



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.595 OF 2023

WITH

INTERIM APPLICATION NO.13926 OF 2023

IN

APPEAL FROM ORDER NO.595 OF 2023

|                                        |   |                 |
|----------------------------------------|---|-----------------|
| Karmaveer Dadashab Gaikwad             | ] |                 |
| Sanskritik Kendra, Mumbai, Through its | ] | ... Appellant / |
| Secretary Nitin Anandrao Sonawane.     | ] | Applicant       |

Versus

|                                  |   |                 |
|----------------------------------|---|-----------------|
| Mr. Ganesh Shivaji Kamble & Ors. | ] | ... Respondents |
|----------------------------------|---|-----------------|

Mr. Mayur Khandeparkar i/b Mr. Rajesh P. Khobragade for Appellant / Applicant.

Mr. Rahul Walvekar for Respondent Nos.1 and 2.

**CORAM :- SANDEEP V. MARNE, J.**

**DATE :- 03 OCTOBER, 2023**

**P. C. :-**

1. **Admit.**

2. With the consent of learned counsels appearing for parties, the Appeal is called out for hearing.

3. The Appeal challenges Order dated 05/07/2023 passed by the City Civil Court partly allowing Notices of Motion Nos.1795 of 2023 and 1798 of 2023. By order impugned, the City Civil Court had temporarily restrained the Defendants from obstructing Plaintiffs' entry to the open playground and from using the same for cricket coaching in

specified play time, without following the due process of law. The Defendants are also restrained by an order of temporary injunction from creating hindrance by sprinkling excess water over the playground, till disposal of the suit.

4. Briefly stated, facts of the case are that Defendant No.1 has been allotted vacant land admeasuring 4,000 sq.meters reserved for development as sports complex and playground by the Collector, Mumbai Suburban, vide letter dated 30/05/2002 on lease subject to various conditions. The area of the plot was subsequently modified from 4,000 sq.meters to 5572 sq.meters by letter dated 07/08/2002. It appears that the Appellant (Original Defendant No.1) has executed a MoU dated 01/07/2007 with Defendant No.2 – Winning Edge Sports Promotion Pvt. Ltd. - (**Winning Edge**) appointing it as an Advisor and Consultant for promoting, managing and conducting the sports complex at the said plot.

5. Plaintiff No.1 is a life member of the Appellant – Trust. He claims to be a cricket coach. Plaintiff No.2 claims to be the social worker and also a coach. By letter dated 30/09/2019, the Appellant – Trust permitted Plaintiff No.1 to use the playground twice a week for 2 hours for promoting sports amongst youth in the locality. Plaintiff No.1 claimed that Defendant No.2 has permitted him to engage in cricket coaching activities on payment of monthly rent of Rs.30,000/- and in pursuance of that arrangement, he has been running cricket coaching classes at the playground from 7 a.m. to 11 a.m. and 4 p.m. to 7 p.m. That, the Defendants stopped issuing rent receipts with ill-objective of removing Plaintiff No.1 from the playground. That, they started creating hurdles in the coaching activities. That, they are misusing the playground by developing the same for commercial activities. That, prior to filing of the

suit, the Defendants deliberately sprinkled water all over the ground making it impossible to conduct cricket coaching. With this cause of action, the Plaintiffs filed S.C. Suit No.1120 of 2023 before the City Civil Court seeking injunctive reliefs against the Defendants from interfering Plaintiffs' use of suit land for cricket coaching and from evicting them from the playground without following due process of law. In the suit, Plaintiffs filed Notice of Motion No.1795 of 2023 praying for temporary injunction from creating hindrance by sprinkling water on the playground or from closing main gate of the playground. Another Notice of Motion No.1798 of 2023 was filed for restraining the Defendants from interfering with Plaintiffs' use of the playground for cricket coaching and from evicting them without following due process of law. By a common order dated 05/07/2023, the City Civil Court has proceeded to partly allow both the Notices of Motion and has passed the following order :-

*“1) Notice of Motion Nos.1795/2023 and 1798/2023 are partly allowed in following terms :-*

*i) Defendants, their servants, agents or anybody claiming through them are hereby temporarily restrained from obstructing plaintiffs entry to the open playground and from obstructing plaintiffs from using open playground for cricket coaching in the specified play time, without following due process of law.*

*ii) Defendants, their servants, agents or anybody claiming through them are hereby temporarily restrained from creating hindrance by sprinkling excess water all over the playground, till disposal of suit.*

*iii) Cost in cause.*

*2) Notice of Motion Nos.1795/2023 and 1798/2023 are disposed of accordingly.”*

6. Mr. Khandeparkar, learned Counsel appearing for Appellant would submit that Plaintiff No.1 has no semblance of right to claim any relief in respect of the suit playground. He would submit that there is no

privity of contract between the Plaintiffs and any of the Defendants. He cannot continue exclusive use of the playground. That, the life membership of Plaintiff No.1 has since been terminated by the Appellant. That, Plaintiff No.1 has never paid any rent to the Appellant. That, except producing 2 receipts issued by Winning Edge, no evidence is shown by the Plaintiff No.1 to demonstrate payment of any rent.

7. *Per Contra*, Mr. Walvekar, the learned Counsel appearing for the Respondents would oppose the Appeal and support the order passed by the City Civil Court. He would submit that Plaintiff No.1 has been allowed to carry out cricket coaching activities both by the Appellant as well as by Winning Edge. He would place reliance on letters dated 30/09/2019 and 03/02/2022 to demonstrate that Plaintiff No.1 has always been permitted to conduct sporting functions at the playground. He would submit that he has been paying rent to Defendant No.2 – Winning Edge for use of the playground for cricket coaching activities and accordingly he is in possession of the same. He would submit that under such circumstances, Plaintiff No.1 cannot be evicted from the suit playground without following the due process of law. He would further submit that Plaintiff No.1 has not been following the terms and conditions for which the playground has been granted by the Collector. That, the Appellant has been serving liquor in the premises constructed on the playground in violation of terms and conditions of such allotment. That, as per the conditions of allotment, the playground must be kept open for use of all members of public and the Appellant cannot prohibit entry of Plaintiffs to the playground. He would pray for dismissal of the Appeal.

8. I have considered the rival submissions.

9. The suit is filed jointly by Ganesh Shivaji Kamble and Pravin Amrutlal Maru. Both claim to be cricket coaches. However, documents relied upon in the plaint pertain only to Plaintiff No.1 – Ganesh Shivaji Kamble. There is nothing on record to indicate that Plaintiff No.2 was ever allowed to carry out any activity at the playground either by the Appellant or by Defendant No.2.

10. The only two documents relied upon by the Plaintiffs to claim right to use playground for cricket coaching is letter dated 30/09/2019 issued by the Appellant and two rent receipts issued by Defendant No.2 – Winning Edge. So far as letter dated 30/09/2019 is concerned, it does not refer to cricket coaching activities in any manner. The same is issued to Plaintiff No.1 in his capacity as life member of the Trust and it states that a jogging park was being made operational for senior citizens at the playground. It further states that for encouraging sporting activities amongst local youth, the Trust had decided to make the playground available for sports practice twice a week for two hours. It further states that it was decided in the meeting held on 27/08/2019 of the Trust that Plaintiff No.1 should implement the program. Plaintiff No.1 was accordingly requested by that letter to implement the program amongst local sports loving youth. Thus, the letter dated 30/09/2019 nowhere seeks to allot the playground to Plaintiff No.1 for being used for cricket coaching activities. The said letter merely requested Plaintiff No.1 to implement the program of promoting sporting activities amongst local youth twice a week for 2 hours. Thus, letter dated 30/09/2019 *prima facie* cannot be relied upon to suggest that any right is created in favour of Petitioner No.1 to continue the use of playground for his exclusive use for cricket coaching activities.

11. Plaintiffs have relied upon 2 receipts issued by Defendant No.2 – Winning Edge. The first receipt is in respect of rent for November and December 2021 for cricket coaching. The second receipt is in respect of rent for the month of February 2022. Except these 2 receipts, the Plaintiffs have not produced any other proof to demonstrate that any rent was levied by either of the Defendants or that they regularly paid the said rent to either of them. The City Civil Court has completely erred in recording that the Plaintiffs were paying rent of Rs.30,000/- per month to Defendant No.2 who was looking after the suit property for and on behalf of Defendant No.1. It is alleged payment of monthly rent that has weighed heavily with the City Civil Court for grant of temporary injunction. In my view, the Plaintiffs did not make out any *prima facie* case of payment of any monthly rent.

12. The Plaintiffs also did not make out any *prima facie* case that any contract is executed in their favour under which they can claim exclusive use of the playground for cricket coaching activities. There is no such allotment letter also in their favour. Requesting Plaintiff No.1 to implement program for engagement of a sporting activities amongst youth is completely different from executing of any contract in his favor under which the right could be created in him to continue to occupy the playground for exclusive use as a cricket coach. I am, therefore, of the view that the Plaintiffs miserably failed to make out any *prima facie* case in their favour.

13. Reliance by the City Civil Court on allegation of serving liquor in the sports complex for grant of temporary injunction is beyond comprehension. The allegations levelled by the Plaintiffs about violation of terms and conditions of allotment of the plot in favour of the Appellant

has no connection with Plaintiffs' right to continue to occupy the playground. The City Civil Court, therefore, ought to have completely ignored those allegations. The City Civil Court has thus taken into consideration extraneous factors nor germane for deciding Plaintiffs' entitlement to seek temporary injunction. It is also incomprehensible as to how Appellant can be restrained from watering the lawn on its own playground just for facilitating Petitioner No.1 to carry out his commercial activity of conducting cricket coaching, in absence of any right.

14. Thus, no case was made out by Plaintiffs for grant of temporary injunction. The impugned passed by the City Civil Court is therefore indefensible.

16. The Appeal is accordingly allowed. The impugned order dated 05/07/2023 passed by the City Civil Court is set aside. Needless to clarify that the observations made in this order are *prima facie* and shall not influence the City Civil Court while deciding the Suit. There shall be no order as to costs.

17. In view of disposal of the Appeal, Interim Application does not survive and the same is also disposed of.

**(SANDEEP V. MARNE, J.)**