



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14135 OF 2023

Vishnudas S/o Ramkishan Agrawal

...PETITIONER

Versus

1. The State of Maharashtra
2. The Latur Municipal Corporation,
Through its Commissioner
3. Samadhan Suryawanshi
4. Satyanarayan Harikishan Agrawal
5. Ghanshyam Harikishan Agrawal

...RESPONDENTS

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for the Petitioner
Mr. B. A. Shinde, AGP for Respondent No.1/State
Mr. H. V. Patil, Advocate for Respondent No. 2
Mr. S. V. Dixit, Advocate for Respondent Nos. 4 and 5

CORAM : R.M. JOSHI, J.

DATE : JUNE 11, 2024

PER COURT:

1. Heard finally at stage of admission by consent of both sides.
2. Parties are referred to by their nomenclature in the original proceedings.

3. Petitioner being aggrieved by the order dated 21.07.2023 passed by 6th Joint Civil Judge Junior Division, Latur in RCS No. 615/2021, refusing to exercise powers under Section 151 of the Code of Civil Procedure (CPC) to grant reliefs as sought by the Petitioner vide application Exh. 26, has preferred this Petition.

4. Petitioner is Plaintiff in RCS No. 615/2021. He claims himself to be tenant in respect of a shop (suit premises) specifically set out in paragraph 1 of the plaint. According to him, Defendant Nos. 3 and 4 are landlords. Inter alia, it is alleged that the Defendant Nos. 3 and 4 in collusion with Defendant No. 1 — Latur Municipal Corporation are trying to dispossess the Petitioner. With these pleadings, suit for mandatory injunction is filed for restraining Defendant Nos. 1 and 2 from demolishing the suit premises. Relief was sought against Defendant Nos. 3 and 4 not to dispossess the plaintiff in case the suit premises is demolished illegally.

5. According to the Petitioner, the learned trial Court passed ex parte ad-interim order on 30.10.2021

whereby the Defendant Nos. 3 and 4 were restrained from dispossessing the plaintiff from suit premises till their appearance. It is further case of the Petitioner that the said order was communicated to Respondents/Defendants but in spite of the same, the suit premises is demolished by the Municipal Corporation, Latur illegally and without following due process of law. Petitioner thereafter amended the plaint and incorporated subsequent events in the plaint, however, no prayer is made with regard to the restoration of the possession of the plaintiff in respect of the suit premises or reconstruction of the suit premises. Petitioner thereafter preferred application Exh. 26 invoking Section 151 of CPC. It is the case of the Petitioner that Plaintiff is dispossessed from the suit premises and as such, the possession of the plaintiff is required to be restore to meet the ends of justice and to prevent the abuse of the process of the law. There is further allegation in the application with regard to the passing of ad-interim order by the Court and non compliance thereof by the Defendants. With these averments in the application, Petitioner prayed for following relief:

In the light of above stated facts and circumstances, the possession of the Plaintiff with regard to suit property may kindly be restored i.e. to the extent of East West 28 ft. from eastern side i.e. from the Building of Shri. Rathi, and North South 32 ft. from the southern side i.e. Main Road in of City Survey No. 6451 and 6450 by directing the Defendants No. 3 and 4 to remove the Tin Shops illegally constructed on the suit property on 14th November, 2021 and to hand over the vacant possession of the suit property to the Plaintiff herein in the interest of Justice alternatively, the plaintiff be allowed to so do with the help of court machinery and police machinery in case the defendant do not act as per the order of this Honble Order on the present application.

6. After hearing both sides, learned trial Court by passing impugned order refused to exercise powers under Section 151 of CPC by holding that the Petitioner has efficacious remedy available to redress his grievance.

7. Learned Senior Counsel appearing for the Petitioner drew attention of the Court to the original pleadings as well as amended pleadings in the plaint and ex parte ad-interim order passed by the trial Court on 30.10.2021. According to him, the said order was

duly communicated to the Defendants and in spite of the same, the Municipal Corporation in collusion with the landlords has demolished the suit premises without following due process of law. According to him, such highhanded action on the part of the Defendants cannot be permitted to be continued and that in order to uphold the majesty of the Court and to prevent the abuse of the process of the law, it was incumbent on the part of the trial Court to exercise the powers of Section 151 of CPC to restore possession of the Petitioner to the extent of 28 ft. in City Survey No. 6451 and 6450 by directing the Defendant Nos. 3 and 4 to remove shops illegally erected on the suit property on 14.11.2021. To support his submissions, he placed reliance on the judgments of the Hon'ble Supreme Court and High Courts as specifically referred in the order by the trial Court. He emphasized on the judgment of the Hon'ble Supreme Court in case of M/s. Shaha Ratansi Khimji and Sons v. Proposed Kumbhar Sons Hotel P. Ltd and Ors, AIR 2014 SC 2895 in order to argue that once the tenancy is created in respect of building standing on the land, it is building and the land which are both components of the said subject

matter of the demise and the destruction of the building alone would not determine tenancy. According to him, by this judgment the judgment of the Hon'ble Supreme Court in case of Vannattankandy Ibrayi v. Kunhabdulla Hajee, (2001) 1 SCC 564 has been overruled, wherein it was held that in absence of structure the tenancy on land does not survive. It is his submission that having regard to the position of law as it stands today, it is absolutely necessary that possession of the Petitioner is restored in respect of the land over which tenanted shop of the Petitioner stood before its demolition.

8. Learned Counsel for the Defendant Nos. 3 and 4/Landlords opposed the said contention by drawing attention of the Court to the amended plaint wherein no prayer for possession has been sought. It is his submission that in absence of prayer being made in the plaint, it would not be open for the Petitioner/Plaintiff to seek any interim relief *sans* such prayers. It is further argued that allegations made by the Petitioner against landlords and Corporation about the collusion etc, cannot be decided

in an application under Section 151 of CPC and the said issues are required only to be determined in a substantial proceeding.

9. Learned Counsel for the Respondent /Corporation submits that Corporation has demolished the premises as it was in dilapidated condition. According to him, due notices were issued and demolition has been carried out by following due process of law and the said aspect can be decided only in trial. It is his submission that in such circumstances the Court was not justified in granting interim relief and has rightly refused.

10. Section 151 of CPC reads thus:

151. Saving of inherent powers of Court.
Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

This provision undisputedly provides for the powers of Civil Court to pass any appropriate order to meet ends of justice or to prevent abuse of the process of the Court. The very wordings of the said provision

shows widest amplitude of the powers of the Civil Court to pass such order. However, such extraordinary powers are to be used sparingly and not in casual manner. Needless to state that when alternate remedy is available, it would not be open for the Civil Court to exercise the powers under this provision. In this regard, a fruitful reference can be made to the judgment of the Hon'ble Supreme Court in case of *State of U.P. & Ors Vs. Roshan Singh and Ors, AIR 2008 SC 1190.*

11. Even if it is true that the Civil Court has powers to pass any order to meet the ends of justice or to prevent the abuse of the process of the Court, the question arises as to whether in the facts and circumstances of the present case such powers are exercisable by the trial Court.

12. Perusal of the record indicates that the Petitioner has filed suit against landlords and Corporation seeking injunction against the landlords not to dispossess him from the suit premises in case the suit premises is demolished illegally. Whereas, the relief was sought against the Corporation restraining

it from demolishing the suit premises. It is admitted fact that an ex parte order was passed by the trial Court whereby Defendant Nos. 3 and 4 were restrained from dispossessing the plaintiff from the suit premises. There is no order of injunction was passed against Defendant No.1 – Municipal Corporation, Latur and its officers. It is thus clear that there is no prohibition to Defendant/Corporation by judicial order from carrying out demolition of suit premises. As such, question of Corporation flouting any order of Court, does not arise. As far as Defendant Nos. 3 and 4 are concerned, injunction against them is not to dispossess plaintiff from the suit premises. It is thus clear that by virtue of demolition of the structure wherein the suit premises was situated, it cannot be *prima facie* said that there was a dispossession caused by Defendant Nos. 3 and 4 in contravention with the order of injunction against them even assuming that the ex parte interim order was duly served upon them.

13. Petitioner/Plaintiff though has amended the plaint and incorporated the subsequent events caused after filing of the suit and passing of ad-interim

relief in his favour, however, conspicuously relief of possession of the suit premises or restoration of possession has not been sought in the plaint. This Court finds substance in the arguments advanced by the Counsel for the landlords that in absence of any relief being prayed in the plaint, it may not be open for the plaintiff to seek the said relief by way of an interim application be under Section 151 or under Order XXXIX of CPC.

14. The aforestated facts raise questions which could be subject matter of decision in a substantive proceeding and the same cannot be decided on the basis of affidavits filed by the parties. The facts as they are *prima facie* appearing from the record indicate that there is allegation made by the plaintiff about the collusion between Corporation and the landlords and pursuant thereto demolition of the premises has occurred. It is also alleged that the said demolition caused is without issuing notices and without following due process of the law. These allegations are refuted by the Defendants and as such, it would be necessary for the plaintiff to prove these allegations by leading

evidence. Mere filing of the affidavit would not be sufficient for the plaintiff to prove the same. As far as the application Exh. 26 filed under Section 151 of CPC is concerned, all these disputed facts cannot be gone into by the Court to record the findings thereon while hearing the same.

15. This is not the case wherein admittedly there was injunction granted by the Court against Corporation and in spite of knowledge of said order in highhanded manner demolition has been carried out. Admittedly, there is no injunction against the Corporation restraining them from demolishing the suit premises. In such circumstances, case in hand would not be the one wherein for the purpose of upholding the majesty of the Court, the order of restoration of possession/reconstruction etc is required to be passed.

16. It is always open for the plaintiff to agitate these issues in a substantial proceedings. In such circumstances, it would not be expected from the trial Court to exercise powers under Section 151 of CPC to direct restoration of the possession of the plaintiff in the suit land belonging to the Defendants/Landlords.

17. Having regard to the above discussion, this Court finds no perversity in the order of rejection of application Exh. 26. As such, there is no merit in the Petition. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani