

MJC No.47/2016
Sanghpal/Yashwant+2

ORDER PASSED BELOW EXH.NO.22

(Passed on 7th January, 2019)

01] Perused application and say. Heard learned Advocate Shri.Mohd.Shareef for the applicant who is the respondent in the original miscellaneous judicial application and learned Advocate Shri.P.T.Gajwe for respondent who is the petitioner in the original application. Both the parties are referred in their nomenclature as the petitioner and the respondent for the sake of discussion and understanding.

02] This application is filed by respondents in view of section 151 of the Code of Civil Procedure for taking action against the petitioner for the breach of injunction order granted in favour of petitioner himself on 30/6/2016.

03] It is the case of respondents that on 30/6/2016, order of temporary injunction was granted in favour of the applicant for temporary restraining defendants from carrying out construction over 3 feet lane in between the house of the applicant and respondents. It is further submitted by respondents that the applicant obtained the order of temporary injunction but he himself constructed a block adjacent to his existing house on 3 feet wide lane. The present miscellaneous judicial application is filed by the applicant under Order 39 Rule 2-A of the Code of Civil Procedure for taking action against petitioner in respect of breach of injunction order passed in his favour on 30/6/2016. The order of temporary injunction was granted in favour of the petitioner in RCS No.40/2016. In short, the submission of respondents is that the order of temporary injunction was obtained by the applicant for not to construct on 3 feet wide lane situated in between his house and house of defendants. However, he himself made

construction over the said lane and thereby abused the process of Court. As such, respondents have prayed for taking proper action against the applicant under section 151 of the Code of Civil Procedure.

04] The petitioner has categorically denied allegations made against them and he submitted that respondents have not obeyed the order of injunction, therefore, they are not entitled for discretionary relief. It is further submitted that respondents themselves breached the order and carried out construction without taking sanction from Municipal Council, Kamptee, in 3 feet lane. It is further submitted that provisions of section 151 of the Code of Civil Procedure are not applicable in such matter when there is specific provision in the Code of Civil Procedure. Hence, the applicant's Counsel has prayed for rejection of the application.

05] It is worth to note that in RCS No.40/2016, an order of temporary injunction was granted against respondents restraining them from carrying out construction over the 3 feet wide lane situated in between the house of the applicant and respondents. It is the case of respondents that the applicant has himself breach the order of injunction granted in his favour. However, it is pertinent to mention here that no injunction order was granted against the petitioner but it was granted in his favor restraining respondent, therefore, it can not be said that the applicant has breached the order of injunction as he is not restrained by the order of this Court. So far as the breach of injunction order is concerned, specific provision are provides under section 39(2)(a) of Cr.P.C. which prescribed course of action and punishment to the person who committed the breach of injunction order passed by the Court. In the present case on hand,

as the order of temporary injunction is granted in favour of the applicant, the allegations of breach of injunction order are made by the applicant against respondents and as a result, the original application is filed by the applicant against respondents under Order 39 Rule 2(a) of the Code of Civil Procedure, which is pending for inquiry. During the continuance of the present proceeding, the present application came to be filed by respondents claiming that the petitioner himself breach the order of injunction.

06] It is pertinent to note that when injunction order restraining respondents from making of construction over the 3 feet lane is passed against respondents, it is quite clear that respondents are only restrained from making construction over the lane. Respondents have come up with the case that the petitioner himself carried out construction over three feet lane and breached the injunction order but the said fact if considered, in view of the provisions of Order 39 Rule 2 A of the Code of Civil Procedure, it appears that the said alleged act of the petitioner will not come within the purview of the said provisions . Moreover, the original application is for breach of injunction order committed by respondents, therefore, the inquiry of the present application is limited to the extent , whether respondents committed breach of injunction order passed by this Court. Even if, it is accepted that the applicant has obtained the order of injunction and carried out construction over the lane himself with the help of injunction order , the remedy of breach of injunction order will not be available against the petititoener . If the respondent is aggrieved by the act of the applicant, if anything done by him as alleged, then he may file proper separate proceeding in respect of breach of their rights.

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07] The learned Counsel for respondents have placed reliance upon **Baban Narayan Landge -vs- Mahadu Bhikaji Tonchar and others, 1989 Mh.L.J. 146**. In this Judgment, it is held by the Hon'ble Bombay High Court by referring to the provisions of Section 151 of the Code of Civil Procedure and Order 39 Rule 1 & 2 of the Code of Civil Procedure that a Civil Court has jurisdiction to issue at an interlocutory stage mandatory injunction as to restore the status quo anterior to the date of institution of a suit. It is further observed that Civil Court has jurisdiction to issue at an interlocutory stage a mandatory injunction so as to restore the status quo anterior to the date of institution of a suit. However, the said citation is not helpful to respondents in view of the differing facts and circumstances of the present case.

08] Thus, considering submission made by both parties and after considering the matter at length, it appears that the remedy of breach of injunction order is not available to the respondent against the petitioner for the simple reason that petitioner is not restrained but the order is passed in his favor. It is further pertinent to note that if respondents are aggrieved by the act committed by the applicant if any of alleged construction on three feet wide lade, he may take proper action by filing separate proceeding. Hence, following order is passed :-

ORDER

Application stands rejected.

Kamptee
Dt/- 07/01/2019

(A.D.Tidke)
Civil Judge (Jr.Dn.),
Kamptee

CERTIFICATE

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

Name of Stenographer : Sau.Sarika Rajesh Bale.

DISTRICT COURT
NAGPUR