

Order below Exh.39 in Regular Civil Suit No.141/2013.

This is an application moved by the plaintiff under Section 151 of the Code of Civil procedure for seeking Police aid.

2) Heard learned advocate Shri. V.G. Desai for the plaintiff and learned advocate Shri. R.P. Bandiwadekar for the defendants. Perused the application and say.

3) The plaintiff contended that she instituted the suit for the relief of declaration and perpetual injunction against the defendants. In view of order passed below Exh.5, defendants are restrained from cutting tamarind tree and removing the shed in the suit property and thereby, causing obstruction and interfering in her peaceful possession till final decision of the suit.

4) Plaintiff further contended that being aggrieved with the order passed on Exh.5, the defendant No.1 to 4 got enraged and with an evil intention to take a revenge, are openly threatening the plaintiff to cause her homicidal death and to wash out the evidence of murder, if she made the use and occupation of the suit property. The plaintiff lodged complaint against the defendants in the Police Station, Chandgad. But the Police instead of taking the cognizance, directed her to approach the Civil Court for the execution of the order passed on Exh.5. Therefore, in such circumstances and as no alternative and being a last resort, the plaintiff has filed the present application.

5) The defendants contested the application by filing their say vide Exh.40. Defendants denied the averments made by the plaintiff. Defendants contended that they have never disobeyed or made breach of the order passed on Exh.5. Defendants further contended that there is absolutely no any cogent evidence on record to establish that defendants have made breach of order passed on Exh.5. Defendants contended that unless there is existence of grave emergency such as apprehension of violence, the order of police protection cannot be passed. The order of police protection can only be passed in exceptional circumstances and it is an extreme step. So there is absolutely no cogent and convincing evidence on record to show that defendants have made any breach of the order passed on Exh.5. Defendants further contended that they have filed an appeal against the order passed by this Court on Exh.5 before the Hon'ble District Judge-

1, Gadhinglaj bearing Misc. Civil Appeal No.34/2016 which is pending. Hence, the application is liable to be rejected.

6) The learned advocate for the plaintiff submitted that as the defendants threatened the plaintiff to cause her homicidal death and wash out evidence of murder if she made use and occupation of the suit property. It means that there is apprehension and violence on the part of defendants. To substantiate his contention, he has filed the office copy of complaint given by the plaintiff to the Chandgad Police Station on 16/08/2016.

7) On the contrary, the learned advocate for the defendants submitted that as there is alternate remedy to the plaintiff under Order 39 Rule 2A of the Code of Civil procedure, the present application is not tenable. Hence, after taking into consideration the submissions made by learned advocates of both the parties, following points arose for my determination. I gave my findings with reasons thereon as under :

<u>Points</u>	<u>Findings</u>
1. Whether plaintiff has made out that there is apprehension of violence on the part of the defendants ?.	.. No.
2. Whether plaintiff is entitled to get Police aid for protecting her possession over the suit property ?.	.. No.
3. What order ?.	.. As per final order.

Reasons

As to point no.1 :

8) Plaintiff contended that with an intention to take a revenge, the defendants are openly threatening to cause her homicidal death and to wash out the evidence of murder, if she made the use and occupation of the suit property. The plaintiff has filed the office copy of complaint lodged by her against the defendants on 16/08/2016. The perusal of the list of documents vide Exh.46/1 revealed that complaint was lodged on 16/08/2016. However, the perusal of complaint revealed that complaint was lodged on 26/09/2016. The perusal of say of defendants vide Exh.40 revealed that defendants filed their say to the

application on 23/09/2016. The defendants in their say have contended that there is no any cogent evidence on record to establish that defendants have made breach of the order passed on Exh.5. Therefore, it appears that this complaint was filed by the plaintiff after defendants filed their say to the application with intention to create evidence in her support.

9) The plaintiff has also filed the order dated 17/09/2016 issued by the Police Station Officer, Chandgad Police Station. The perusal of copy of order revealed that it was only a photo copy. There is no record before me which would reveal that who had prevented to plaintiff from producing the true copy of the order of Police Station Officer. On the contrary, the perusal of photo copy of the order revealed that there are material alterations in the date of order. Furthermore, it appears that said order was passed on 17/09/2016 after filing the said application. The plaintiff has moved the present application on 08/09/2016. In my considered view, there was sufficient time with the plaintiff for producing the certified copy or any other documentary evidence which would show that she had approached to the Police Station for getting the police aid to protect the order of injunction. Hence, in my view if any prudent man in whose favour the order of injunction is passed, should not keep mum when defendants disobeyed the order of Court. Therefore, the conduct of plaintiff who was aware that the order of injunction is in her favour remained quite is bound to draw inference to me that there is no such grave emergency or apprehension of violence on the part of defendants.

10) The learned advocate for the plaintiff has relied on Judgment in Shrimati Ratnabai w/o Narayanrao Naik and another, Vs. Shri Satwarao s/o Narayanrao Naik [AIR 1995 Bombay 61]. Perusal of said Judgment revealed that application for grant of police aid by plaintiff for protecting his possession can be allowed in two circumstances (i) because of apprehension of violence or obstruction from judgment-debtor himself, (ii) because of conditions of a general character such as locality where execution will have to be effected being in a disturbed state or a class of people, similarly situated being likely to make a common cause with judgment-debtor and resist execution. In the said case, Hon'ble Bombay High Court held that "the special procedure for police help

would not be allowed unless there are reasonable grounds to suppose that the execution will not be effected without serious danger to public peace, because of apprehension of violence or obstructions from the judgment-debtor himself". However, in the present case, the plaintiff has failed to make out that there is serious danger to public peace, because of the obstruction from the defendants. Therefore, I hold that plaintiff has failed to establish that there is grave emergency to grant police aid. Hence, I answer point no.1 in the negative.

As to point no.2 :

11) In view of my answer as to point no.1, I hold that plaintiff has failed to made out existence of grave emergency or there is apprehension of violence on the part of the defendants. Hence, plaintiff is not entitled to get the relief of police aid. Hence, I answer point no.2 in the negative.

As to point no.3 :

12) In view of my answers as to points no.1 and 2, I hold that application is liable to be rejected. Hence, I proceed to pass the following order.

Order

1. The application is rejected.
2. No order as to costs.

Sd/-

(M. D. Thombare)

Civil Judge, Jr. Dn., Changdad.

Dated:- 17/10/2016.

C E R T I F I C A T E

I affirm that the contents of this P. D. F. file Judgment/Order are same,
word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. V. L. Tatkod, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	17/10/16
Judgment/Order signed by the P. O. on	18/10/16
Judgment/Order uploaded on	18/10/16