

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.105 OF 2023

Klassik Vinyl Products LLP

.. Petitioner

Versus

Fayzan Khan and Ors.

.. Respondents

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- Mr. Vishal Kanade a/w. Mr. Saket Mone and Mr. Dinesh Parmar i./by Mr. Makrand B. Sawant for Petitioner
 - Mr. Vivek Shukla a/w. Mr. Rohan Surve and Mr. B. Sayed i./by V. Shukla and Association for Respondent Nos.1 to 4
 - Mr. S. D. Rayrikar, AGP for Respondent Nos.5 to 8 and 11
 - Mr. Yogesh Patil i./by Mr. Vijay Patil for Respondent Nos.9 and 10
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2023

P.C.:

1. Heard Mr. Kanade, learned Advocate for Petitioner; Mr. Shukla, learned Advocate for Respondent Nos.1 to 4, Mr. Rayrikar, learned AGP for Respondent Nos.5 to 8, 11 and Mr. Patil, learned Advocate for Respondent Nos.9 and 10 and perused the records of the case.

2. In this Writ Petition, the impugned order under challenge is order dated 20.12.2022 granting *ex-post facto* leave to the Plaintiff (Respondents) before the learned Trial Court for filing the suit under Section 91 of the Code of Civil Procedure, 1908.

3. Mr. Kanade would submit that said leave under Section 91 ought to have been obtained prior to filing of the suit as per the extant provisions.

4. Mr. Shukla would refute and submit that there are a catena of judgments to the effect that *ex-post facto* leave granted on the same day or even subsequent thereto to the Plaintiff would suffice.

5. It is seen that Plaintiff lodged the suit on 24.11.2022 and thereafter moved the learned Trial Court subsequently by filing an Application seeking leave under Section 91 on 20.12.2022 i.e. after almost one month from the date of filing of the suit. The learned Trial Court allowed the Application on the same date, however Mr. Kanade would submit that Advocate for Defendant No.7 (Petitioner herein) was present when the said order was passed, but his grievance is that the copy of the Application for seeking leave was not given to him and he was not allowed to file Affidavit-in-Reply to oppose the Application. He submitted that this aspect is not considered by the Trial Court. There is one more aspect which deserves to be mentioned at this stage i.e. after lodging the suit on 24.11.2022, the learned Trial Court has passed an order of *status quo* in respect of the suit property on the Application of the Plaintiffs on 30.11.2022.

6. In view of the above, it is seen that admittedly the order of *status quo* and the subsequent order dated 20.12.2022 granting *ex-post facto* leave under Section 91 is affecting the Petitioner and that hence the Petitioner is before this Court in this Writ Petition.

7. Mr. Kanade has placed reliance on the decision of the Single

Judge of this Court in the case of ***Municipal Council, Jalna and Others V/s. Eknath s/o. Narayan Shankar Pelli and others***¹ and more specifically on paragraph No.9 thereof which reads thus:-

“Before parting with the judgment, a reference is required to be made to the fact that the Civil Judge has given permission under section 91 of the Act (Sic: Code). The said application Exh. 11 was produced before this Court. It is alleged in the said application that this mis-administration causes a public nuisance which affect the public in general, and therefore, the permission may be granted. Surprisingly, the Court has passed one word order viz. "Allowed" and the suit has been entertained on the basis of such a cryptic one word order. In fact when the law contemplates that such a suit to be instituted on a leave being granted by the Court to institute such a suit, the law enjoins a duty on the Court that such a power should be exercised judiciously and not in arbitrary manner as has been exercised in the present matter. In fact the Court should have passed a reasoned order so that it would have been known to this Court and/or the parties as to why the permission has been granted by the Court to institute such a suit. And, therefore, the courts, hence-forth will take notice that while granting permissions and/or leave under section 91, the Court shall pass a reasoned order instead of passing one word order which does not show application of mind and renders the order as arbitrary one. Any power, if not exercised judiciously and with reasons, renders the said order into arbitrary one and liable to be struck down and therefore the very permission which has been granted to institute the suit under section 91 of the Act is hereby struck down and the suit filed by the plaintiff is hereby returned.

In the result, the Civil Revision Application is allowed. Rule made absolute accordingly. In the facts and circumstances of the case there shall be no order as to costs. ”

8. That apart, it is seen that the order dated 20.12.2022 granting *ex-post facto* leave to the Plaintiff is not a reasoned order and it is one line cryptic order and hence the same deserves to be set aside.

9. The impugned order is therefore quashed and set aside and the learned Trial Court is directed to pass a reasoned order granting leave

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under Section 91 after hearing both the sides.

10. Both the parties shall present themselves before the learned Trial Court on 27.01.2023 at 12.00 noon to decide and fix schedule / for hearing of the Application for leave under Section 91 filed on 20.12.2022

11. In view of the above, the order granting *status quo* on 30.11.2022 by the learned Trial Court stands vacated. Liberty to apply after leave is procured. Learned Trial Court shall not be influenced by any observations made in this Order.

12. Mr. Shukla has requested for continuation of the order of *status quo* as it was in operation since 30.11.2022. However, in the above facts, I am not inclined to continue with the said order of *status quo*.

13. The learned Trial Court is however requested to decide the Application under Section 91 as also Applications that would be filed seeking ad-interim / interim order as expeditiously as possible and in any event within a period of two weeks from today.

14. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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