Order below Exh.5 in Spl. C. S. No. 3/2023 in the matter of Adityaraj Deshmukh +1 Vs. Sudarshan Patil + 1

CNR No. MHOS12000007-2023

1. *Present application is filed by plaintiffs against defendants for interim mandatory injunction thereby directing them to pay amount of Rs. 9,00,000/- to the plaintiffs as compensation along with alternative prayer for interim mandatory injunction thereby directing them to deposit said compensation amount of Rs. 9,00,000/- in the Court along with alternative prayer for interim mandatory injunction thereby directing them to furnish bank guarantee in respect of said compensation amount of Rs. 9,00,000/- in the court along with alternative prayer for interim mandatory injunction thereby directing them to pay at least 50% of said compensation amount of Rs. 9,00,000/- to plaintiffs till the final disposal of the suit.*

2. *As per contents of application, to the Western side of plaintiff's land Bhumapan no. 287/B & 288/A, the land out of Bhumapan no. 287/A and 290 of defendants is situated. To the Western side of defendant's said lands there is one customary road from survey bandh. All the adjoining land holders including plaintiffs have been using said customary road since long ago. Defendant's bhumapan no. 287/A and 290 being adjacent to said customary road there is survey number bandh which proceeds in between bhumapan no. 287/A and 290 which all the adjoining land holders using since last 100 years for accessing the customary road situated to the Western side of defendant's said Bhumapan no. 287/A and 290 for purpose of transporting agricultural implements, agricultural produce, bullock-cart etc.*

3. *Plaintiffs use to cultivate their lands through labours as they regularly go to Pune and Mumbai in connection with their job. In year 2021 plaintiffs*

planted sugarcane seeds by expending Rs. 2,00,000/- in their bhumapan no. 287/B and 288/A. In crushing year 2021-2022 when plaintiff no.2 started cutting sugarcane for selling to sugar factory, the defendants with intention to cause loss to plaintiffs, destroyed survey number bandh situated in between survey no. 287/A and 290 and encroached upon area of said survey number bandh. By this way, defendants restrained plaintiffs from cutting and transporting their remaining sugarcane crop grown in 60 to 70 R. land area resulting in loss to the plaintiffs of Rs. 4,00,000/- in crushing year 2021-2022 and Rs. 4,00,000/- in the crushing year 2022-2023.

4. *Despite plaintiff's effort of explaining the defendants, they rest on their stand and told plaintiffs that they would be cultivating encroached portion of Sarbandh and would not allow them to use said Sarbandh. Thereafter, plaintiffs approached Tahsildar, Washi U/s 5 of Mamlatdars' Courts Act, 1906 who after taking into account panchanama and hearing the parties ruled that plaintiffs having right of use of said Sarbandh road and also prohibited defendants from causing any obstruction to plaintiffs in using it. However, while said proceeding before Tahsildar was pending, the defendants plucked 500 meters of pipe line of plaintiffs causing their loss of Rs. 1,00,000/-. It is further averted that, plaintiffs sent demand notice for payment of compensation amount to the defendants but of no use.*

5. *In view of all the above averments, plaintiffs filed suit for compensation of Rs. 9.00.000/- together with interest. However, as it would take time for deciding the suit, plaintiffs apprehend that, defendants would alienate/ sold their land gat no. 287/A & 290 which would eventually result into obstruction to the execution of decree. Accordingly, it is prayed to allow present application with object of securing the execution of proposed decree.*

6. *Defendants resisted the application by filing say at exhibit 12. They*

denied all the material averments of plaint. They pleaded that; plaintiffs have mentioned wrong boundaries in the plaint. They denied cultivation of sugarcane by the plaintiffs. They denied laying down of pipeline by the plaintiffs. They denied situation of survey no. 262 adjacent to 287/B and 288/A as averted by plaintiffs. They denied existence of any customary road to the Western side of survey no. 287/A and 290. They denied existence of any Sarbandh in between bhumapan no. 287/A and 290. They denied cultivation of sugarcane crop by plaintiffs by expending Rs.2,00,000/-. They denied selling of sugarcane by plaintiffs to sugar factory. They denied destroying of Sarbandh as averted by plaintiffs. They denied obstruction as averted by plaintiffs. They denied causing loss of Rs. 9,00,000/- as averted by plaintiffs.

7. *Defendants specifically pleaded about non-existence of any customary road and Sarbandh road as averted by plaintiff. They pleaded that panchanama prepared by circle officer is false and incorrect. They pleaded that; they would be filing appeal against decision of Tahsildar. They pleaded that; they would not alienate their land. They assailed application on the ground of maintainability. They pleaded that, defendant no.1 is not having any interest or title in relation to survey no. 287/A & 290, therefore, suit itself is bad for mis-joinder of parties. They pleaded that, predecessor-in-title of plaintiffs by name Lalasaheb Kawade was the cousin brother of father of plaintiff no.2. There was no dispute between father of plaintiff no.2 and said Lalasaheb Kawade in respect of survey no. 287/A, 287/B, 288/A, 289 and 290. They specifically pleaded that, there was never any road on Sarbandh. On the other hand, there are trees on Sarbandh and therefore, there is no question of using of said Sarbandh. It is specifically pleaded that, plaintiff having approach road to their field from survey no. 289, 288/A and 287/B. Plaintiffs having approach road from Southern side of survey no. 287/B which is called as "Ghodakwat". It is specifically pleaded that, firstly, court commissioner*

needs to be appointed in the matter. There is no entry of any 'right of way' in the revenue records. Accordingly, it is prayed to reject the application.

8. *Perused the application and say. Perused the record and documents. Perused the written argument submitted by plaintiffs at exhibit 16. Heard the oral arguments advanced by learned counsel for defendants. Following points arose for my determination. I record my findings thereon for the reasons to follow them –*

Sr. No.	***Points for determination***	***Findings***
1	*Whether plaintiffs prove prima-facie case in their favour?*	*No.*
2.	*Whether plaintiffs prove balance of convenience in their favour?*	*No.*
3.	*Whether plaintiffs prove irreparable loss to them in case temporary mandatory injunction is not granted?*	*No.*
4.	*What order?*	*As per final order.*

9. ***Reasons as to point no.1:***

Section 39 of Specific Relief Act, 1963 deals with relief of Mandatory injunction as the one which court feels necessary to be granted in order to prevent breach of an obligation by compelling performance of certain acts. In leading case law of ***Hon'ble Apex Court in the matter of Dorab Cawasji Warden Vs. Coomi Sorab Warden & Ors. reported in 1990 AIR 867,*** *certain broad prepositions of law were set in case of granting of mandatory injunction at interlocutory stage. In said ruling Hon'ble Apex Court held that, for grant of mandatory injunction at an interlocutory stage the plaintiff must show strong case of a higher standard than a prima-facie case that is normally required for prohibitory injunction. Similarly, plaintiff must also show that, interlocutory mandatory injunction is necessary to prevent an irreparable or serious* *injury which normally cannot be compensated in terms of money. In said ruling reference of 24 Halsbury's Laws of England (4th Edn.) para 948 was cited which provided that, mandatory injunction can be granted on an interlocutory application, but, in the absence of special circumstances, it will not normally be granted.*

10. *In case in hand, in real sense there is no question of restoring or preserving any status-quo of the last non-contested status because what plaintiffs claiming relief by way of suit and present application is not restoration of status-quo of last non-contested status but only a relief of compensation for damages caused to them as a result of breach of an obligation. So, basically, the nature of present application itself goes to show that, it is moved not to prevent any breach of an obligation but for relief of compensation resulting out of breach of an obligation. So, in my considered view, the very basic nature of present application and relief claimed thereby would not make out any prima-facie case for grant of interlocutory mandatory injunction.*

11. *It is to be noted that, there is vast difference in between claiming relief of interlocutory prohibitory or mandatory injunction for the purpose of preventing breach of an obligation and claiming relief of compensation for loss or damages suffered as a result of such breach of an obligation. The first relief is directed either for preventing breach of an obligation or for restoration of status-quo ante. The latter part is aimed at recovery of compensation which arose out of such breach of an obligation. In case in hand, what plaintiffs are claiming by way of interlocutory mandatory injunction is the final relief of compensation for loss or damages caused to them as a result of breach of an obligation by the defendants by the act of destruction of survey number bandh and pipeline. The case would have been different had plaintiffs moved present application for interlocutory mandatory injunction in order to prevent the defendants from destruction*

of said survey number bandh or pipeline. Therefore, essentially plaintiffs are claiming final relief of compensation for breach of an obligation in the disguise of interlocutory mandatory injunction. It is to be noted that, question of grant of compensation for loss or damages suffered is the question which certainly need evidence and trial without which the same could not be determined at this preliminary stage. The question of determination of compensation for loss or damages suffered could not be prima-facie determinable on the basis of certain documents which are yet to be gone into evidence to test their admissibility, relevancy and proof. So the very basic nature of relief claimed by way of present application does not fit in the category of relief of interlocutory mandatory injunction. Therefore, there does not arise any question of prima-facie case to exist in favour of plaintiffs on this count alone.

12. *Apart from the above discussion, the documents relied upon by the plaintiffs (which are filed with list exhibit 4) i.e. certified copies of 7*12 extract, certified copies of application made to Tahsildar Washi u/s 5 of Mamladars' Court Act and certified copies of proceeding held therein i.e drawn panchanama and order passed by Tahsildar in said proceeding thereby recognizing/declaring the right of plaintiffs to use road passing on survey number bandh of bhumapan no. 287/A, 290 and 289 would not be sufficient enough to hold a prima-facie case of a strong nature required in case of interlocutory mandatory injunction because these documents though disclose planting of sugarcane crop by plaintiffs but that would not be sufficient enough to hold that plaintiffs suffered loss as claimed by them by way of present application. The questions of whether there was survey number bandh or not?, whether plaintiffs having right to use said survey number bandh or not?, whether the defendants destroyed said survey number bandh or not?, whether there was any pipeline or not?, whether defendants destructed said pipeline or not?, whether there was sugarcane crop or not in the field of plaintiff?, whether due to act of*

defendants the sugarcane crop could not be cut and delivered by the plaintiffs to sugar factory or not?, whether there was any alternative way available to the plaintiffs for transporting their sugarcane to the factory or not? and what the exact amount of damages, if any, suffered by the plaintiffs as result of breach of an obligation by the defendants are all the facts in issue and relevant facts which needs to be put in trial for evidence and adjudication. On consideration of documents filed by plaintiffs at this stage nowhere all these questions could be answered. Most importantly, plaintiffs have stated that, there is apprehension to them of non-recovery of decreetal amount in case defendants alienates their properties which constrained them to file present application. However, this apprehension of plaintiff's come under totally different provision of law relating to "attachment before judgment". Even to that effect also there is nothing in the present application which would provide some particulars of proposed transaction which defendants intend to enter with respect to alienation of their properties. In this regard also plaintiffs have not shown basis of their apprehension. Therefore, on the basis of all this discussion, I have come to the conclusion that, plaintiffs have failed to prove prima-facie case in their favour. Resultantly, I record my finding to the point no.1 in negative.

13.***Reasons as to point no. 2 & 3:***

As discussed in answer to the point no.1, the nature of present application is not in real sense could be termed as for interlocutory mandatory injunction to prevent breach of an obligation. On the other hand, the very nature of present application is for claiming recovery of compensation amount for loss or damages already suffered as result of breach of an obligation. So, basically under such situation there does not arise any question of balance of convenience or irreparable loss being caused to the plaintiffs because plaintiffs are not claiming any relief for purpose of prevention of breach of an obligation which if not prevented would put *them into the irreparable loss situation. Under such situation there is no question of more comparative hardship to the plaintiffs than the defendants. On the other hand, what plaintiff essentially claiming is the final relief of compensation at this interim stage without there being any trial or without proof of certain facts as per Indian Evidence Act. Therefore, under such situation if relief as prayed is granted, irreparable loss would certainly be to the defendants. On the other hand, even if relief as prayed by way of present application is not granted there is no question of any irreparable loss to the plaintiffs because their pleading is with regard to loss which they already have suffered and they also even quantified that loss and claimed compensation accordingly. As plaintiffs have quantified loss suffered by them and claimed compensation accordingly for that loss by way of their pleading therefore, question of irreparable or non-quantifiable loss does not remain anymore. Plaintiffs are having remedy to prove that loss during trial by leading evidence and obtain necessary adjudication thereof and to get decree executed. On the other hand, without following such procedure of law, the interlocutory mandatory injunction as prayed by plaintiffs if allowed then irreparable loss would certainly ensue to defendants. Resultantly, I record my finding to the point no. 2 and 3 in negative and as answer to the point no. 4, I pass the following order -*

ORDER

1. *The application is rejected.*
2. *The plaintiffs shall bear cost of present application.*

Digitally signed by AMOGH PRABHAKAR KULKARNI
Date: 2023.07.20 17:09:40 +0530

(A.P. Kulkarni)
Jt. Civil Judge Senior Division,
Bhoom.

Date: 20.07.2023
Place: Bhoom.

CERTIFICATE

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

Name of Stenographer	---	Mr. Sayyad R.M. Stenographer - Grade II
Court	---	Mr. A. P. Kulkarni Jt. Civil Judge, Senior Division, Bhoom, District - Osmanabad.
Date	---	20/07/2023
Order signed by the Presiding Officer on	---	20/07/2023
Order uploaded on	---	20/07/2023