

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

WRIT PETITION NO. 2790 OF 2022

Ramji S/o Harishankar Shukla vs. Smt. Vibha Devendrakumar Gupta

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. H. D. Dangre, Advocate for petitioner.
Mr. M. V. Samarth, Senior Advocate assisted by Mr. Vipul
Ingle and Mr.P.S.Tidke, Advocate for sole respondent.

CORAM : MANISH PITALE J.
CLOSED ON : 15/06/2022
PRONOUNCED ON : 22/06/2022

The original plaintiff is before this Court challenging order dated 11/05/2022, passed by the Court of Adhoc District Judge-2 Wardha (hereinafter referred to as 'Appellate Court'), whereby appeal filed by the respondent was allowed and order of temporary injunction passed in favour of the petitioner by the 5th Joint Civil Judge, Senior Division, Wardha (hereinafter referred to as the 'trial Court'), was set aside.

2. The petitioner has filed a suit for declaration and permanent injunction against the respondent and two other defendants seeking a declaration to the effect that he is in legal possession over suit office and residential house within the premises of a Trust known

as Manohar Dham, Dattapur, Maharogi Sewa Samiti, Wardha and for an injunction restraining the defendants from obstructing and disturbing the peaceful possession of the petitioner over the office of the trust and residential house located in the premises of the trust. In the said suit, the petitioner filed an application for grant of temporary injunction for restraining the defendants from obstructing and disturbing his peaceful possession over the office of the trust and the residential house located in the premises of the trust, till the decision of the suit.

3. The respondent i.e. the defendant No.1 filed written statement-cum-reply to the application and opposed the reliefs sought by the petitioner.

4. By order dated 24/01/2022, the trial Court considered the contentions of the rival parties and allowed the application for temporary injunction, directing that the respondent stood restrained from obstructing and disturbing the peaceful possession of the petitioner over the office of the trust and residential house.

5. Aggrieved by the same, the respondent filed appeal before the appellate Court. By judgment and order dated 21/02/2022, the appeal was allowed and

the order of temporary injunction passed by the trial Court was set aside. Aggrieved by the same, the petitioner approached this Court by filing Writ Petition No.1417 of 2022. In the said petition, this Court found that the parties and their counsel were raising a dispute as to whether the appellate Court had actually heard the appeal finally while passing the order. Without going into the controversy and since the parties agreed to re-argue the appeal before the appellate Court, the order passed by the appellate Court was set aside and this Court directed the parties to appear before the appellate Court, with a direction that the appellate Court would decide the appeal within 15 days. The said order was passed on 13/04/2022.

6. In pursuance thereof, the appellate Court passed the impugned order dated 11/05/2022, again allowing the appeal and setting aside the order of the trial Court. The petitioner filed the present writ petition, challenging the said judgment and order of the appellate Court, wherein notice was issued on 24/05/2022, returnable on 14/06/2022, directing that till the returnable date the possession of the petitioner would stand protected. This petition was finally heard on 15/06/2022.

7. Mr. Harish Dangre, learned counsel for the petitioner submitted that the appellate Court erred in interfering with the discretion exercised by the trial Court in allowing the application for temporary injunction. It was submitted that the well settled principle that restraint was required to be shown by the appellate Court while interfering with such discretion, was not followed by the appellate Court, thereby rendering the impugned order erroneous. It was emphasized that the petitioner had clearly made out a prima facie case in his favour, for the reason that on 25/03/2014, the petitioner was appointed as a Manager of the aforesaid trust and since then he was in possession of the suit premises. It was submitted that amongst the original trustees of the trust, only the defendant No.3 was alive, but he was residing at Delhi and being a Senior Citizen aged about 94 years, suffering from various health ailments, he was not able to look after the affairs of the trust. The petitioner asserted that the respondent and defendant No.2 were complete strangers to the trust and they were illegally seeking to interfere with the affairs of the trust and that they were attempting to dispossess the petitioner from the suit premises, despite the fact that the petitioner had been managing affairs of the trust in the capacity of a duly appointed Manager from the year 2014. It was

submitted on behalf of the petitioner that since the suit was purely for injuncting respondent i.e. defendant No.1 from disturbing the possession of the petitioner and since the respondent had no concern with the trust in question, the bar sought to be invoked under the provisions of the Maharashtra Public Trusts Act, 1950, was not applicable and that the suit was clearly maintainable.

8. It was also submitted that the material on record clearly indicated that even the respondent could not deny the fact that the petitioner was and continued to be in possession of the suit premises, thereby demonstrating that the balance of convenience was clearly in favour of the petitioner and that he would suffer irreparable loss, if temporary injunction was not granted.

9. According to the learned counsel for the petitioner, the trial Court properly appreciated the material on record to render findings in favour of the petitioner, while the appellate Court committed a grave error. By referring to the impugned judgment and order, learned counsel submitted that the appellate Court erred in holding that the trial Court ought not to have postponed consideration of the question of

maintainability of the suit while deciding the application for temporary injunction.

10. According to the learned counsel for the petitioner, the trial Court had indeed examined the aforesaid aspect of the matter to render prima facie findings. The learned counsel further highlighted that the applications moved on behalf of the respondent and others before the Court of the Charity Commissioner itself demonstrated that they were not trustees of the trust in question and that therefore, being complete strangers, they had no right to interfere with the possession of the petitioner in the suit premises.

11. It was further submitted that the appellate Court erred in referring to amended bye laws of the trust to render adverse findings against the petitioner on the basis that post of Manager was not provided for in the amended bye laws, because the said aspect was a matter for trial and it could not be a factor to be taken into consideration while deciding the prayer for grant of temporary injunction. On this basis, it was submitted that the impugned order passed by the appellate Court deserved to be set aside and the order of temporary injunction granted by the trial Court deserved to be restored.

12. It was also submitted that the appellate Court, while examining the question of prima facie case, erroneously went into unnecessary details regarding address of the petitioner on certain documents on record, because all such matters were matters for trial and they were wholly irrelevant for deciding the question of grant of temporary injunction. On this basis, it was submitted that the impugned order deserved to be set aside.

13. Mr. M.V. Samarth, learned Senior Advocate along with Mr. Vipul Ingle and Mr. P.S. Tidke, learned counsel appeared on behalf of respondent and vehemently opposed the contentions raised on behalf of the petitioner. It was submitted that maintainability of the suit itself was a basic factor as part of examining the prima facie case sought to be made out by the petitioner and that therefore, the appellate Court was justified in holding that examination of the said aspect could not be postponed. At least prima facie finding as regards the very maintainability of the suit was necessary. It was submitted that perusal of the plaint and the reliefs sought by the petitioner clearly indicated that the suit was not maintainable under Section 50 read with Section 51 of the aforesaid Act, which the trial Court completely failed to appreciate, while granting

temporary injunction in favour of the petitioner. It was submitted that the appointment order dated 25/03/2014, upon which the petitioner was placing reliance, on the face of it was a fabricated document. The petitioner could not support with cogent documentary material, his assertion of having been appointed as Manager of the trust. It was submitted that bye laws of the trust, amended in the year 1973, had done away with the position of Manager and that therefore, there was no question of appointing the petitioner as Manager. It was submitted that signature of one of the trustees on the purported appointment order was fabricated and the petitioner had no concern with the trust.

14. It was further submitted that even if the petitioner claimed to be in possession of the suit properties, which are admittedly trust properties, by virtue of being a Manager of the trust, any suit in respect of the same could have been filed only with prior permission of the Charity Commissioner under Section 51 of the said Act. This prima facie indicated the non-maintainability of the suit, thereby indicating that the petitioner could not claim to have a prima facie case in his favour for granting temporary injunction.

15. It was further submitted that the petitioner had himself initiated number of proceedings under the provisions of the said Act before the Charity Commissioner and that therefore, he could not turn around to claim that insofar as the suit was concerned, no permission was necessary from the Charity Commissioner for instituting the same.

16. It was further submitted that in the proceedings initiated prior to filing of the suit, the petitioner himself had stated his address of another place in Wardha and not the suit residential house, thereby showing that the petitioner was seeking to take advantage of his illegal action of barging into the trust property along with antisocial elements. It was submitted that such a litigant could certainly not claim protection of the Court. By referring to various judgments of the Supreme Court and this Court it was submitted that the suit was not maintainable and since no prima facie case was made out by the petitioner, there was no question of balance of convenience and the aspect of irreparable loss being in favour of the petitioner. On this basis, it was submitted that the writ petition deserved to be dismissed.

17. This Court has heard the learned counsel for the rival parties in the backdrop of the material placed

on record. The entitlement of a person for grant of temporary injunction has to be tested on the well known parameters of strong prima facie case, balance of convenience being in favour of the person claiming temporary injunction and irreparable loss that such a person may suffer, if the order of temporary injunction is not granted. If such a person is unable to demonstrate existence of a prima facie case in his favour, the aspects of balance of convenience and irreparable loss pale into insignificance. Therefore, it would be necessary to examine as to whether the petitioner has been able to make out a prima facie case in his favour for grant of temporary injunction, while claiming that the impugned order deserves to be set aside.

18. It is obvious that the fundamental aspect of the very maintainability of the suit and a prima facie opinion regarding the same would be subsumed under the process of examination of prima facie case as projected on behalf of the petitioner. Therefore, it would be necessary to reach a prima facie conclusion in respect of the said matter. Apart from this, the petitioner would obviously have to demonstrate that the claims made on his behalf on the basis of which prayer for grant of temporary injunction is made, are at

least prima facie made out on the basis of the material placed on record.

19. The respondent has strongly objected at the outset to the very maintainability of the suit in the light of the provisions of the said Act. A perusal of the plaint, the averments made therein and the reliefs sought by the petitioner is necessary in the backdrop of other material on record and in the light of the provisions of the said Act, to form a prima facie opinion about the maintainability of the suit.

20. In the plaint, the petitioner has extensively referred to the aforesaid trust, the manner in which the names of erstwhile trustees were present in Schedule-I maintained by the office of the Assistant Charity Commissioner, Wardha and how only defendant No.3, is the sole surviving trustee. It is then claimed that one of the trustees i.e. Ravishankar Sharma in his lifetime appointed the petitioner as Manager of the trust and from the date of his appointment on 25/03/2014, the petitioner has been residing in the residential house in the premises of the trust. It is claimed that he has been managing affairs of the trust as its Manager. Thereafter, allegations have been made against the respondent i.e. original defendant No.1, as also the original defendant No.2, claiming that they have sought to obstruct

peaceful possession of the petitioner in the residential house and the office of the trust. It is then claimed that the petitioner, as the Manager of the trust, has been taking signatures of employees on Muster Roll and reference is made to certain police complaints made against the respondent and defendant No.2. Thereupon, the petitioner has prayed for a declaration that he is having legal possession over the suit office and residential house in the premises of the trust and an injunction is sought for restraining the defendants from obstructing his peaceful possession in the suit premises. In the application for temporary injunction, the petitioner has sought restraining the defendants from obstructing and disturbing his peaceful possession in the suit properties.

21. It is significant that even according to the petitioner, he is claiming entitlement in the said properties of office and residence, by virtue of being appointed as Manager of the trust. Thus, prima facie the entitlement of the petitioner is linked with the trust and its properties, as also the role that the petitioner claims to be playing in the context of the trust. Section 2(8) of the said Act defines 'Manager' as any person other than a trustee who administers the trust property of any public trust. Section 2(18) defines 'trustee' to

mean a person in whom the trust property is vested and includes a manager. It is significant that in the suit, even according to the petitioner, the sole surviving trustee i.e. defendant No.3 has been made a party.

22. Section 50 of the Act pertains to suits by or against or relating to public trusts or trustees or others and Section 51 of the Act specifies that consent of the Charity Commissioner is necessary for instituting a suit of the nature specified in Section 50 of the said Act. A bare perusal of Section 50 of the said Act would show that it includes a suit for declaration or injunction in favour of a trustee or a beneficiary thereof.

23. In the light of the averments in the plaint and the nature of reliefs sought against the defendants, a preliminary examination was necessary for reaching at least a prima facie conclusion as to whether the suit could be said to be maintainable in the light of Sections 50 and 51 of the said Act. But, a perusal of the order dated 24/01/2022, passed by the trial Court would show that it proceeded on the basis that the objection regarding maintainability of the suit could not be dealt with at the stage of considering the application for temporary injunction. Even after forming the said opinion, the trial Court immediately thereafter recorded that prima facie the suit was not covered under Section

50 of the said Act, on the basis that temporary injunction was being sought only against respondent as defendant No.1, who was neither trustee nor member of the trust and since an injunction could be claimed against a stranger, there was no substance in the objection regarding maintainability of the suit. This Court is of the opinion that the trial Court clearly erred in reaching such sweeping conclusions without appreciating that it was for the petitioner as a plaintiff, to first make out his prima facie case for entitlement to the trust properties by examining whether the petitioner had even prima facie made out a case regarding his appointment as Manager of the trust. If, it was to be even prima facie found that the petitioner could be said to be appointed as Manager of the trust, his entitlement and possession in the suit properties would again be on the basis of being concerned with trust properties as Manager of the trust, prima facie indicating operation of Sections 50 and 51 of the said Act. The sole surviving trustee, even as per the petitioner, was indeed a defendant in the suit and therefore, the aspect of maintainability of the suit could not have been brushed aside, as was done by the trial Court in a cavalier manner.

24. The other aspects of the question, as to whether the petitioner made out a prima facie case in his favour pertain to the theory of the petitioner as having been appointed as Manager on 25/03/2014, by one of the trustees who later expired. A serious objection has been raised on behalf of the respondent with regard to the authenticity of the said appointment order dated 25/03/2014. Even otherwise, the Court is required to examine at least prima facie whether such a document can be said to be indicating the appointment of the petitioner as Manager of the trust and by virtue of the same being entitled to protect his possession in the suit properties. Another aspect relevant in this context is the question as to whether bye laws of the trust at all provide for the position of Manager.

25. In this respect, a perusal of the material on record would show that the signature of the trustee, who purportedly appointed the petitioner as Manager on the order dated 25/03/2014, is prima facie different from documents pertaining to earlier points in time, including a change report dated 30/03/2010, submitted before the office of the Assistant Charity Commissioner by the very same trustee. There is no comment on the part of the trial Court on this aspect of the matter. It is also relevant that while the petitioner claimed that he

was appointed on 25/03/2014, as Manager, he submitted a change report for the first time in that regard before the Assistant Charity Commissioner after more than seven years, on 18/11/2021. In the context of the said change report submitted by the petitioner, on 07/01/2022, the Assistant Charity Commissioner, Wardha, issued notice to the recorded trustees, observing that when the bye laws of the trust amended in 1973 had done away with the post of Manager of the trust, appointment of the petitioner as Manager of the trust in the year 2014 would create a doubt even in the mind of an ordinary prudent person. After recording this, Assistant Charity Commissioner issued notice in the change report enquiry.

26. The learned counsel for the petitioner is not justified in contending that since the enquiry is still pending and merely notice is issued by the said order dated 07/01/2022, demonstrating that the observations therein are prima facie and no significance could be attached the same, because such an observation and the document on record is being considered only to examine whether the petitioner indeed has made out a prima face case in his favour for grant of temporary injunction or not.

27. The amended bye laws of the trust even in the record of the office of the Assistant Charity Commissioner show that after amendment in 1973, the post of Manager was done away with. Therefore, prima facie it is indeed surprising that the petitioner claims that he was appointed as Manager of the trust by one of the trustees on 25/03/2014.

28. Another aspect of the matter, to which the appellate Court has referred, is that certain documents on record indicate that the petitioner himself in various proceedings before the Assistant Charity Commissioner under the provisions of the said Act had stated his address to be of a place in Wardha district, different from the suit trust premises. In applications filed under various provisions of the Act before the Assistant Charity Commissioner, Wardha, the petitioner himself had stated his address as 110, Dhanvantari Nagar, Doctor Colony, Sevagram, Taluka and District Wardha and not the address of which he claims to be a resident within the premises of the trust. It is crucial that in the said proceedings initiated before the Assistant Charity Commissioner under the provisions of the said Act, prior to filing of the suit, the petitioner had consistently stated his residential address to be that located in 110, Dhanvantari Nagar, Doctor Colony, Sevagram, Taluka

and District Wardha and not within the premises of the trust property. This has a crucial bearing on the question of the petitioner having made out a prima facie case in his favour as regards possession of the property in the premises of the trust, by virtue of being Manager of the trust, while claiming temporary injunction in his favour.

29. It is also significant that initiation of various proceedings under the provisions of the said Act before the Assistant Charity Commissioner at Wardha, at the behest of the petitioner, further prima facie indicates that the objection regarding maintainability of the suit in the backdrop of Sections 50 and 51 of the aforesaid Act was not appreciated in the correct perspective by the trial Court.

30. Although the learned counsel for the petitioner vehemently argued that the respondent i.e. the original defendant No.1 and the original defendant No.2 were complete strangers and they had nothing to do with the aforesaid trust, while examining as to whether the petitioner was entitled to grant temporary injunction, it was for the petitioner to demonstrate that his claim of deserving temporary injunction for protection of his possession in the properties of the trust by virtue of being appointed as a Manager of the trust,

was at least prima facie made out. As the plaintiff/applicant it is for the petitioner to stand on his own legs. If the material on record and the claims made by the petitioner are found to be not even prima facie made out, it would not lie in the mouth of the petitioner that since the respondent herein and the original defendant No.2, according to him, are strangers to the trust, the order of temporary injunction ought to follow in his favour.

31. This Court is of the opinion that the material on record, upon which the petitioner as the plaintiff himself has placed much emphasis, does not make out a prima facie case in his favour and that therefore, the appellate Court was justified in interfering with the order of temporary injunction passed by the trial Court. Since the petitioner has failed to make out even a prima facie case in his favour, the aspects of balance of convenience and irreparable loss do not require consideration, thereby indicating that no interference is warranted in the impugned order passed by appellate Court.

32. In view of the above, the writ petition is found to be without any merit and accordingly, it is dismissed. Pending applications, if any, stand disposed of. The observations made in this order are necessarily

restricted to examining the claim of the petitioner for grant of temporary injunction and being prima facie in nature, the trial court shall decide the suit uninfluenced by such observations. Needless to say, interim order granted by this Court stands vacated.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*22.06.2022
17:58

KOLHE