

AD- 22
Ct No.16
17.02.2025
(SSS)/TN

FMAT 175 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024

Poonam Mali
Vs.
Burrabazar Fee Parking
Co-operative Society Limited and Ors.

Mr. Ranajit Chatterjee,
Mr. Arajit Dey,
Mr. Nilratan Banerjee

....For the Appellant.

Mr. Abir Sarkar

...For the Respondent No. 1.

1. The delay in preferring the appeal is of about 12 days. The plea taken in the application for condonation of delay is that the petitioner had to suffer from physical injuries and mental trauma due to assault meted out by the men and agents of the defendant/respondent No. 1 with regard to a dispute regarding the parking space which is also the subject matter of the litigation.

2. Learned Counsel for the appellant places reliance on certain copies of medical documents which go on to indicate that there were several injuries on certain occasions on the person of the petitioner and other family members of the petitioner.

3. Learned Counsel for the principal defendant/respondent No. 1 controverts the allegation and submits that it will be evident from the annexures to the injunction application filed in connection with the present appeal that there are contradictory statements in the complaint lodged by the petitioner with the police. Insofar as it was alleged that one Dipak Sonkar committed an assault but thereafter some other persons have been mentioned as assailants in the FIR lodged in the context of the said complaint. That apart, from the medical report annexed at Page 23 of the injunction application, it is seen that no external injury like cut or abrasion was found on the body of the petitioner.

4. However, upon hearing learned Counsel for the parties, we find that the allegation in the complaint was not confined to assault made by Dipak Sonkar alone. It was alleged in the complaint that Dipak Sonkar had stopped the petitioner from collecting parking fees and discharging her duties whereas physical assault was perpetrated on the petitioner by musclemen sent by one Shyamal Manna.

5. Thus, there is no palpable discrepancy on the face of the complaint to give a complete go-by to the veracity of the complaint at this stage, particularly since criminal cases are pending on the basis thereof. That apart, the medical document relied on by the respondent No. 1 is not the sole document handed over by the petitioner.

From the documents, a bunch of which are handed over today by learned counsel for the appellant in court and kept on record, for which leave was craved in the application, we find that several injuries were also apparently suffered by the petitioner and other members of her family.

6. Thus, we find that a strong case of the petitioner having suffered from injuries, which prevented her from preferring the appeal in time, has been made out. Accordingly, without going into the merits of the allegations and counter allegations of criminal nature, which are sub judice before the concerned criminal court, we find that a case of condonation of the miniscule delay of 12 days has been made out.

7. Accordingly, CAN 1 of 2024 is allowed on contest, thereby condoning the delay in filing FMAT 175 of 2024.

8. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

9. In view of several questions of fact and law being involved, we admit the appeal and the appeal will be heard on the questions framed in the memorandum of appeal.

10. On consent of both sides, the appeal as well as the application are taken up for hearing together, since short points are involved in the appeal. As no substantial relief has been sought against the other respondents, service of notice of the appeal on them is dispensed with.

11. Since we have not invited affidavits, it is deemed that none of the allegations made in the injunction application are admitted by the respondent no.1, which is the principal defendant in the court below. As such, service of notice of appeal on the proforma defendants/respondent nos.2 to 6 is dispensed with.

12. The bone of contention between the parties is the right of the appellant, in the capacity of an agent authorised by the respondent no.1, to collect parking fees on the eastern side of Jogendra Kabiraj Row, Kolkata.

13. Learned counsel for the appellant argues that the learned Trial Judge, without assigning appropriate reasons, refused to grant ad interim injunction.

14. It is submitted that initially the husband of the appellant/petitioner was a parking fee collector under the respondent no.1 and thereafter on his demise, an authority letter was given on October 01, 2021 empowering the present appellant to collect such parking fees as a sub-agent under the respondent no.1, the latter being entrusted by the Kolkata Municipal Corporation to collect parking fees in the concerned area.

15. The grounds assigned by the learned Trial Judge were only that there is no urgency in the appeal and that other litigation is pending in the same court between the parties. With regard to the first ground, learned counsel relies on the annexures to the injunction application which go on to *prima facie* establish that the appellant

was severely assaulted and forced by the men and agents of the respondent no.1 to collect parking fees on the western side of the said road, which even the respondent no.1 is not authorised to do.

16. As such, it is alleged that the appellant/petitioner had to pay huge penalties to the Police.

17. Learned counsel for the respondent no.1 opposes the prayer and argues that the plaintiff/appellant has filed a parallel suit, which is still pending in the self-same trial court, where the plaintiff has claimed right to collect parking fees under the respondent no.1 in respect of the western side of Jogendra Kabiraj Row. As such, it is argued that the plaintiff is seeking to blow hot and cold in the same breath.

18. Furthermore, it is pointed out that there are discrepancies in the complaints lodged by the appellant.

19. Learned counsel appearing for the respondent no.1 denies the allegations made by the appellant and submits that the plaint as well as the injunction application, as framed, are not maintainable.

20. Upon hearing learned counsel for the parties, we find that the plaintiff has sought several reliefs in the plaint. The primary relief sought is a declaration that the plaintiff is a *bona fide* collecting agent under the defendant/respondent no.1 and continuing to run fee parking zone at Jogendra Kabiraj Row (eastern side). The second limb of the relief sought is a declaration that the

plaintiff is entitled to operate in such capacity within the local limits of the Posta Police Station and that the defendants and their men and agents are not entitled to create any disturbance thereto.

21. Although we have some reservation as to whether the second relief is maintainable in view of the bar under Section 41(a) of the Specific Relief Act, as the agreement/agency, by its very nature, seems to be determinable, we choose to desist from making any conclusive remarks in that regard, since it will be open to the trial court to enter into such issues.

22. However, the plaintiff's first relief sought in the suit regarding a declaration that she is a collecting agent and continuing to run fee parking zone is legitimate in view of such case being *prima facie* established by virtue of the annexure at page-18 of the present injunction application, which is an authority letter dated October 01, 2021 issued by the respondent no.1 empowering the plaintiff/appellant to be appointed as a car parking fees collector on a temporary basis under the respondent no.1 for collecting parking fees at Jogendra Kabiraj Row (east side).

23. Insofar as the prayer for injunction is concerned, both in the plaint as well as the temporary injunction application filed in the court below, there are two limbs to the same. As to the first limb, which seeks a restraint order on the defendant no.1 from interfering with the

peaceful possession of the plaintiff and/or dispossessing the plaintiff from the schedule suit property or any part thereof and/or transferring or alienating the same or any portion thereof to any intending stranger, we are of the opinion that the said relief is not maintainable, being incompatible with the frame of the suit which claims a right of the plaintiff/appellant merely in the capacity of an agent of the respondent no.1 to collect parking fees and does not seek any declaration regarding any immovable property or possession thereof as such. However, we also find that the second limb of the injunction prayer, which is in aid of the final relief sought in the suit regarding the declaration of the plaintiff/appellant's right to operate as a collecting agent under the defendant no.1, is in consonance with the frame of the suit, since the plaintiff also seeks a restraint order on the defendant no.1/respondent no.1 from disturbing the functioning of the plaintiff/petitioner as parking fee collector of the Kolkata Municipal Corporation regarding the parking zone on Jogendra Kabiraj Row (eastern side), Kolkata.

24. We find that a sufficient *prima facie* case has been made out by the plaintiff/appellant to go for trial in the suit as well as the injunction application insofar as the authority letter dated October 01, 2021 *prima facie* empowers the petitioner/appellant to collect parking fees, although on a temporary basis, in respect of the

eastern side of Jogendra Kabiraj Row, which is the subject-matter of the suit itself.

25. The learned Trial Judge, however, without adverting to such facts and documents, merely refused ad interim injunction on a cryptic premise, holding that there is no urgency for allowing the said *ex parte* order. However, in view of the alleged assault on the appellant and the allegation that the appellant is being forced to collect parking fees from the western side of the concerned road, in respect of which neither the respondent no.1 nor the appellant has any authority to collect parking fees, we find considerable urgency in the matter as well as that the factors of irreparable injury and balance of convenience and inconvenience operate in favour of grant of injunction.

26. As regards the pendency of a different suit by the appellant in the same breath, regarding the western side of the self-same road, the claim of the appellant regarding the western and eastern side in the same breath are not mutually destructive. However, since the appellant relies on the self-same set of documents to claim such reliefs, we put a question to the learned Advocate for the appellant as to how the two suits could be maintained together.

27. At this, learned counsel for the appellant before this court, on instructions from his client, submits categorically that his client, the appellant herein,

undertakes to abandon/withdraw the prior suit in respect of the western side of Jogendra Kabiraj Row.

28. Thus, it is expected that appropriate steps in that regard shall be taken by the appellant at the earliest.

29. Insofar as the present injunction is concerned, the impugned order is devoid of reasons. That apart, the learned Trial Judge failed to take into consideration the extreme urgency involved as well as the *prima facie* case made out by the appellant insofar as the present right of the appellant to collect parking fees from the eastern side of the said road is concerned.

30. Accordingly, FMAT 175 of 2024 is allowed, thereby setting aside the impugned order and granting ad interim injunction restraining the respondent no.1 and its men and agents from disturbing the collection of parking fees by the appellant on the eastern side of Jogendra Kabiraj Row till disposal of the injunction application in the court below.

31. It is made clear that the above injunction is granted subject to the condition that the appellant shall go on paying the remuneration, as fixed by agreement between the respondent no.1 and the appellant, to the respondent no.1 for collection of parking fees from the eastern side of Jogendra Kabiraj Row.

32. In default of such payment, it will be open to the respondent no.1 to apply for vacating the interim order before the learned trial court.

33. The respondent no.1 shall file its written objection to the injunction application in the court below, if not already filed, within three weeks from date.

34. It is expected that the learned Trial Judge shall endeavour to dispose of the injunction application as expeditiously as the business of the said court permits.

35. It is made clear that this court has not entered into the merits of the case conclusively and has been dealing with only the veracity of the impugned order in respect of refusal of ad interim injunction and it will be open to the learned Trial Judge, at the final hearing of the injunction application as well as all subsequent stages of the suit, to decide all issues on merits independently without being influenced by any of the observations made above.

36. Consequentially, CAN 2 of 2024 is also disposed of in the light of the above observations.

37. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)