Mandamus or appropriate writ or directions of like nature the R. Nos. 2 and 3 be directed to grant application/representation dt. 24/8/2022 and to grant police protection to the petitioner so as he can live peacefully in his house plot No. 43/44, Omkareshwar Nagar, Taroda Bk, Nanded without fear of false accusation at the hands of persons who are daily committing breach of interim injunction granted by learned civil court on 22/12/2021 below Ex-5 in RCS No. 232/2021.”

4. The learned Advocate Mr. Waramaa would take us through the papers and would point out that the petitioner is the owner of the house property, but his possession is being illegally obstructed by his daughter-in-law, who is having a matrimonial dispute with his son. The petitioner has filed a suit against her and the Civil Court has granted temporary injunction restraining his daughter-in-law, his son who is her husband, and her parents and brother from causing obstruction and interference in his peaceful possession over the house property till decision of the suit. He submits that in spite of such injunction in his favour, the daughter-in-law and her relatives are bent upon to obstruct possession in breach of the injunction. To protect his possession and to save any threat to his life, he submitted an application dated 24.08.2022 with the concerned Superintendent of Police, seeking police protection at his cost, but his application is not being considered, either allowed or rejected.

5. Mr. Waramaa points out from the CCTV footage that the daughter-in-law with the help of the police machinery, has effected forcible entry by breaking open the lock of the gate of the compound. He therefore submits that the petitioner has a right to apply for police protection to secure his right enshrined under Article 21 of the Constitution of India.

6. Learned APP would submit that the parties are already before the Civil Court which has even granted temporary injunction and it would be for the petitioner to seek appropriate relief from that Court to enforce the temporary injunction which is already granted in his favour. He would submit that the police cannot be made a party circuitously to any civil dispute.

7. We have carefully considered the rival submissions and perused the papers.

8. Admittedly, the petitioner has filed a civil suit and has even succeeded in obtaining a temporary injunction against not only the daughter-in-law and his son, but even her parents and brother. Needless to state that if at all he is now complaining about any breach of injunction, it would be apposite for him to enforce that injunction and even seek to take steps for breach of injunction in the very same suit before the Civil Court. Even if he wants some police protection in that regard, it would always be open for him to apply to the Civil Court even for that purpose.

9. In the exercise of this writ petition, it would not be proper for this Court to issue any writ which, directly or indirectly, either would aid the Civil Court or obstruct its due process.

10. Pertinently, the petitioner as also the daughter-in-law had filed proceedings against each other under Section 156(3) of Cr.P.C., but the concerned Magistrate has rejected both these applications. Learned Advocate Mr. Waramaa points out that that rejection was in respect of the applications filed before filing of the suit and even that order is under challenge before this Court. He also points out that another proceeding under Section 156(3) of Cr.P.C. has been subsequently initiated even against the police officers allegedly aiding the daughter-in-law, which is pending before the Magistrate. If such is the case, it would still be further difficult for this Court to issue any writ by undertaking some inquiry when the matter is seized with the learned Magistrate.

11. Considering the aforementioned facts and circumstances, when an appropriate remedy can be had from the Civil Court in the pending litigation, we feel that the writ petition is not maintainable. The writ petition is dismissed. Rule discharged.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]