



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 01 OF 2020

Madanrao s/o Aparao Shelke,
Age; 64 years, Occ; Pensioner & Agri,
R/o; Yeldarkar Colony, Parbhani,
Tq. Dist. Parbhani.

**...PETITIONER
(Orig.Deft.No. 1)**

VERSUS

Sunderrao s/o Munjaji Shinde,
Age; 46 years, Occ; Service,
R/o; Wazur, Tq. Purna,
District; Parbhani.

**...RESPONDENT
(Orig. Plaintiff)**

.....
Advocate for the Applicant : Mr. Girish K. (Naik) Thigale
Advocate for the Respondent : Mr. M.P. Kale (Caveator)
.....

CORAM : SANDIPKUMAR C. MORE, J.

Date :- 01.03.2024

ORDER :

1. The present applicant, who is the appellant in MCA No. 27 of 2019 has challenged the judgment and order passed by the

learned Principal District Judge, Parbhani in the said appeal on 13.12.2019, whereby the learned appellate Court upheld the order passed by the learned Joint Civil Judge, Junior Division, Purna i.e. the learned trial Court in MCA No. 51 of 2014 whereby, the present appellant was ordered to be detained in civil prison for three months on account of breach of injunction order dated 08.07.2011.

2. The background facts are is as under :

The present respondent had filed a Special Civil Suit No. 16 of 2011 against the present petitioner and one Sau. Gangasagar Labde for specific performance of contract in respect of Gut No. 110 at village Dagadwadi, Tahsil Purna. Thereafter, the said suit was transferred to Joint Civil Judge, Junior Division, Purna i.e. the trial Court and renumbered as 21 of 2012. Before that the learned Civil Judge, Senior Division, Parbhani vide order dated 08.07.2011 had restrained the present appellants temporarily from interfering into the peaceful possession of the plaintiff i.e. the present respondent over the suit property, till disposal of the suit. The said order of temporary injunction was challenged by the present appellant before the learned appellate Court, Parbhani, but in the said appeal it was revealed that during the subsistence of the of the aforesaid

order of temporary injunction, the present appellant along with certain other persons carried out the measurement in the suit land. Thus, the present respondent filed MCA No. 51 of 2014 against the present appellant and other persons by invoking Order XXXIX Rule 2 (c) of the Code of Civil Procedure. The learned trial Court by considering documents on record opined that the present appellant had committed breach of injunction order dated 08.07.2011 passed in RCS No. 21 of 2012 and thereby ordered for detention of the appellant in civil prison for three months. The appeal filed against the said order has already been rejected by the learned Principal District Judge, Parbhani. Hence this petition.

3. Learned Advocate for the appellant submits that the original Civil Suit bearing RCS No. 21 of 2012 between the present appellant and respondent has already been decided by the learned trial Court partially by directing defendant No. 1 in the said suit to repay an earnest amount of Rs. 4,00,000/- to the present respondent/plaintiff. Thus, the learned Advocate for the appellant pointed out that when the prayer for specific performance of claim of the present respondent/plaintiff has been rejected finally, the interim order, which was only in force till disposal of that suit, now

merges into the final order and since the claim of specific performance of the present respondent is rejected, the interim order stands automatically nullified and as such when the said order is nullified, consequently the order in respect of breach of that order has also come to an end.

4. On the contrary, the learned Advocate for the respondent submits that even though the claim of specific performance raised by the present respondent/plaintiff in RCS No. 21 of 2012 has been rejected, but the order of learned trial Court was very much enforced when the present appellant along with other persons carried out the measurement in the suit land contrary to the said order. Thus, he prayed for rejection of this Civil Revision Application.

5. Heard the rival submissions. Also perused the documents on record.

6. Admittedly, the order in respect of which the breach was committed by the present appellant, was in force when he carried out the measurement of the suit premises contrary to the said

order. Moreover, the appeal against the detention order passed by the learned trial Court has also been dismissed. However, the appellant has pointed out that as per the observations of Hon'ble Apex Court in the judgment reported in 2012 (4) SCC 307 in the case of Kanwar Singh Saini v. High Court of Delhi, the present issue has been resolved. He pointed out the observations of the Hon'ble Apex Court in paragraph No. 17, which reads as under :

“17. Application under Order 39 Rule 2-A CPC lies only where disobedience/breach of an injunction granted or order complained of was one that is granted by the court under Order 39 Rule 1 and 2 CPC, which is naturally to enure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically.”

7. On going through the aforesaid order, it has been clarified by the Hon'ble Apex Court that once the suit is decreed, the interim order, if any, passed in the said suit merges into the final order and no litigants can derive any benefit from mere pendency of the case in the Court of Law. It has been also observed that if the case is ultimately dismissed, the interim order stands

nullified automatically.

8. In the instant case the claim of present respondent was for specific performance of contract executed between defendant No. 1 and himself in respect of the suit land. The present appellant had already purchased the suit land when the said agreement of sale was in existence. However, on final adjudication of the suit i.e. RCS No. 21 of 2012 the learned trial Court has rejected the claim of the present respondent/plaintiff and directed defendant No. 1 in the said suit to repay an earnest money of Rs. 4,00,000/-, which she had taken at the time of execution of agreement of sale. As such, on final disposal of the suit, the main prayer of present respondent/plaintiff of claiming specific performance of contract has been rejected by the learned trial Court, therefore, as per the observations of the Hon'ble Apex Court in the case of **Kanwar Singh Saini** (supra) as mentioned above the interim order dated 08.07.2011 has automatically got nullified. As such, when the said order has already been nullified at the final adjudication of the suit, no question will arise for punishing the present appellant for committing breach of the said order.

9. Even otherwise also, it appears that, the learned trial

Court had passed the aforesaid injunction order dated 08.07.2011, only for temporary period i.e. till the disposal of the suit and relying on the recitals of the so called agreement of sale, wherein, the possession of the suit land was allegedly handed over to the present respondent/plaintiff. However, in the final judgment in the said suit passed by the learned trial Court, it is observed that though the present respondent/plaintiff had claimed to be in possession of the suit land but he could not adduce any satisfactory evidence as regards his actual possession over the suit land, by examining any neighbouring agriculturist of the suit land. Moreover, the revenue record of the suit land and the mutation entry clearly revealed that the present appellant was owner and possessor of the suit land. Therefore, on this count also the order dated 08.07.2011 appears to be erroneous. Therefore, considering all these aspects and the observations of the Hon'ble Apex Court, the order dated 08.03.2019 passed by the learned trial Court directing the detention of the present appellant in civil prison for three months and the order passed by the learned Principal District Judge, Parbhani confirming the said order vide its order dated 13.12.2019 in Misc. Appeal No. 27 of 2019 are required to be set aside. Hence the Civil Revision Application stands allowed and the orders of both the Courts below

namely order dated 08.03.2019 passed by the learned Civil Judge, Junior Division, Purna in MCA No. 15 of 2014 and judgment and order dated 13.12.2019 passed by the learned Principal District Judge, Parbhani in Misc. Appeal No. 27 of 2019 are quashed and set aside. The Civil Revision Application is accordingly stands disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

mahajansb/