



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1196/2022

Sau. Aruna w/o Vinod Deshpande and another
...Versus...
Kisana s/o Fakiraji Dudhakaware and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. D.L. Dharmadhikari and Mr. K.J. Topale, Advocates for petitioners
Mr. O.W. Gupta, Advocate for respondents

CORAM : SACHIN S. DESHMUKH, J.
DATE : 29/07/2025

1. Heard learned counsel for the litigating sides.
2. The petitioners, who are the original plaintiffs in Regular Civil Suit No.28/2019 filed a civil suit for permanent injunction. The trial Court after considering the entitlement of the petitioners for grant of injunction, same was granted. It is informed by the learned Counsel for the respondents/defendants that the said order is subject matter of challenge in the Misc. Civil Appeal before the District Court. However, the order of injunction granted by trial Court is still in force. Although the order of injunction is in operation, still acting with impunity, the present respondents have forcibly dispossessed the petitioners herein causing deliberate breach of the order of injunction, which is operating against respondents. The response of the respondents before the Trial Court, particularly paragraph No.3, sufficiently establishes the conduct of the respondents in view of their statement that “it

is submitted that the plaintiff no.1 was and is never in possession as per theory of plaintiff.” Paragraph No.3 of the response filed by the respondents before the Trial Court reads as under :-

“3. As per para no.1 – The allegations in this para are specifically denied. It is denied that the defendant has taken forcible possession of S. No.51/1. It is submitted that the plaintiff no.1 was and is never in possession as per theory of plaintiff. The order of Hon’ble Court is challenged by defendants. And is yet to be decided by Appellate Court. It is specifically denied that there is any type of alleged breach by defendants at any time. The plaintiffs are the senior advocate and also in practice. For this count, the plaintiffs can understand what is the weight to appeal against the said order of dated 21-12-2020. The temporary injunction application is not finally decided at this stage. The plaintiffs are trying to take disadvantage of order on Exh.5. It is submitted that the defendants are in possession from the time of Registered sale deed of dated 3-2-1993 which was sold out by the hands of mother of plaintiff no.1 S. No.56, Area 0.64. It is submitted that the Field of plaintiff no.1 and defendant, in between them there is canal of Wardha Upper project towards East side of defendants field. There is no question arise at any time for taking alleged forcible possession of subject matter. The plaintiffs suit is out of limitation. The rest of the allegations are not specifically admitted, hence denied.”

3. Ignoring the fact that the order of injunction is in operation, still the respondents acting with impunity breached the order of injunction and dispossessed the petitioners in utter disregard to the order of injunction. Faced with the difficulties, the petitioners herein approached the Court below requesting to restore the possession. Although the application was presented under Section 144 r/w 151 of the Code of Civil Procedure, however, the learned Trial Court applying the provisions Section 144 of the Code of Civil Procedure has

turned down the application by adopting technical approach rather than ensuring Court's order are respected and implemented.

4. In support of the same, learned Counsel for the petitioners relied upon the decisions in the case of *Sri Anil Kumar Dey Vs. Sri Bidhu Bhusan Das and others*, 2005 SCC OnLine Cal 108; *Meera Chauhan Vs. Harsh Bishnoi and another*, (2007) 12 SCC 201 and *Gyan Chand and another Vs. Satpal and others*, 2014 SCC OnLine ALL 3042. Admittedly, the respondents herein have breached the order of injunction which is in vogue.

5. Therefore, merely relying upon the technicality, such as referring provisions of Section 144 of the Code of Civil Procedure would not really permit defiance by the respondents with order of injunction, trial Court ought not to have rejected the application presented by the petitioners. The Apex Court in the case of *Meera Chauhan Vs. Harsh Bishnoi and another* (2007) 12 SCC 201, in paragraph Nos. 14, 15, 16, 18 and 19 has observed thus:-

“14. Before we deal with this question of possession as to who was in actual possession at the relevant point of time it would be appropriate to note that the order for restoration was passed by the trial court on an application under Section 151 of the Code of Civil Procedure. A question may arise whether such an application can be entertained by the court when specific provision under Order 39 of the Code of Civil Procedure has been made for grant of injunction in the form of mandatory order in the exercise of power under the said Order. Therefore to decide this aspect of the matter, let us consider the scope of Section 151 of the Code of Civil

Procedure. Section 151 reads as under :-

"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."

15. *On a bare perusal of Section 151 of the Code of Civil Procedure, it cannot be said to be in dispute that Section 151 confers wide powers on 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.*

16. *The power of Section 151 to pass order of injunction in the form of restoration of possession of the code is not res integra now.*

18. *At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.*

19. *It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the court can order restoration of possession to the party wronged."*

6. Thus, in the event of breach of order of injunction Court exercising inherent power, has to restore possession. Resultantly, the application presented by the petitioners, is allowed. It is made clear that so far as the request for grant of

police aid is concerned, the Trial Court is expected to consider the same in light of the order of injunction which is in operation. Hence, the impugned order is quashed and set aside. The writ petition is allowed in terms of prayer clause (a). No order as to costs.

(SACHIN S. DESHMUKH, J.)

Wadkar