

Common Order Below Ex.28 & 29.
(Passed on 05/10/2018)

The sum and substance of both applications are same. Perused both applications and common say below Ex. 38. So I first consider the application under Order 26 Rule 9 of Code of Civil Procedure (Hereinafter the C.P.C).

2. Advocate for the defendant Shri. B.K.Gandhi submitted that the defendant has also filed an application under section 29 of Maharashtra Rent Control Act, (in short, hereinafter “the Act”) for removal of obstructions to clear the passage, which is the facility available for the defendant and the customers and devotees visiting the temple. He submitted that the plaintiffs-sansthan has installed barricades to compel the customers for not visiting the shop premises of the defendant. In fact, the livelihood of the defendant is dependent upon the visit of devotees to the shop. The passage is completely blocked by the plaintiffs-sansthan by erecting barricades and appointing sevadhari prohibiting the devotees to enter from the passage proceeding towards the shop and thereafter to the temple. He submitted that the main gate is already closed long back. On the northern side, two gates are created. One for entry and one for exit. For exit of devotees, already an extremely eastern side gate is open, so that the devotees shall not have any access towards the shop. He submitted that from the entry gate, the devotees are obstructed to proceed from the passage and from the back side of the shop, which is three feet lane in between the rear wall of the complex and the compound wall. The

plaintiffs-sansthan has created the way so that the devotees can proceed towards the temple without having any passage to the shop of the defendant. Therefore, he submitted that to appoint the Court commissioner for the inspection of plaintiffs-sansthan premises.

3. Per contra, advocate for plaintiffs-sansthan strongly opposed to all the contentions which have raised by advocate for the defendant. He submitted that the Court commissioner cannot be appointed for the collection of evidence. He submitted that the grievance of the defendant is not in respect of the installation of barricades. But for his own income from the shop premises. He submitted that the installation of barricades is completely lies within the discretion of plaintiffs-sansthan. The defendant-tenant has no right to interfere into the internal administration of the plaintiffs-sansthan. The defendant is only concern of his profit and not the safety of the devotees. He argued that the plaintiffs-sansthan has made an arrangement of one way traffic of entrance and exit for the devotees in the interest of the safety and convenience. And this is required to avoid the incidents like stampede, theft, injury to the property and person of the devotees. Therefore, the two gates situated at north-west and north-east of the temple have been opened by this plaintiffs-sansthan. The gate from north-west is open for the entry and north-eastern gate is open for exit. The only reason for fixation of the divider is to avoid the crossing of incoming and outgoing devotees and to avoid the incidents arising out of such uncontrolled flow of devotees. He submitted that there is no need to appoint the Court commissioner.

4. I consider submissions of both advocates. To decide this application firstly, I wish to consider the provisions of O.26 R.9 of the

C.P.C., which states as -

9. *Commissions to make local investigation.*

In any suit, in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property or the amount of any mesne profit or damages or annual net profits, the Court may issue a commission to such a person as it thinks fit directing him to make such a investigation and to report thereon to the court.

Provided that, where the State Government has made rules as to the persons to whom such a commission shall be issued, the court shall be bound by such rules.

5. As per O.26 R.9 of the C.P.C., the Court has indeed power to appoint commissioner for the purpose of elucidating any matter in dispute or ascertaining the market value or amount of mesne profit or damages. Now, the grievance of the defendant is that the plaintiffs-sansthan has created barricades and stopped the flow of devotees. According to the defendant, this leads to starvation. Now, in the present matter, the defendant has relied upon the map for showing the new arrangement made by plaintiffs-sansthan to approach for darshan of Lord Shri. Gajanan Maharaj. Further, the plaintiffs-sansthan has also filed a map which has been approved by Hon'ble Bombay High Court in Writ Petition No. 5856/2007. It has indeed argued on behalf of the plaintiffs that Hon'ble Bombay High Court has approved the map of proposed developments in Gajanan Maharaj Temple. Further, it has been directed by Hon'ble High Court that no sub-ordinate Court shall entertain any litigation with respect to the subject matter, which is pending before this

Court. I consider submissions of both advocates.

6. Here, the present application is in respect of appointment Court commissioner to make the inspection of plaintiffs-sansthan premises to bring the exact position of the premises. But let me mention here that the plaintiffs-sansthan has not denied the arrangement made by them in premises. At this point, it is important to note that recently the incidents of stampede are increasing in temples. The large number of devotees are coming to Shegaon to offer prayer and take blessings from Lord Shri. Gajanan Maharaj. Now the Shegaon Town has been developed under the scheme of Shegaon Vikas Arakhada, which is completely monitored by all the stakeholders of the Govt. of Maharashtra. The only purpose is to give a new model to the Shegaon town and to provide more facilities to the devotees coming to the Shegaon.

7. So far as the internal administration of the plaintiffs-sansthan is concerned, needless to say that the trustees being the important persons of the plaintiffs-sansthan have all power to make any arrangement to control the flow of devotees. Indeed, they have power to make any arrangement for the safety and security of the devotees. It is a true fact that if the safety and security of the devotees is neglected, then possibility of occurrence of stampede cannot be ruled out. Being the trustees, the plaintiffs have their own choice to open or close any gate of the temple or to make arrangement to control the flow of devotees. Installing the barricades by closing the main gate and by opening other two gates is a matter of the discretion of the trust and if it is for the safety of the devotees, then no serious prejudice would be caused to the defendant. After all, safety of the devotees is an important factor, which cannot be

neglected at any cost.

8. Here in the present application, the defendant has himself brought the position of plaintiffs-sansthan premises by relying upon the map. No doubt, the plaintiffs-sansthan has not denied this fact. Thus, the situation of the plaintiffs-sansthan premises is on the record. Had it been a situation that the position had not brought by the defendant on the record, then there would be just and proper to appoint the Court commissioner to make the inspection. But here in the present matter, the defendant has himself brought the position of the plaintiffs-sansthan premises on the record. Further, in view of the judgment of *Sanjay Namdeo Khandare -vs- Sahebrao Kachru Khandare, 2000 C.J. (Bom) 708*, wherein Hon'ble Bombay High Court held that *the court commissioner cannot be appointed for collecting the evidence*. The ratio laid down in this case is applicable to the present case. Already the situation of the plaintiffs-sansthan premises is on the record. So no purpose would suffice by appointing the Court commissioner. Thus, I come to the conclusion that there is no necessity to appoint the Court commissioner to make the inspection of the plaintiffs-sansthan premises.

9. Now moving further to the contentions made in the application which has been filed under section 29 of Maharashtra Rent control Act, 1999. Advocate for defendant submitted that the defendant is running the business and earning the livelihood on the shop premises which is located in plaintiffs-sansthan. He submitted that the plaintiffs-sansthan has created obstructions by installing barricades to stop the devotees coming to the shop premises of the defendant. He submitted that the right to passage is an essential service as per section 29 of the Act. And

the plaintiffs-sansthan being the landlord be directed to remove the obstructions to have the enjoyment of the right of the passage, which is an essential service. He submitted that the defendant is deprived of the fundamental right to run the lawful business as guaranteed under Article 19 of the Constitution of India under the guise of security. He submitted that plaintiffs-sansthan is very powerful. They want the shop premises by hook or crook from the defendant. Therefore, the plaintiffs-sansthan has made every attempt to compel the defendant to close their shop premises and fled away from the plaintiffs-sansthan premises.

10. Per contra, advocate for the plaintiffs-sansthan have strongly opposed the contentions. He submitted that the defendant has made false allegations against the plaintiffs-sansthan. There is absolutely no obstruction to the devotees for approaching the shop occupied by the defendant. The application is malafidely filed. The entire crux of the application is to obtain the order under the garb of Section 29 of the Act. He submitted that the plaintiffs-sansthan has made the arrangements in plaintiffs-sansthan by the orders of the Charity Commissioner and other Govt. Departments in relation to safeguard the property of trust and life of devotees. He submitted that prior to this application, the same application has been filed by the defendant in Spl.C.S.No.29/2012 in Hon'ble C.J.S.D., Khamgaon, which came to be rejected. Further, the appeal against the said order has also dismissed by Hon'ble District Court, Khamgaon in Misc. Civil No. 14/2017. The defendant has concealed the said fact. The defendant and other occupants have filed the W.P No. 6363/2017 in Hon'ble Bombay High Court against the appeal. The plaintiffs have filed pursis below Ex.51 and informed to the Court that Writ Petition No.

6363/2017 has been disposed on 04/09/2018.

11. I consider submissions of both advocates. As per Section 29 of the Act, which puts the restrictions upon the landlord as to not to cut off or withhold the essential supply or service. For the purpose of this section, the essential supply or services includes supply of water, electricity, lights in passages, and on staircases, lifts and conservancy or sanitary services. To decide this application, I wish to consider the observations of Hon'ble C.J.S.D., in Spl.C.S.No.29/2012. In which the defendant has filed an application below Ex.94 along-with other tenants against the plaintiffs. Advocate for plaintiffs submitted that the point of essential supply as per Section 29 of the Act has been considered by Hon'ble C.J.S.D., Khamgaon. It has been observed that -

“ Learned advocate for plaintiffs submitted that more open space is available to the defendants to control crowd of devotees. The essential requirements of the plaintiffs are to be considered as they are the tenants of defendants/trust. Learned advocate for plaintiffs have drawn my attention to the provisions under Section 29 of Maharashtra Rent Control Act (for short “the Act”). Section 29 of the Act says that “landlord not to cut off or withhold essential supply or service”. For the purpose of this section essential supply or services includes supply of water, electricity, lights in passages and on staircases, lifts and conservancy or sanitary services. I am of the view that the provisions of tis section are not applicable when we are considering this particular injunction application. According to the plaintiffs, due to installation of barricades by the defendants, the access of the

devotees prevented to their shops. This cannot be said the essential requirement as contemplated under section 29 of the Act. Between the two shopping complex, there is no open space on which the barricades have been installed by the defendants in order to control the flow of devotees, and for the safety of devotees and temple such action is required. The point raised by the plaintiffs under Section 29 of the Act is not helpful in this case.”

12. Further, advocate for plaintiffs submitted that the said order has been challenged by the defendant in Misc. C.A. No.14/2017. The said appeal came to be dismissed. Hon'ble District Court, Khamgoan has observed that –

“ The learned trial court has rightly observed in the impugned order that judicial note can be taken of the fact that recently incidents of stampede are increasing in temples, where large number of devotees come to offer prayer and to take blessings. If the safety and security of devotees is neglected, then possibility of occurrence of stampede cannot be ruled out. Being the trustees of the temple, it is their choice to open or close any gate of the temple or to make the arrangement to control the flow of the devotees. Installing the barricades by closing the main gate and by opening other two gates for 13 entrance and exist, is the matter within the discretion of the trust and if it is for the safety of the public at large then grievance of appellants that they are suffering inconvenience has no substance. The safety of devotees or public at large in the temple premises is more important than the interest of appellants. The appellants cannot interfere in the internal administration of the respondent-trust. They cannot dictate their terms on the respondent

with regard to user of the temple premises. They cannot put the safety and security of the devotees at stake for their personal gain. Be that as it may, the respondents have justification for closure of the main entrance gate and putting barricades in the open space. Therefore, it cannot be said that the respondents have created the circumstances to evict the appellants from the suit shops. The documents available on record would show that the appellants are running their shops and the devotees are purchasing articles from them. Merely because some inconvenience is being caused to the appellants, that fact by itself is not sufficient to issue mandatory injunction as prayed for by the appellants.”

13. Advocate for plaintiffs submitted that the defendant and other occupants have filed the W.P No. 6363/2017 in Hon'ble Bombay High Court against the appeal. The plaintiffs have filed pursis below Ex.51 and informed to the Court that Writ Petition No. 6363/2017 has been disposed on 04/09/2018. Wherein, the Hon'ble Bombay High Court observed as –

i) *Shri C.S. Kaptan, learned senior counsel would submit that in view of the events and/or change in circumstances subsequent to the order impugned, the petitioners shall move an appropriate application seeking amendment of the suit plaint and would prefer a suitable application under O.39 R. 1 & 2 of C.P.C.*

ii) *The petitioners are at liberty to prefer such an application and claim such a relief as is permissible and/or available in law and needless to say such an application shall be decided by the trial court on its own merit.*

iii) *With these observations, the petition is disposed of accordingly.*

14. Here in the present application, the defendant wants to direct the plaintiffs to remove the obstructions. According to him, the right of passage which is an essential service has been cut of by the plaintiffs. On the bare reading of Section 29 of the Act, which clearly shows that the right to passage as alleged by the defendant is not coming under the purview of said section. The installation of barricades by the plaintiffs which prevented the access of devotees to the shop premises of the defendant, is cannot be said to be the essential requirement as per Section 29 of the Act. As I have already discussed supra, that the plaintiffs-sansthan has every power to make the arrangement in the plaintiffs-sansthan premises to control the flow of devotees. And for the safety of the devotees, the plaintiffs-sansthan has made such arrangement in the premises. It is the choice of the plaintiffs-sansthan to open or close the gates. It is their choice to install or re-install the barricades in the plaintiffs-sansthan premises. They have entrusted with the duty to safeguard the devotees or public at large. So in this regard, the defendant cannot interfere in the internal administration of the trust. The defendant cannot impose his terms on the plaintiffs-sansthan.

15. Further, the most important thing is right of passage as alleged by the defendant cannot come under the parameter of Section 29 of the Act. Further, the Court is not empowered to interfere in the internal administration of the trust. So, it would not be proper to exercise the power under section 29 of the Act and direct the plaintiff to remove all the obstructions which has created by installation of barricades. Thus, I do not deem fit to exercise the power under section 29 of the Act. Further, I must mention here that the aspect of the essential services has been

decided upto Hon'ble High Court. In which the Hon'ble High Court has directed to the defendant and other occupants to file the appropriate application in the trial court. Furthermore, the Hon'ble High Court has approved the proposed map in respect of the development of plaintiffs-sansthan premises. It has also been directed that no other courts to interfere in the litigation. Apart from these facts, I wish to mention here that the plaintiffs plaintiffs-sansthan has discretionary power to conduct the internal administration. They have all power to do any internal changes for the safety and welfare of devotees. Thus, I do not deem fit proper to exercise the power under section 29 of the Act. Thus, considering the above discussion, I come to the conclusion that both applications have no merits. They deserve to be rejected. Thus, I pass following order.

Order

- 1] Both applications are hereby rejected.
- 2] Parties and their advocates to take note of order.

Sd/-

(V. V. Kulkarni)

Place : Shegaon.
Date : 05/10/2018.

Civil Judge Junior Division
Shegaon, District Buldana.

CERTIFICATE

I affirm that the contents of this PDF file are same word for words as per original.

Name of Steno : A.I. Shastri.
Name of Court : CJJD. Shegaon.
Upload date : 11.10.2018.