

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13203 OF 2025

Suryakant Rajaram Jadhav

VERSUS

Shivaji Parshuram Jadhav

Mr. Dilip Bodake a/w Ms. Sujata B. Lohar, Mr. Sharad T. Bhosale
Advocate for Petitioner

Mr. Prashant N. Patil a/w Mr. Gaurav Kalekar for respondent

CORAM : SACHIN S. DESHMUKH, J.

DATE : 18th APRIL, 2026.

P. C. :

1. The Petitioner who is the original Plaintiff is seeking removal of encroachment and further injunction against the Defendant on raising construction. The Trial Court, after considering the fact that the Petitioner has failed to make out triple test i.e. *prima facie* case, balance of convenience and irreparable loss, has declined to exercise the discretion and eventually rejected the application seeking temporary injunction. The said order is endorsed by the First Appellate Court.

2. Mr. Bodake, learned counsel for the Petitioner submitted that the Defendant is raising illegal construction without there being a permission and in the process has committed encroachment. Therefore, the Petitioner has satisfied the triple test i.e. *prima facie*

case, balance of convenience and irreparable loss, still the Courts below grossly erred in not exercising the discretion in favour of the Petitioner. As such, interference by this Court is warranted so as to ensure that the Defendant does not raise the construction in an illegal manner.

3. *Per contra*, learned counsel for Respondent supported the order and prayed for dismissal of the Petition.

4. Having heard the submissions of litigating sides and perusal of material on record, it appears that the Suit is presented with an assertion that the Defendant has committed an encroachment. In absence of factum of encroachment being established, it cannot be regarded that the Petitioner has made out a *prima facie* case.

5. The principles governing the grant of injunctions are dealt in detail in the verdict of **Dalpat Kumar And Anr. vs Prahlad Singh And Ors. AIR1993 SC 276 B**, wherein the apex Court has held as follows:

“4. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is

likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.”.

“5...Satisfaction that there is a *prima facie* case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

6. Thus, applying the aforesaid principles of triple test i.e. *prima facie* case, balance of convenience and the irreparable loss, the trial Court has declined to exercise the discretion in favour of the Plaintiff while rejecting the application for injunction.

7. It is a settled principle of law that where the Trial Court and the Courts below have concurrently declined to exercise discretion

in favour of the Plaintiff, this Court would be cautious to interfere, particularly in view of the judgment of the *Hon'ble Apex Court in Wander Limited And Another vs. Antox India P. Ltd. 1990 (Supp) SCC 727*, in particular, para 13 and 14 thereon, which reads as under :

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v.*

Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

8. In view of the aforesaid precedents and upon perusal of the orders under challenge, it is clear that there are concurrent findings in favour of the respondents/Defendant while refusing to exercise the discretion in favour of the Plaintiff and the same is endorsed by the first appellate Court. Thus, no exceptional circumstance or irreparable loss is demonstrated even before this Court by the Petitioners to warrant interference in the concurrent findings.

9. Resultantly, the Petition sans merits. Accordingly, Writ Petition stands dismissed.

10. At this stage, Mr. Bodake, learned counsel for the petitioner makes a request to continue the interim relief. In view of the aforesaid finding, the request does not deserve to be acceded and the prayer stands rejected.

[SACHIN S. DESHMUKH, J.]

IRESH
MASHAL

Digitally signed by
IRESH MASHAL
Date: 2026.04.20
18:29:11 +0530