

R.C. S. No. 78/2013
Vijay vs G.P. Sakegaon**ORDER BELOW EXH. 6**
(29th August 2015)

This is an application for temporary injunction restraining defendant no.1 from stopping plaintiff's flour mill by issuing objection against the plaintiff's business of flour mill.

2. In short the plaintiffs' case is that plaintiff runs flour mill in G.P. House no.225 belonging to his grand father Dharma Kalu Patil. The defendant is tenant in the adjoining House no.256 belonging to Gangaram Bhavdu Patil. The plaintiff has obtained electricity supply for his flour mill in 2003 by obtaining NOC from gram panchayat, Sakegaon. On 5.11.2012, a dispute arose between plaintiff and defendant on the count of dust/husk of flour mill and offence was registered at the instance of the plaintiff. Since then the defendant no.2 is making complaint to various authorities to stop running of the flour mill of plaintiff. The defendant has passed a resolution that the NOC granted in 2003 is canceled by it and send such letter to M.S.E.B. office. In pursuance of the said letter the M.S.E.B. intimated plaintiff that electricity supply of plaintiff will be cut down in seven days. Therefore the plaintiff filed this application for restraining defendant no.1 from stopping plaintiff's flour mill by issuing objection against the plaintiff's business of flour mill.

3. The defendant no.1 resisted the application by filing his

written statement cum reply at exh. 15. He contended that plaintiff was given electricity supply subject to certain conditions and now inconvenience is caused to public. Therefore gram panchayat has canceled the NOC granted to plaintiff. Defendant no.2 has resisted application by filing his reply at Exh.22. He contended that he is tenant in the house no.256 and 259 adjacent to house of plaintiff. Due to flour mill of plaintiff, his family members are suffering asthma, irregular sleep, mental harassment, blood pressure and they cannot pursue their daily life. Therefore they have to take regular medical treatment. So he applied to gram panchayat and it has rightly canceled the NOC granted to plaintiff. Both defendants contended that the plaintiff has no prima facie case, balance of convenience and no irreparable loss would be caused to plaintiff in comparison to their loss of health. They further stated that the plaintiff has filed this suit in order to harass them and therefore prayed for rejection of the application.

4. From the rival submission of the parties, following points arrived at for my consideration to which I have recorded finding along with my reasons.

Point	Findings
1 Whether the plaintiff has made out a prima facie case ?	Negative
2 Whether the balance of convenience lies in favour of the plaintiff?	Negative
3 Whether the plaintiff will suffer and irreparable loss if injunction is refused ?	Negative
4 What order	As per final order

REASONS**AS TO POINT NO. 1 TO 3 :-**

5. In order to avoid repetition of evidence I have taken these points for discussion together. The advocate of plaintiff has submitted that plaintiff has started the business of flour mill in his grand father's house after obtaining NOC of the concerned authorities he has received electric connection and defendant cannot arbitrarily cancel NOC. Plaintiff has the only source of income from the flour mill and if electric connection is cut off he may sustain irreparable loss. He further contended that plaintiff has prima facie case and balance of convenience also lies in favour of the plaintiff. Hence he prayed for temporary injunction. In support of the application he has filed many documents.

6. Advocates of defendant no.1 has submitted that, NOC was granted subject to certain conditions and now the plaintiff has breached the conditions and therefore it has issued cancellation of NOC to M.S.E.B. Advocate of defendant no.2 has submitted that his family members are facing health problem due to running of flour mill. Hence he prayed for rejection of application.

7. Perused the application and heard both parties. It is not disputed that the defendant no.1 has passed resolution of cancellation of NOC granted in 2003 and sent information of it to M.S.E.B. office. Therefore the fact of cancellation of NOC is completed.

8. As per provision u/O.39 (1).Cases in which temporary injunction may be granted.- Where in any suit it is proved by affidavit or

otherwise-

(a)that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree, or

(b)that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit ;or until further orders.

9. On the part of the defendant no.1 there is no impending danger to property of the plaintiff. The act of passing resolution and intimating M.S.E.B. is already done. The injunction application cannot be used to undo the acts already done. So the application has become infructuous. Hence considering the facts and circumstances of the case the plaintiff has failed to prove he has prima facie case and irreparable loss would be caused to him if temporary injunction is refused to him. The balance of convenience also does not tilt in his favour. In my view, the application is liable to be rejected. Hence following order :-

ORDER

1.. Application is hereby rejected.

2.. Costs in cause.

Date : 29/08/2015

(P. B. Warade)
2nd Jt. Civil Judge(Jr.Dn.)
Bhusawal.