

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 785 OF 2024
WITH
INTERIM APPLICATION NO. 14549 OF 2024

M/s. Jenita Enterprises and Another ...Appellants
Versus
M/s. P. S. Warehousing Enterprises LLP and Anr. ...Respondents

Mr. Vaibhav Joglekar, Senior Advocate a/w Rajesh Kachare, Savita Sawalkar and Rohan Tamhane i/b M/s. Tamhane and Co. for the Appellants.

Mr. Girish Godbole, Senior Advocate a/w Mayur Khandeparkar a/w Ms. Neveille Mukerji and Mr. Asim Tirmizi i/b Veritas Legal for Respondent No.1.

CORAM : M.M. SATHAYE, J.
DATE : 21st NOVEMBER 2024

P.C. :

1. At the outset, leave is granted to amend the cause title of this appeal, to the extent of changing name of Respondent No.1 as 'P. D. Warehousing Corporation'. Amendment to be carried out within a period of 1 week. Leave is also granted with the consent of Respondent No.1 to make same amendment in the cause title of the suit and the pending Notice of Motion.

2. Heard learned Senior Advocate for the Appellants and learned Senior Advocate for Respondent No.1. Perused the record. Considering the arguments advanced at the time of hearing, it appears that Respondent No.1 is the real contesting party. Since this appeal is directed against refusal of ad-interim relief, the matter is taken up for

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disposal.

3. This Appeal is filed challenging the order dated 21.10.2024 passed by the City Civil Court, Gr. Bombay in Draft Notice of Motion in Suit No. 6372 of 2024. By the said impugned order, the prayer of ad-interim injunction restraining Respondent No.1 and/or its appointed security personnel, servants etc. from obstructing/restraining the entry of vehicles intending to go to godown No. GE-12 which is 'the suit godown', in Gopal Estate, P.D. Industrial and Warehouse Unit Owners Association, Lal Bahadur Shastri Marg, Bhandup-West, Mumbai – 400 078, was refused. The motion is pending for hearing before Trial Court.

4. The learned Senior Advocate for the Appellants submits that the Appellants are in possession of the suit godown based on Deed of Declaration dated 26.05.1995, Agreement for Sale as well as Supplementary Agreement both dated 24.10.1996 & Deed of Apartment / Indenture dated 24.09.1998 between Respondent No.1 and the Predecessor of the Appellants (Mohan Brothers) and Deed of Conveyance dated 17.07.2007 between the Appellants and its Predecessor. He submits that under the terms and conditions thereunder, the Appellants can park one vehicle during day/night time and can conduct loading and unloading of vehicles during day time. He submits that despite condominium in existence, Respondent No.1 is exercising dominion over the entire cluster of godowns, including the suit godown, in a manner resulting in vehicles of Appellants or its licensee not being freely allowed to reach the suit godown for the purpose of loading and unloading. He submits that there is sufficient space around the suit godown for free movement of vehicles but the Respondent No. 1 is creating a bogey about obstruction of passage way.

5. Learned Senior Advocate for Respondent No.1, on the other hand, submits that since there are complaints about the vehicles of the Appellants and its Licensee blocking the passage way around the cluster of godowns, this dispute has been in existence since 2020. He has placed on record an enlarged copy of the map/sketch annexed with the plaint. He further submits that Suit No. 1648 of 2015 filed by Respondent No. 1 against the Appellants is pending for recovery of unpaid maintenance charges and municipal taxes, in which similar grievance is already raised by the Appellants by way of counter claim. He submits that therefore the objection raised in present motion about alleged obstruction by Respondent No.1 is nothing new.

6. Considering that the dispute is at the stage of ad-interim injunction in a suit, I am refraining from commenting in detail, on rights of the parties and rival claims thereto, since it is likely to prejudice either parties.

7. Perusal of said enlarged map/sketch apparently shows that the space in front of subject godown is uneven and of peculiar shape. Bare look at the said map also indicates that if vehicles such as 10 ton capacity truck or 3.5 ton capacity tempo (which are stated to be in regular use for the purpose of business in suit godown) are parked in parallel fashion between the subject godown and compound wall, it is most likely to block ingress / egress of other vehicles used by other godown owners. This Court has to be mindful of the fact that, at this stage, Appellants' right to effectively use the subject matter godown cannot be overlooked but at the same time, its use should not block the movement of other vehicles used by other godown users and a workable

ad-interim arrangement has to be reached.

8. After the matter was argued for some time, considering the approximate measurements of the vehicles involved (specially width thereof) and the possibility of its free movement through the space available in front of the suit godown, this Court was of the view that if the vehicles are parked parallel in front of suit godown, the blockage is inevitable. Considering this view of the Court, learned Senior Advocate for the Appellants, on instructions, volunteered to file an affidavit, undertaking that the vehicles coming for loading and unloading in front of suit godown will be parked in a linear fashion and not parallel to each other, ensuring not to create bottleneck. He further volunteered on instructions to undertake to park private vehicle of Appellants (other than loading/unloading vehicles) within godown complex ensuring not to cause nuisance / blockage to any other godown holder.

9. Considering the approximate measurement of the vehicles involved, and *prima facie* rights of parties emerging from documents on record, this Court is of the view that following ad-interim arrangement during pendency of the motion will be just and proper and it be maintained :

(A) The Appellants or their licensee will be permitted to park, at any given point of time during contractual timings of the day, **one truck** of 10 ton capacity **and one tempo** of 3.5 ton capacity, for the loading/unloading purpose, in linear fashion ensuring not to create bottleneck.

(B) Unless one of these two vehicles is removed from

passage way around the cluster of godowns, second vehicle will not enter or park in the godown complex for the purpose of loading/unloading.

(C) Respondent No. 1 is directed to permit the Appellants to park one private vehicle (other than loading/unloading vehicles) within godown complex, however the Appellants are directed not to park such vehicle so as to cause nuisance / blockage to any other godown holder.

10. Necessary affidavits of undertaking as indicated above, shall be filed by the Appellants and their licensee within a period of one week from today.

11. With the aforesaid directions, this Appeal from Order and pending Interim Application is disposed of. This order will operate as ad-interim order, during pendency of the motion, which will be decided on its own merits without being influenced by observation made in this order. Rival contentions are kept open.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)