

मेवादा येथील म. सिव्हील जज जु.डी लाईव
पांचे जायलयात.

वे.म.न.

३६२/२०२५

वादी

बनारस नाकापट्ट कृषि

वतिवादी

शाबुसाहेब विनायक शिंदे

Order

Seen & filed

या काही वादी तसे दाखल केलेल्या पुढील
दस्तावेज प्रमाण खर्च प्रकरणी वादी वि.ने.
पुढे चौकशी काही दस्तावेज केले दाखल

2nd Jt.CJJD Newasa

करा झाले.

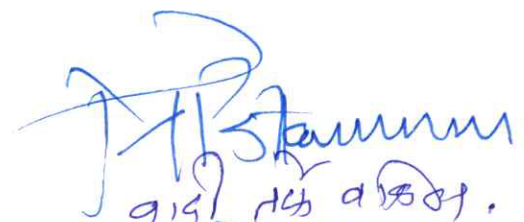
① २०११(०) ALL M.R पेज नं. १५

येणे प्रमाण केले दाखल

अज

मेवादा

११.२३/२/२०२६


वादी तसे वक्ति.
११/२/२०२६

2011(6) ALL MR 15

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
(AURANGABAD BENCH)

S.V. GANGAPURWALA, J.

Baban Anantrao Naik
Vs.
Sau. Pramila Uttamrao Yenare & Anr.

Appeal from Order No. 31 of 2010
12th October, 2010.

Mr. N.V. GAWARE, Advocate for the appellant.
Mr. V.D. HON, Advocate for Respondent Nos. 1
& 2.

Civil P.C. (1908), O.39 Rr.1, 2 and S.151 – Application for temporary injunction – Factum of possession – At time of determination of an application for temporary injunction, the Factum of possession would only be the relevant factor – Whether the possession is lawful possession or not would not be the subject matter of enquiry.

At the time of determination of an application for temporary injunction, the factum of possession would only be the relevant factor. Whether the possession is lawful possession or not would not be the subject matter of enquiry. Whether the amount of consideration has been paid or not, whether the plaintiff was ready and willing to perform his part of contract or not, would all be the issues which can be decided only after the parties adduce evidence. It would be premature at this stage to give findings on the said issues. 2004 (1) SCC 769 – Rel. on. (Para 8)

CASES CITED :

Rame Gowda (dead) by L.Rs. Vs. M. Varadappa Naidu (dead) by L.Rs. and another, 2004(1) SCC 769 9

PARA

JUDGMENT :- This Court vide its Order dated 02/03/2010 had ordered issuance of notice to the respondents with an indication that the Appeal would be finally heard at the stage of admission. With the consent of the learned counsel for the parties, the Appeal is heard finally at the stage of admission.

2. Heard Mr. N.V. Gaware, the learned counsel for the appellant and Mr. V.D. Hon, the learned counsel for the respondents.

3. The present appellant has instituted Special Civil Suit No. 47 of 2009 for specific performance of contract and for declaration that the sale deed dated 05/12/2008 executed by defendant no. 1 in favour of defendant no. 2 is illegal, null and void and also for perpetual injunction. Along with the said Suit, the present appellant also filed an application for temporary injunction (Exh. 5) restraining the respondents from interfering with the possession of the appellant in the suit premises.

4. In pursuance to the suit summons and the notices, the present respondents appeared and contested the Suit and the application (Exh. 5) by filing Written Statement. The Civil Judge (Sr. Division), Ahmednagar vide Order dated 11/01/2010, rejected the temporary injunction application. The appellant has assailed the said order in the present Appeal from Order.

5. Mr. Gaware, the learned counsel for the appellant contended that at the stage of determination of an application for temporary injunction, only the factum of possession is relevant. The Court has diledcted itself on the validity of the transactions about the payment of consideration amount. All these factors can be proved only after adducing evidence and at the time of the final trial. According to him, the trial Judge has not considered the factum of possession at all. On the contrary, in para no. 5 of its order, the trial

Court has accepted that the plaintiff is doing the business of automobiles in the suit shop. But, on the premise that the plaintiff has failed to prove his lawful possession, has negated the relief of injunction.

6. Per contra, Mr. Hon, the learned counsel for the respondents/original defendants contended that the trial Court has rightly considered all the aspects. The plaintiff has not approached the Court with clean hands and the party who has not approached the Court with clean hands is not entitled for equitable relief of injunction. According to him, the plaintiff is not in possession of the suit property and is not entitled for injunction. According to him, respondent no. 2 is bonafide purchaser for the valuable consideration of the suit property and is legitimately in possession of the same.

7. With the assistance of the learned counsel, I have gone through the Judgment and the pleadings of the parties and the documents on record.

8. At the time of determination of an application for temporary injunction, the factum of possession would only be the relevant factor. Whether the possession is lawful possession or not would not be the subject matter of enquiry. Whether the amount of consideration has been paid or not, whether the plaintiff was ready and willing to perform his part of contract or not, would all be the issues which can be decided only after the parties adduce evidence. It would be premature at this stage to give findings on the said issues.

9. From the perusal of the Judgment of the lower Court, it is manifest that the trial Judge has referred to the photographs filed on record and has also observed that the plaintiff runs business of automobiles therein. But, has further observed that plaintiff has failed to prove that he is in lawful possession. Even a

trespasser in settled possession is entitled for injunction as has been held by the Apex Court in the case of **Rame Gowda (dead) by L.Rs. V/s M. Varadappa Naidu (dead) by L.Rs. and another** reported in **2004 (1) Supreme Court Cases – 769**. Further, even the defendants had come forward with the case that the plaintiff was in possession of the suit property on the basis of Leave and Licence agreement of 7 years. Once it is admitted that plaintiff was inducted in possession of the suit property, then the presumption would be in favour of the continuity of possession unless the defendants pleads and proves that the plaintiff was dispossessed. In the present case, no such prima facie evidence appears on record. More over, taking into account the observations of the Civil Judge (Sr. Division), Ahmednagar, who has held that the plaintiff runs the business of automobiles in the suit premises, then the necessary corollary would be that he is in possession. Whether the possession is lawful or not would be decided after the evidence is led. Prima facie, as such, it appears that the plaintiff is in possession of the suit property.

10. In light of the same, the impugned order is quashed and set aside and the parties are directed to maintain statusquo as this Court vide its order dated 02/03/2010 had directed the parties to maintain statusquo and said order is in force till today. As such, the same order would continue till the disposal of the Suit.

11. The trial Court shall make an endeavour to decide the Suit as early as possible and preferably up to 30/09/2011.

12. The present Appeal from Order is accordingly disposed off with no order as to costs.

Ordered accordingly.

2011(6) ALL MR 17

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

R. M. SAVANT J.

Hindustan Unilever Ltd.
Vs.
Hindustan Lever Kamgar Sangh

Writ Petition No. 2157 of 2011.
25th August, 2011.

Shri J.P. CAMA, Senior Counsel with Shri H.V. THAKUR, for the petitioner.

Shri S.D. THAKUR, Counsel for the resp. no.1.

Shri A.D. SONAK, Learned Asst. Govt. Pleader for respondent No. 2.

(A) Bombay Industrial Relations Act, (1946) S.73-A – Reference under – Application for interim relief – Conclusion reached by Appellate Tribunal that there is no bar for entertaining an application for interim relief in a Reference under S.73-A of B.I.R. Act, held, cannot be faulted with. I L.L.J. 1966,727 Gujarat – Rel. on. (Para 9(i))

(B) Bombay Industrial Relations Act, (1946) S.119-D – Demand for wage increase – Industry-cum-region principle – It is not an inflexible rule as the ultimate objective is to give a living wage to the workmen – Held, there have been cases when comparisons have been drawn with industry situated outside the region as also not involved in similar lines of business.

1986 I L.L.J. 520 SC Rel. on. (Para 9(iii))

CASES CITED :

PARA
French Motor Car Company Ltd. Vs. Their Workman, 1962 II L.L.J. 744 S.C. 6, 7(ii), 9(iii), 9(viii)
Shivraj Fine Arts Litho Works & Ors. Vs. The State of Industrial Court, Nagpur, AIR 1978 SC 1113 7(iii), 9(viii)

Ahmedabad Millowners' Association etc. Vs. The Textile Labour Association., AIR 1966 SC 497 7(iii)

Mukand Ltd. Vs. Mukand Kamgar Union Kurla & Anr., 2000 I CLR 694 7(iv)

Concept Pharmaceuticals Ltd., Aurangabad Vs. Concept Pharmaceuticals Kamgar Sanghatana, 2005 II CLR 337 7(iv)

The Management of Shri Chalthan Vibhag Khan Udyog Sahakari Mandli Ltd. Vs. G.S. Barot and another, AIR 1980 SC 31 7(iv)

Workmen of Orient Paper Mills Ltd. Vs. Orient Paper Mills Ltd., 1969 II LLJ 398 (SC) 8(v)

Tata Chemical Ltd Vs. Workmen, 1978 II LLJ 22 8(v), 9(iii)

Hindustan Lever Ltd. Vs. B.N. Dongre & ors., AIR 1995 SC 817 8(vi)

Ahmedabad Miscellaneous Industrial Worker's Union Vs. Ahmedabad Electricity company Ltd., I L.L.J. 1966, 727 Gujrat 9(i)

The Monthly rated workmen of Indian Hume Pipe Company Ltd. Vs. Indian Hume Pipe Company Ltd., Bombay, 1986 I LLJ 520 SC 9(iii)

JUDGMENT :- Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

2. The above petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 15/04/2011 passed by the Industrial Court, Akola Bench, Akola ("Tribunal" for short), by which order the application Exhibit-9-B as amended by application Exhibit-25 was allowed and the respondent Company was directed to pay an amount of Rs.3,500/- per month as an interim relief to the TO, T1, T2, T3, T4 & T5 grade of employees with effect from 01/06/2008 till the decision of the Reference. The Industrial Court also directed that the arrears of the interim relief with effect from 01/06/2008 to 31/03/2011 shall be paid by the respondent Company in