



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14894 OF 2024**

Noel Reginold Pereira ... Petitioner
versus
Sampson Morris Ghonsalvis and Ors. ... Respondents

Ms. Pallavi N. Dabholkar, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 5 MARCH 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 5 April 2024 passed by the learned District Judge, Vasai in Misc. Civil Appeal No.1 of 2024 whereby the appeal was partly allowed by modifying the order of interim mandatory injunction granted by the trial Court by an order dated 10 January 2024 on an application (Exhibit 57) directing the Petitioner to keep open the gate at all times for an uninterrupted access to the Plaintiff to approach the suit property. The Petitioner was also restrained from locking the said gate.
3. Respondent Nos.1 and 2 instituted the suit against the Petitioner and Respondent No.3 seeking a declaration that the Defendants have constructed a wall illegally and an order to demolish the gate and wall and to provide access as mentioned in the layout of the Conveyance Deed dated 7 September 2006 and direct the Defendants to provide peaceful and

uninterrupted access to the suit property in accordance with the Conveyance Deed.

4. In the said suit, Respondent Nos.1 and 2 filed an application for interim mandatory injunction asserting, inter alia, that the Petitioner – Respondent No.3 had blocked the access of the Plaintiff to the suit property they purchased under the Conveyance Deed executed by Respondent Nos.1 and 2 on 7 September 2006.

5. By the impugned order, the learned Civil Judge, was persuaded to allow the application observing, inter alia, that a strong prima facie case was made out. The Defendants had conceded in the written statement that the Plaintiff was using the pathway since the year 2017 and that substantiated the claim of the Plaintiff that a wall was constructed by the Defendants in the year 2017. Learned trial Court found the balance of convenience in favour of the Plaintiff as the Plaintiff would have been left without access to the suit property. The trial Court, thus, instead of demolition of the wall, directed Defendant No.1 to keep open the gate at all times for uninterrupted access to the Plaintiff to approach the suit property. Under clause (3) of the said order dated 10 January 2024, the trial Court directed the Defendant No.1 to comply with the said order within a period of 15 days and, in the event of default, granted liberty to the Plaintiff to open a new gate.

6. In the appeal, the learned District Judge found no error with the order of

grant of interim mandatory injunction. However, the learned District Judge was of the view that the Plaintiff could not have been granted liberty to execute the order in the event of default on the part of the Defendant No.1. In case of breach, the Plaintiff was at liberty to execute the said order of interim mandatory injunction. Accordingly, clause 3 of the order passed by the trial Court was set aside.

7. Ms. Dabholkar, learned Counsel for the Petitioner, submitted that the trial Court as well as the learned District Judge fell in error in rushing to pass the order of interim mandatory injunction, without a case having been made out. First and foremost, the legality and validity of the Conveyance Deed by the Defendants in favour of the Plaintiff has been challenged in the written statement and a counter claim has also been filed seeking reliefs qua the said instrument. Secondly, there is material to show that the Plaintiff had alternate access. Thirdly, without appointing a court Commissioner and ascertaining the situation at site, the trial Court could not have granted mandatory injunction at interim stage. Ms. Dabholkar placed reliance on the decisions of the Supreme Court in the cases of Metro Marins and Anr. V/s. Bonus Watch Co. Pvt. Ltd. and Ors.¹, Bank of Maharashtra V/s. Race Shipping and Transport Co. Pvt. Ltd. and Anr.² and Dorab Cawasji Warden V/s. Coomi Sorab Warden and Ors.³, wherein the Supreme Court has postulated the

1 AIR 2005 SC 1444

2 AIR 1995 SC 1368

3 1990 SCR (1) 332

principles which should weigh with the Court in granting mandatory injunction at interim stage.

8. The decision of the Supreme Court in the case of Dorab Cawasji Warden (supra), illuminatingly postulates the principles which govern the grant of mandatory injunction at an interim stage. The observations of the Supreme Court in paragraph No.14 are instructive, and, hence, extracted below :

“14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy – until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are :

- (1) The Plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.”

9. In the light of the aforesaid enunciation of law, it has to be seen whether

the Courts below have committed any error in the exercise of discretion. Indisputably, the claim of the Plaintiff rests in the Conveyance Deed executed by the Defendants, wherein the said access has been provided. It was the contention on behalf of the Defendants that the legality and validity of the said conveyance has been challenged. The Courts below were justified in taking a view that the legality and validity of the Conveyance was a matter for adjudication at the trial. Secondly, the trial Court has recorded a finding that in the written statement, the Defendants have conceded that the Plaintiff was using the pathway till the year 2017. It is, in that context, the Courts below have returned a finding that a strong prima facie case has been made out. The circumstances of the case are such that if the Plaintiffs are restrained from having access to their property, which has been provided in the Deed of Conveyance, they would suffer irreparable loss. In these circumstances, the courts below have found the elements of balance of convenience and irreparable loss in favour of the Plaintiffs.

10. In any event, the order passed by the courts below is balanced one, in the sense that, the Defendant No.1 has been directed to keep open the gate for access of the Plaintiff to the suit property. The nature of the order is not such that it partakes the character of final relief at an interim stage. Therefore, this Court does not find any justifiable reason to interfere with the discretionary order passed by the Courts below.

11. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)