



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11500 OF 2023

M/s Karan Beer Shopee Prop.
Keshar Shankar Harne And Another

VERSUS

Bhaskar Vastupurti Flat Owners Sahakari Gruhnirman
Sanstha Through Its Chairman And Others

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Mr. V. S. Undre, Advocate for the Petitioner
Mr. B. K. Patil, Advocate for Respondent No. 1
Mr. N. B. Patil, AGP for Respondent Nos. 2 and 3

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CORAM : R.M. JOSHI, J
DATE : JUNE 10, 2024

PER COURT :

1. By consent of the parties, Petition is heard finally at admission stage.

2. Petitioners are defendant nos. 1 and 2 in RCS No. 924/2021 filed by Bhaskar Vastupurti Flat Owners Sahakari Gruhnirman Sanstha seeking injunction against them from conducting liquor business from the suit premises.

3. At the outset, learned Counsel for the Petitioners submit that the Petitioners have raised objection with regard to the maintainability of the suit in view of Section 146 of Bombay Prohibition Act

which precludes Civil Court from entertaining any issue with regard to the action of the State Excise Authority. It is his contention that the plaintiff has prayed for recall/stay of the license issued by the State Excise Authority. By relying upon the judgments of this Court in Shripat Chaituji Mahajan vs. Sanjay Radheysham Jaiswal and ors, 2002 (5) Mh.L.J 528 & Krushnarao Vitthalrao Gollar vs. The State of Maharashtra and Others, 2000 (3) Mh.L.J. 585 it is contended that the issue of the maintainability of the suit ought to have been decided by the learned trial Court first before passing any interim relief.

4. Learned Counsels for the Respondents/Original Plaintiffs supported the impugned order.

5. The suit is filed by cooperative housing society seeking injunction for not carrying out business of liquor from suit shop. *Prima facie* perusal of the record indicates that defendant no. 2 is the owner of the shop premises situated in the plaintiff society and his title document on record i.e., registered sale deed no. 50/2016 dated 05.01.2016 shows that there is specific declaration that the suit

property would not be used for the purpose of liquor business etc. On this ground, learned trial Court has passed order below Exh. 5 restraining defendants from carrying out liquor business on the suit premises. The said order was came to be challenged by filing MCA No. 19/2022 unsuccessfully. Perusal of the record indicates that *prima facie* there is a prohibition for conducting any liquor business from the suit premises. Thus, at this *prima facie* stage, this Court finds no perversity in the reasons recorded by the trial Court which were confirmed by the District Court in MCA. At this stage, this Court finds it necessary to record that the plaintiff is seeking an injunction against defendants from carrying out liquor business from the suit premises. *Prima facie*, this Court is of the view that the interim relief granted by the trial Court and the confirmed by the District Court is in consonance with the material documentary evidence on record and pleadings of the parties.

6. So far as the contention of the Counsel for the Petitioners with regard to the maintainability of the suit is concerned, it is open for the Petitioners

to agitate the said issue before the trial Court. Learned trial Court to decide the said issue in accordance with law, without getting influenced by the observations made by this Court in this order, as the same are made for limited purpose of ascertaining correctness of impugned order.

7. For want of any perversity therein, this Court finds no reason to exercise writ jurisdiction to cause interference in the impugned orders. Hence, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani