

Ajay

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

WRIT PETITION NO. 4223 OF 2024

Dinesh Radheyshyam Passi

.. Petitioner

Versus

The General Manager Western Railway and Ors. .. Respondents

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- Mr. A.A. Siddiquie i/by M/s. A.A. Siddiquie & Associates for Petitioner.
 - Mrs. V.R. Raje, AGP for Respondent No.6 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 04, 2024.

P.C.:

- 1.** Heard Mr. Siddiquie, learned Advocate for Petitioner and Mrs. Raje, learned AGP for Respondent No.6 – State.
- 2.** By the present Writ Petition, the order dated 04.03.2024 passed in Chamber Summons No.333 of 2024 is challenged. By virtue of that order, relief prayed for by the Plaintiff in Chamber Summons No.333 of 2024 qua injunction only is refused by the learned Trial Court.
- 3.** Facts in the present case are extremely gross. I have heard Mr. Siddiquie, learned Advocate for the Writ Petitioner at length for more than 30 minutes.

4. Chamber Summons No.333 of 2024 is filed by Plaintiff seeking to incorporate amendment to the Suit plaint in L.C. Suit No.1429 of 2022. Prayers in the said Chamber Summons are at page No.25 of the Writ Petition. There are infact two prayers which are pleaded and prayed for. First prayer is for seeking amendment to the Suit plaint as per the schedule annexed to the Affidavit in support. Second prayer seeks injunction against the Defendants jointly and severally as also against their servants, agents, contractors and/or anyone claiming through Defendants to be restrained by an order of the Court from putting any nature of construction on the Suit plot.

5. At this juncture, I need to delineate that all Defendants in the present Suit proceedings are either the State Government or the arms of the Union Government. The principal contesting Respondent is Western Railway.

6. Before I proceed with the facts of the present case, it needs to be stated that the impugned order dated 04.03.2024 records the finding in paragraph No.5 for rejection of prayer clause 'b' pertaining to injunction. Paragraph No.5 of the order dated 04.03.2024 is relevant and reproduced hereunder:-

"5. The record shows that the Notice of Motion bearing no.2229 of 2022 taken out by the plaintiff for restraining the defendants from dispossessing the plaintiff from the peaceful possession of the suit property was dismissed by this court by passing order on 27.7.2022. While dismissing the said notice this court has taken into consideration the entire documents

relied on by the plaintiff. The record further shows that defendants no.1 to 5 have filed their written statement before the court. In such circumstances, plaintiff wants to incorporate the amendment in the plaint. The same is not under consideration as of now. The plaintiff is insisting that till deciding the said Chamber Summons, defendants be restrained from putting any nature of construction on the said plot. Once the Notice of Motion No.2229 of 2022 is dismissed on merits and the interim relief has been refused by this court, granting prayer clause (b) of Chamber Summons without giving opportunity to the defendants to file reply would amount to undo the order that has been passed by my Ld. Predecessor in Notice of Motion No.2229 of 2022. And therefore, once the said aspect decided by the court, I am not inclined to consider the relief claimed by the plaintiff as contemplated of prayer clause (b) of the Chamber Summons. Hence, the order.”

7. From the above, it is seen that cognizance has been taken by the Court of the previous Exhibit “5” order dated 27.07.2022 passed by the learned Trial Court in Notice of Motion bearing No.2229 of 2022 filed by Plaintiff seeking injunction against the Defendants. That order is appended at page No.44 of the Writ Petition. Plaintiff has prayed that the Suit property bearing CTS No.803/1 is a private property adjacent to Railway land in Village Gundavli, Taluka Andheri, Mumbai and the Plaintiff is having a structure ad-measuring 6 X 12 sq. ft standing thereon in which the Plaintiff is carrying on his business. It is contended by Plaintiff that Plaintiff’s predecessors-in-title, namely his forefather was in occupation of the said Suit property since the year 1952 and in use, occupation and possession thereof and was running his business in the name and style of Shree Siddhivinayak Fast Food Shop No.1.

8. On being threatened to vacate and remove the structure from the Suit land, Plaintiff filed Suit in the Trial Court being SC Suit No.1429 of 2022. The learned Trial framed four specific issues qua injunction sought for by the Plaintiff below Exhibit “5” Application (Notice of Motion); the said Notice of Motion was contested before the learned Trial Court. On the principal issue with respect to entitlement of Plaintiff to claim any substantive or any other right in the Suit property, the learned Trial Court returned a finding after perusing the documentary evidence produced by Defendants to conclude that the Suit land belonged to the Railways and Plaintiff is an encroacher on the said Suit land. This observation is arrived at by the learned Trial Court on the basis of documentary evidence in the form of various statutory notices which were issued by Railways to the Plaintiff and the Plaintiff having failed not only in replying and giving response to the said notices, but even before the learned Trial Court to show as to how Plaintiff is entitled to claim any injunction in the Suit property. If it is Plaintiff’s case that his forefather had been in the possession of the Suit property since the year 1952, there is not an iota of evidence to prove the same even on a *prima facie* basis. The learned Trial Court rejected the Notice of Motion (Exhibit “5”) and the temporary injunction Application sought for by the Plaintiff by a reasoned order dated 27.07.2022.

9. The Plaintiff did not stop here. In January, 2024 Plaintiff

filed Writ Petition before this Court through a new Advocate. The Division Bench of this Court by order dated 18.01.2024 after hearing the Plaintiff for some time, allowed Plaintiff to withdraw the Writ Petition with liberty to Plaintiff to raise all contentions in the pending Suit or the Appeal from Order against the order dated 27.07.2022. While allowing the Plaintiff to withdraw the Writ Petition, the Division Bench of this Court observed that if the Plaintiff filed any Application for amendment in the Suit, the same will be decided by the Civil Court / Trial Court in accordance with law.

10. Mr. Siddiquie, learned Advocate for the Plaintiff who is the Petitioner before me would submit that in view of that observation and liberty the Chamber Summons was filed pursuant to liberty granted by the Division Bench of this Court.

11. Be that as it may, assuming that even if any liberty is granted, that liberty would only relate to filing of an Application seeking amendment in the Suit and not for a fresh cause for seeking injunction. The fact that the Plaintiff has filed Chamber Summons seeking the relief of injunction once again after having failed miserably before the learned Trial Court cannot be a ground for the Plaintiff to state that liberty has been granted by the Division Bench of this Court. On reading the order dated 18.01.2024, the Division Bench of this Court has not granted any such liberty to the Plaintiff to file a second

Application seeking injunction.

12. Thereafter the Plaintiff filed Appeal from Order against the order dated 27.07.2022 through a third Advocate and pressed the said Appeal from Order before this Court. The learned Single Judge of this Court (Coram: R.N. Laddha, J.) by order dated 23.02.2024 allowed the said Appeal from Order to be withdrawn on the statement made by the Plaintiff's counsel that the Suit structure has already been demolished. Hence, Appeal from Order came to be withdrawn unconditionally.

13. In the above background, Plaintiff filed Chamber Summons No.333 of 2024 as delineated hereinabove. Apart from the prayers seeking amendment in the Suit plaint, once again Plaintiff sought to plead the prayer for injunction against the Defendants. Once again, it is the Plaintiff's case that he had informed to the learned Single Judge of this Court at the time of the passing of the order dated 23.02.2024 that the Suit property was already demolished.

14. At this stage of my dictation, Advocate for Petitioner has interrupted me to state that the statement was made by the learned Advocate before the learned Single Judge of this Court on 23.02.2024 was that the Suit property was partly demolished and hence Appeal from Order was sought to be withdrawn. However, the order dated 23.02.2024 does not record so that the Suit property was partly demolished. The order clearly records that the learned Advocate for

the Plaintiff i.e. Petitioner informed the Court that Suit structure has already been demolished and therefore sought leave to withdraw the Appeal from Order.

15. In view of the above, it is seen that once again Plaintiff filed Application for seeking interim relief of injunction. The Application and more specifically prayer clause 'b' is a sheer abuse of the due process of law. When the opening paragraph No.1 of the order dated 04.03.2024 is pointed out to the Petitioner, the only answer that the learned Advocate would give to the Court is that liberty was granted to the Plaintiff by virtue of order dated 18.01.2024 of the Division Bench of this Court to file the Chamber Summons for amendment. There is no answer whatsoever given by the learned Advocate as to why and how the prayer for injunction which was once refused by the learned Trial Court was again impleaded and prosecuted by the Plaintiff. By prosecution of the said prayer, I mean that in the order dated 04.03.2024 the Plaintiff's statement is recorded in the opening paragraph by the learned Trial Court by stating that "at present Plaintiff is pressing for relief in prayer clause (b) of the Chamber Summons". In the Chamber Summons, prayer clause (b) specifically pertains to injunction and nothing more.

16. The learned Trial Court has held that the injunction having been refused and the challenge to the said injunction order having

been withdrawn by the Plaintiff, no restraint order can be passed. There is nothing wrong in the order dated 04.03.2024 and the reasons returned by the learned Trial Court on the basis of the aforesaid facts. Despite that the order dated 04.03.2024 is challenged by the Plaintiff i.e. Writ Petitioner in the present Writ Petition on the ground that it is unsustainable in law and the actions of the Defendants are infact an abuse of the due process of law and the Plaintiff has also in one of the grounds invoked the provisions of the Special Act, 1989.

17. The Suit of the Plaintiff shall succeed or fail on the basis of the evidence and the material available with the Plaintiff to prove his Suit claim. The grounds which are enumerated in the present Writ Petition and more specifically the grounds (a) and (e) are such that they will not make any difference to any Court of law. The Plaintiff's case will succeed on the strength of his own evidence and not otherwise.

18. Today, I am of the opinion that the present Application for injunction against the Defendants having once been rejected earlier by the learned Trial Court, is overreaching the orders of the Court.

19. Mr. Siddiquie draws my attention to the averments made in paragraph No.5 of the Affidavit in support to freshly seek relief for injunction. I have perused paragraph No.5. Perusal of the said paragraph reveals that it has been stated by the Plaintiff that the

structure on the Suit plot was partly demolished without following the due process of law and after it has been handed over wall has been constructed illegally by the Defendants i.e. Railways and hence Plaintiff was constrained to seek relief for the injunction once again. However, the averments made in paragraph No.5 would not pertain to the Plaintiff now seeking fresh relief for injunction, it may be with respect to the principal prayer clause (a) in the Chamber Summons seeking amendment for placing on record the subsequent events.

20. In so far as the issue of injunction is concerned, I have delineated the order dated 27.07.2022 passed in Notice of Motion No. 2229 of 2022 and the two orders of this Court, one by the Division Bench and one by the Single Bench with respect to the same cause of action. In view of the order dated 27.07.2022 having become absolute, present Application for a fresh plea of injunction was uncalled for.

21. In that view of the matter, the Plaintiff has infact misled the learned Trial Court by seeking the relief of injunction for the second time, despite the same having been refused once by the learned Trial Court at an earlier point of time. Such conduct of the Plaintiff is deprecated by this Court. A strong message needs to be sent across the Bar that no litigant shall or can misuse the liberty granted by this Court. The learned Advocate argued that the Division Bench order dated 18.01.2024 gives liberty to the Plaintiff to file any Application

for amendment in the Suit. To that extent, if any Application for amendment is filed, the Division Bench of this Court clearly records that it will be decided in accordance with law, but the Plaintiff has misused these observations to file fresh Application seeking injunction once again, which is an abuse of the due process of law.

22. In that view of the matter, Plaintiff is therefore liable in my opinion to pay exemplary costs of Rs.25,000/-. Cost shall be paid to the **A.K. Munshi Yojana's J.T. Sheth Mandbuddhi Vikas Kendra**, a Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163 within a period of two weeks from today.

23. In view of the above order, the impugned order dated 04.03.2024 is sustained and upheld. At the request of the learned Advocate for the Petitioner the hearing of Chamber Summons No.333 of 2024 in so far as prayer clause (a) of the said Chamber Summons is concerned is expedited , subject to payment of costs as directed

hereinabove and the receipt of the payment of costs be tabled before the learned Trial Court alongwith a server copy of this order within a period of 2 weeks from today. If the costs are paid as directed by the Petitioner – Plaintiff and receipt of payment is placed before the Trial Court, the learned Trial Court is requested by this Court to dispose of the Chamber Summons No.333 of 2024 within a period of 8 weeks thereafter.

24. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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