

MHKO110002242016



Reg. Civil Suit No.26/2016.

(CNR No.MHKO110002242016)

Order Below Exh.184.

01. Plaintiff made the present application under section 151 of Code of Civil Procedure (in short C.P.C.) for seeking police aid, to implement order passed vide **Exh.05**.

02. It is submission of the plaintiff that, in year 2016, he instituted the present suit for seeking the relief of perpetual injunction. In the said suit, he made an application vide **Exh.05**. The said application was allowed by this Court. While deciding the application vide **Exh.05**, this Court held his possession over the suit property. He further contented that, till today also he is owner and possessor of the suit property. Defendants preferred appeal to challenge order passed vide **Exh.05**. The said appeal was dismissed. After the order of this Court vide **Exh.05** and dismissal of appeal, defendants again started to obstruct to his possession over the suit property.

03. He further submitted that, before making the present application, he made an application with the same prayer vide **Exh.127**. In the present suit, there is five defendants. However, he seeking the prayer in the application vide **Exh.127** against non-applicants no.6 to 13 who are not party to the present suit. So, on that ground his application vide **Exh.127** was stands rejected. He filed a writ petition to challenge the order passed vide **Exh.127**. He withdraw the said writ petition with

the liberty that, he shall make necessary application. Hence, he made the present application. It is further contention of the plaintiff that, after passing the order vide **Exh.05**, defendants no.1 to 5, started to create obstruction to his possession over the suit property. So, he made various complaint with Vadgaon Police Station. However police did not initiate any action against defendants till today. He made a Misc. Civil Application bearing no.25/2022 against defendants under contempt of Court Act. On 27/10/2018, defendants no.1 to 5, kept some domestic articles in the suit property and thereby committed the violation of the order of this Court and they also continue to commit the violation of the order of this Court. He also made a private complaint bearing no.179/2023, against defendants no.1 to 5 and their respective advocates. As, defendants no.1 to 5, are continuously committing the violation of the order of this Court, hence, to properly execute the order of this Court, he is in need of police aid. So, he made the present application.

04. Defendants filed their say on the overleaf of the application. They submitted that, present application is not tenable in the eyes of law. In the writ petition preferred by plaintiff to challenge the order passed vide **Exh.127**, Hon'ble Bombay High Court did not pass any order, in respect of order passed below **Exh.127**. In spite of that, plaintiff made the present application with the false contention. Hence, before plaintiff made an application vide **Exh.127**. They filed their say to the application vide **Exh.148**. Court after considering the rival contention of both the parties, rejected the application vide **Exh.127**. Plaintiff to challenge the order passed vide **Exh.127** filed writ petition before Hon'ble Bombay High Court. However, Hon'ble Bombay High Court did not pass any speaking order while disposing the said writ petition. So also , the present application is illegal and liable to be rejected.

05. Defendants further submitted that, the contents of application vide **Exh.127**, and contents of present application are one and the same. As, previous application vide **Exh.127** with the same contention of the present application was decided. So, plaintiff has no right to make the present application, with the same contention and prayer as of application vide **Exh.127**. They further submitted that, their say vide **Exh.148** shall be considered while deciding present application. They finally submitted that, plaintiff *sou-moto*, withdraw the writ petition. Hence, he has no right to make the present application. So, the same is liable to be rejected.

06. Today, learned advocates Shri. D.N.Kulkarni submitted his oral arguments. He vehemently urged that, defendants no.1 to 5, after passing the order by this Court, vide **Exh.05**, and also after dismissal of the appeal, which preferred to challenge the order passed vide **Exh.05**, also continued to disturb his possession over the suit property. After passing the order vide **Exh.05**, plaintiff put some domestic articles in the suit property and thereby causing obstruction over the suit property. He also further argued that, plaintiff made various complaint with concern police station against defendants no.1 to 5, however police did not initiate any action against them. It is also submission of learned advocates appearing for the plaintiff that, application vide **Exh.127**, was made against the persons, who were not parties to the present suit. So, on that ground the said application was rejected. But, now he made the present application against defendants no.1 to 5 of the present suit.

07. Learned advocate appearing for defendants filed his written argument vide **Exh.202**. In the written argument learned defence advocate submitted that, plaintiff filed writ petition bearing no.3124/2023, to challenge order passed vide **Exh.127**. However,

plaintiff withdraw the same writ petition *sou-moto*. Hon'ble High Court did not give any liberty to the plaintiff to make the present application. He further submitted that, plaintiff submitting false that, he made various false complaint against defendants to various police stations. He further submitted that, defendants are in possession of suit property and not plaintiff. Plaintiff with the aid of police protection trying to grab the possession of the suit property. He further submitted that, even though plaintiff made a private complaint bearing no.179/2023 and also made a Misc. Civil Application bearing no.25/2022, till today no action was taken against them in both these proceedings. Plaintiff by misleading to the Court, illegally trying to take possession of the suit property from defendants. He finally submitted to reject the application.

08. Perused the application and say there on. Heard to both the sides.

09. Before dealing with the fact of present application, I would like to attract the attention of both the parties towards following judgments of various Hon'ble High Court and Hon'ble Apex Court.

10. In **Rayapati Audemma Vs. Pothineni Narasimham**, on reference the Division Bench of the composite High Court of Andhra Pradesh, it is held that,

"In view of these clear observations of their Lordships with regard to the scope and ambit of the inherent powers of the court under Section 151, Civil P. C. we are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of the court, the civil courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of Court or the exercise of the rights

created under orders of court. That the police authorities owe a legal duty to the public to enforce the law is clear from a decision of the Court of Appeal, reported in **R. v. Metropolitan Police Commr. (1968) 1 All ER 763**, where Lord Debnig, M. R. observed at page 769 as follows:

“hold it to be the duty of the Commissioner of police, as it is of every chief constable to enforce the law of the land.....but in all these things he is not the servant of anyone, save of the law itself. The AIR 1971 AP 53 responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”

11. Hon’ble Madras High Court in **Varadachariar Vs. Commr. Of Police (1969) 2 MLJ**, held that,

“If the police authorities are under a legal duty to enforce the law and the Public or the citizens are entitled to seek directions under Article 226 of the Constitution for discharge of such duties by the Police Authorities we feel that the civil courts can also give appropriate directions under Section 151 Civil P. C. to render aid to the aggrieved parties for the due and proper implementation of the orders of Court. It cannot be said that in such a case the exercise of the inherent power under Section 151, Civil P. C. is devoid of jurisdiction. There is no express provision in the Code prohibiting the exercise of such a power and the Court can give appropriate directions at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the Court's order in a lawful manner.”

12. The Hon’ble High Court of Andra Pradesh, in **Satyanarayan Tiwari Vs. S.H.O.PS. Santhoshnagar, Hyderabad and Ors.**, held that,

“No authority in the State, revenue or police, can ignore the finding of the Civil Court of refuse to take steps to see that the order of

the Civil Court is implemented and the party, in whose favour there is the order of the Civil Court, gets all help to maintain the law and order and not allow the other party to contravene the injunction order and create law and order problem.”

13. Hon’ble Apex Court in **Meera Chauhan Vs. Harsh Bishnoi (2007) 12 SCC 201**, held 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.”

14. In **Manohar Vs. Hira Lal : AIR 1962 SC 527** it is held that,

“while dealing with the power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court, this Court held that the courts have inherent jurisdiction to issue temporary order of injunction in the circumstances which are not covered under the provisions of Order 39 of the Code of Civil Procedure. However, it was held by this Court in the aforesaid decision that the inherent power under Section 151 of the Code of Civil Procedure must be exercised only in exceptional circumstances for which the Code lays down no procedure. 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. 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.”

15. In **Nirabai J. Patil Vs. Narayan D. Patil**, Hon’ble Bombay High Court held that,

“If Civil Court which has passed the order of temporary injunction takes a view that there is no power vested in the Court to direct the police to grant assistance for enforcing or for implementation of the order of temporary injunction, the very purpose of granting order of temporary injunction may be frustrated in a given case. It is the duty of every police Officer to enforce the law of the land. The duties of police officers are reflected in Section 64 and Section 66 of the Bombay Police Act, 1951. In my opinion, the view taken by the learned Trial Judge that "There is no provision for police and for execution of interim order, is totally incorrect. The learned Judge failed to appreciate that he has a power under Section 151 of the said Code to pass the order directing that police help should be made available provided facts of the case warrant passing of such order.”

16. In **N. Karpagam and Ors. Vs. P. Deivanaiammal**, Hon’ble Madras High Court held that,

“It is also relevant to refer the Division Bench decision of this Court reported in 1992 TLNJ 120 (cited supra), wherein after considering the relevant provisions relating to grant of injunction and Section 151 C.P.C. the Bench has concluded that, "In view of the above position of law, it has to be held that in appropriate cases, directions

under Section 151 of the Code can be issued by the Civil Courts to the police authorities to render aid to the aggrieved parties for the due and proper implementation of the order of AIR 2004 BOM 225 AIR 2003 MAD 219 temporary injunction or a decree for permanent injunction granted by the Civil Court.”

17. Thus, by considering supra cited case laws of various Hon’ble High Court and Hon’ble Apex Court it is emerged that, powers conferred by section 151 of C.P.C., to make such orders as may be necessary for the ends of justice or to prevent abuse of process of Court. Hence, by keeping this in mind, now let’s deal with the instant application.

18. Learned advocate appearing for the defendants to oppose the instant application, vehemently urged that, plaintiff before making the present application also made an application vide **Exh.127** with the same prayer. The same was stands rejected. Plaintiff filed a writ petition bearing no.3124/2023, before Hon’ble Bombay High Court. Plaintiff *sou-moto* withdraw the said writ petition. So, present application is not tenable in the eyes of law. Per-contra, learned advocate appearing for the plaintiff vehemently urged that, application made vide **Exh.127** was against some persons who are not parties to the present suit and only on that ground said application stands rejected. He further argued that, Hon’ble Bombay High Court granted liberty to plaintiff to take necessary steps to implement order passed by **Exh.05**. So, he withdraw the writ petition.

19. Plaintiff produced on record true copy of order passed in writ petition bearing no.3124/2023. On bare perusal the order of Hon’ble Bombay High Court in writ petition produced on record vide

Exh.199/1, it is seen that, plaintiff made a submission before Hon'ble Bombay High Court that, he will take steps in accordance with law to give effect to the order passed vide **Exh.05**. So, Hon'ble Bombay High Court, granted permission to the plaintiff to withdraw the said writ petition. By perusing the said order it is seen that, it is nowhere barred to the plaintiff for not making a subsequent application, which will be on the same footing of application vide **Exh.127**. On the other hand, if we consider the present application from the angle of *res-judicata* then also the same is tenable because the previous application made vide **Exh.127**, was against the persons who are not party to the present suit. In the previous application vide **Exh.127**, there were 13 non applicants including present non applicants i.e. defendants no.1 to 5. this fact also make crystal clear that, the previous application vide **Exh.127**, and present application vide **Exh.184** is not between the same parties. So, I am of the opinion that, the present application is tenable in the eyes of law.

20. Now, let's consider whether plaintiff prove that, after passing the order vide **Exh.05**, defendants no.1 to 5, obstructing to this possession over the suit property. For that purpose plaintiff relied upon photographs vide **Exh.141/1** to **Exh.141/4**. Plaintiff submitted that, these photographs are of the suit property and defendants illegally sitting in the suit property and also put some domestic articles in the suit property. During the argument learned advocate appearing for the defendants nowhere denied the truth-ness of these photographs. On the other hand, plaintiff produced on record affidavit of photographer vide **Exh.142**. The photographer submitted in his affidavit that, he take these four photographs and the same were of the suit property. Plaintiff also produced on record the bill of photos vide **Exh.141/7**. On perusing the date on the bill vide **Exh.141/7**, it is seen that, the same was of the

26/10/2018. This fact shows that, after passing the order below **Exh.05**, defendants entered into the suit property and they sit there alongwith some domestic articles. As, order below **Exh.05** was passed on 18/02/2017, and it is seen from the record that, on 26/10/2018 defendants were sitting in the suit property. So, considering both these dates, it is *prima-faice* seen that, after passing the order **Exh.05**, and thereby defendants temporary restrained not to obstruct plaintiff's possession over the suit property. However, inspite of that, they are entered in the suit property and thereby obstruct to the plaintiff's possession over the suit property. It is also seen from the record that, defendants no.1 to 5, continuously obstructing to the plaintiff's possession over the suit property, inspite of having temporary injunction order in his favour. So, plaintiff made a private complaint bearing no.179/2023 against them. So, considering above discussion, I am of the opinion that, plaintiff proved that, defendants no.1 to 5, committed the violation of temporary injunction order passed vide **Exh.05**. So, for the due and proper implementation of the order passed vide **Exh.05**, it is necessary to provide police protection to the plaintiff.

21. Defendants in support of their contention relied upon following case laws,

1. P.R.Muralidharan & Ors. Vs. Swami Dharmanand Thefrtha Padar & others. (2006 STPL 5504 SC)
2. Abdul Sukhure Bhai Vs. Durai Kuppuswamy (2005 STPL 10573 Madras)
3. P Shanker Rao Vs. Smt. B. Susheela (Civil Revn. Petn. No.5267 of 1999 / Date 20/01/2000)

22. In supra cited judgments **P.R.Muralidharan & Ors. Vs.**

Swami Dharmanand Thefrtha Padar & others. (2006 STPL 5504 SC), Hon'ble Apex court held that, “ a writ for police protection so called, has only a limited scope as when the court is approached for protection of rights declared by a decree or by an order passed a civil court. It cannot be extended to case where rights have not been determined either finally by the civil court or at least at an interlocutory stage in an unambiguous manner and then too in furtherance of the decree or order.”

23. In the present case in my hand, my learned predecessor while deciding application vide **Exh.05**, specifically held that, plaintiff is in possession of the suit property. So, I am of the opinion that, as this court come to conclusion by way of interim order that, plaintiff is the possessor of the suit property. So, considering this fact I am of the humble opinion that, supra cited judgment is not applicable to the present case in my hand.

24. In the supra cited judgment **Abdul Sukhure Bhai Vs. Durai Kuppuswamy (2005 STPL 10573 Madras)** Hon'ble Madras High Court held that, “there is no proper exercise of discretion in granting police aid. The learned District Munsif has not recorded any reason as to the necessity in ordering the police protection and the reasons for finding that the case in had was appropriate case for ordering police protection. There is improper exercise by the learned District Munsif in granting the police aid. The impugned order suffers from material irregularity and infirmity and cannot be sustained and is to be set aside.”

25. It is pertinent to note here that, on perusing supra cited judgment it is seen that, the fact and circumstances of the supra cited

judgment and present case on my hand are standing on two different footing. So, its my humble opinion that, supra cited judgment is not application to the case in my hand.

26. **P. Shanker Rao Vs. Smt. B. Susheela (Civil Revn. Petn. No.5267 of 1999 / Date 20/01/2000)** In the supra cited judgment, Hon'ble Andra-Pradesh High Court, held that, "Thus, it is not a case where the order to extend police aid was granted in order to ensure compliance with an order of injunction in force pending the suit. The mere fact that, the action could be taken against either party for flouting the injunction under Order XXXIX, Rule 2-A, or under Contempt of Courts Act does not come in the way of the Court taking all necessary steps for ensuring obedience of the injunction order. The court need not wait till the injunction is breached. In a fit case, the court can undoubtedly direct police aid as preventive measure. This power though not expressly conferred, is a power incidental or ancillary to the exercise of the power to grant injunction pending the suit. With great respect, I am not in a position to record my concurrence with the broad observations made by learned Judge that the, Civil Court cannot direct police aid for execution of the order interlocutory or final and that the party should only have recourse to the procedure laid down under Order XXI, Rule 32 or the Contempt of Courts Act. The observation are in the nature of obiter and therefore not binding on me. It is therefore unnecessary to refer the matter to the Division Bench, more so in view of the decision of this Court relied upon by the trial court. I would however like to point out that, the police aid should not be granted for mere asking. The Court has to be satisfied *prima-facie* that, there is an imminent threat of violation of interim order, if police does not intervene and that there is no other way of ensuring effective compliance. If, however and alternative could be found such as

deploying an office of the Court to oversee the implementation of the order, the Court can avoid granting order for police aid.”

27. On minutely perusing supra cited judgment it is also seen that, Hon’ble Andhra Pradesh High Court held that, the court need not to wait till the injunction is breached, in a fit case, the court can undoubtedly direct police aid as a preventive measure. In the present case in my hand, it is *prima-facie* proved that, after passing the order, below **Exh.05**, defendants no.1 to 5, commit the violation of the said order. So, I come to conclusion that, this is the fit case to provide police aid, to the plaintiff to properly implement the order passed vide **Exh.05**. On the other hand, in the supra cited judgment Hon’ble Andhra Pradesh High Court held that, if by deploying a Court Officer, interim order shall be properly execute then, in such situation court can avoid to grant police aid. In the present case in my hand, by considering the conduct on the part of defendants no.1 to 5, i.e. to sit in the suit property along with some domestic articles, is not prudent or advisable to deploy a court officer to properly implement order passed vide **Exh.05**. So, I am of the opinion that, to properly implement order passed vide **Exh.05**, it is necessary to grant police aid to the plaintiff. So, considering above discussion, I am of the humble opinion that supra cited judgment also not applicable to the present case in my hand. Hence, considering above discussion, I proceed to pass the following order -

ORDER.

1. The application **Exh.184** is allowed.
2. Police Inspector / Asst. Police Inspector of Vadgaon Police Station, is hereby directed to provide police aid of two

male and two female police constables to the plaintiff for due implementation of order passed vide Exh.05, dated 18/02/2017. Plaintiff shall pay the necessary charges of police aid.

3. Application is disposed off, accordingly.

Date : 08/05/2025.

(L. M. Pathan)
Civil Judge Junior Division,
Peth-Vadgaon.