

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13753 OF 2022

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.10.19
10:26:35 +0530

Vetal Navnath Deve & Ors.

... Petitioners

V/s.

Santaram Krushna Dive, deceased
thr heirs & LRs Popat S. Dive & Ors.

... Respondents

Mr. Prasad P. Kulkarni for the petitioners.

Mr. Ashok M. Misal for respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 18, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioners/original plaintiffs are challenging order of the Trial Court rejecting application for police protection in furtherance of order of temporary injunction. The Trial Court rejected the application on the ground that prima facie case has not been made out as to how opponent No.4 is causing interference. Report filed with police station by the plaintiffs shall be dealt with by the police authorities as per law. Moreover, it is necessary for the petitioners to initiate proceedings under Order 39 Rule 2A of the Code of Civil Procedure, 1908 for breach of the order of temporary injunction.

2. It is not in dispute that the Trial Court by order dated 27 July 2021 restrained defendant No.4 from causing interference with the possession of the plaintiffs over the suit property.

3. The petitioners filed application under Section 151 of the Code of Civil Procedure, 1908 alleging that defendant No.4 is disturbing their possession over the suit property despite order of the Court. Huge mob supports defendant No.4. Despite filing complaint with the police station, no cognizance is taken by the police officials. The petitioners, therefore, sought direction to provide police protection. In the said facts, the power of the Court to grant police protection under Section 151 of the Code of Civil Procedure, 1908 is no longer *res integra* in view of the judgment of this Court in **Nirabai J. Patil v. Narayan D. Patil** reported in 2004 (1) Mh.L.J. 1058. This Court in paragraphs 7 and 8 has held as follows:

“7. The aforesaid observations made by the learned Single Judge of this Court are very relevant for the present case. If Civil Court which has passed the order of temporary injunction takes a view that there is no power vested in the Court to direct the police to grant assistance for enforcing or for implementation of the order of temporary injunction, the very purpose of granting order of temporary injunction may be frustrated in a given case. It is the duty of every police Officer to enforce the law of the land. The duties of police officers are reflected in Section 64 and Section 66 of the Bombay Police Act, 1951. In my opinion, the view taken by the learned Trial Judge that there is no provision for police aid for execution of interim order, is totally incorrect. The learned Judge failed to appreciate that he has a power under Section 151 of the said Code to pass the order directing that

police help should be made available provided facts of the case warrant passing of such order.

8. As observed by this Court in the aforesaid judgment, the grant of police aid is an extreme step and therefore order for grant of police help or police assistance cannot be made unless the Court is fully convinced about the existence of grave emergency such as apprehension of violence by the persons against whom the order has been passed. It is very difficult to give exhaustive list of circumstances in which the Court can exercise the said power. However, said power is to be exercised with caution and the said power can be exercised only after the Court is fully convinced of existence of grave situation warranting exercise of said power.”

4. Learned advocate for the respondent opposed the writ petition relying on the judgment of the Apex Court in **My Palace Mutually Aided Co-operative Society v. B. Mahesh & Ors.** in Civil Appeal No.5784 of 2022 decided on 23 August 2022, The Apex Court in the said judgment held that power under Section 151 of the Code of Civil Procedure, 1908 can be exercised only where no remedy has been provided for under any provisions of the Code of Civil Procedure, 1908. It is also held that inherent power cannot be used in conflict of any other existing provision or in case remedy has been provided under the provisions of the Code of Civil Procedure, 1908.

5. Learned advocate for the respondent is unable to point out any provision which confers right on the plaintiffs to apply for police protection in the Code of Civil Procedure, 1908. No provision in conflict with the exercise of powers under Section 151 granting police protection is pointed out.

6. Section 151 of the Code of Civil Procedure, 1908 enacted recognizing inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent of abuse of process of Court. Once the order of injunction is passed by the Court, if compliance with such order creates law and order situation and once it is proved that the plaintiffs despite being entitled are not able to get benefit of the order, the Court has power to grant police protection. Therefore, in my opinion, the judgment in the case of **My Palace Mutually Aided CHS** (supra) is inapplicable.

7. Since the applicant has filed a complaint with the police station alleging disturbance of his possession over the suit property and lack of cognizance by the concerned police officers, in my opinion, the petitioner has made out a case for grant of relief. Hence, following order:

- a) Impugned order dated 18 February 2022 passed by Learned Civil Judge Senior Division, Barshi below Exhibit 37 in Special Civil Suit No.35 of 2021 is quashed and set aside;
- b) Application filed by the petitioners below Exhibit 37 in Special Civil Suit No.35 of 2021 is allowed;
- c) The concerned police station shall grant police protection, subject to payment of necessary charges as are required;

8. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)