

Order Below Exh. 95 in R.C.S. no. 30/2021

(CNR No. MHRT080004552021)

By the present application, the plaintiff has prayed for mandatory injunction against the defendant No. 01 to remove the iron gate erected by him. It is also prayed that, defence of defendant No. 01 be struck out.

02. The plaintiff contends that, this Court has passed an order on Exh.06 on 07/07/2022. The defendant No. 01 is thereby restrained from interfering or obstructing the plaintiff from exercising right of way through a pathway, passing through land of defendant No. 01 in gat No. 56/4, from Jakadevi to Phungus road to the land of the plaintiff in gat No. 180/9 and 180/10.

03. Thereafter, on 19/07/2022, the plaintiff carried some of the fertilizer bags to his land through aforesaid pathway. However, wife of defendant No. 01 has then reached there. She obstructed the plaintiff. She did not allow the plaintiff to use that pathway for carrying remaining bags. The plaintiff was threatened. Thus, he made a complaint to police on 22/07/2022.

04. Again on 30/07/2022, the plaintiff was obstructed, assaulted and force was used against him. Said episode is video graphed.

05. On 27/11/2022, plaintiff was going to his land, with his labours. At that time, when he reached at the starting point of the pathway from Jakadevi -Phungus main road, he found that, from the side of said road, defendant No. 01 has erected a compound wall for his land. An iron gate is fixed at the point of the pathway. Said gate was locked. Thus, plaintiff could not use the way.

06. The plaintiff contends that, only to deprived him from use of the pathway, as per order dated 07/07/2022, below Exh. 06, such gate and compound wall is erected by defendant No. 01. Therefore, he is seeking

mandatory injunction against defendant No. 01 to remove said gate. He has also prayed for striking defence of the defendant No. 01.

07. Defendant No. 01 has filed reply below Exh. 104 and opposed the application. He contends that, the plaintiff was allowed to use the pathway. Any right or authority has not been granted to the plaintiff to demolish old compound wall. Taking disadvantage of the order of the temporary injunction, plaintiff has damaged and destructed the old compound, at two points. It was necessary for him to erect a compound wall to protect his mango trees in his land from the animals. As such, according to him, there is no merit in the contentions of the plaintiff. Moreover, the plaintiff has not sought the relief of mandatory injunction in the suit. Thus, he cannot seek such relief by way of present interlocutory application. Therefore, the application is liable to be rejected, contends the defendant.

08. Perused the record. Heard learned advocate Shri. A. A. Kadam for the plaintiff and learned advocate Shri. S. T. Dhawal for defendant No. 1.

09. Learned advocate Shri. Kadam has submitted that, in view of the facts stated and showed, it is necessary to direct the defendant No. 1 for removing iron gate laid by him. He contends that, this Court can certainly pass an order as per Rules 1 and 11 of Order XXXIX and u/s. 151 of CPC, for efficacious implementation of order for temporary injunction, he submits.

10. Learned advocate Shri. Dhawal, for defendant No. 01, on the other hand, contends that, when the plaintiff has not sought the relief of mandatory injunction, in his suit, such relief cannot be granted. Moreover, the plaintiff has broken the old compound wall at two points of that compound wall. Thus, plaintiff took disadvantage of order of T.I. passed by this Court. In fact, there is no way available for the plaintiff

through the land belonging to defendant No. 1. In all these circumstances, present application is liable to be rejected, he submitted.

11. Noticeably, both the learned advocates have referred to various photographs produced by them, to substantiate their respective contentions. Learned advocate for the plaintiff has also produced a pendrive containing alleged video.

12. At the outset, it need to be noted that, recording of evidence is not yet started. There is no evidence about identity of the persons in the photographs. Thus, the photographs produced are not of much use.

13. Pertinently, the defendant has not showed anything about destruction or demolition of old compound wall at two points of the compound, by the plaintiff, as alleged. Moreover, it is not denied that, the compound wall and particularly the gate is erected, after the order of temporary injunction below Exh. 6. It is not the case of defendant No. 01 that, there was any gate, even before 07/07/2022 (the day on which order is passed below Exh. 06).

14. It is thus made out that, the compound wall is newly erected. So also, particularly, iron gate is newly erected. If such a gate is kept in locked condition, the plaintiff will not be in a position to use the pathway as is allowed by order below Exh. 06 on 07/07/2022.

15. Now the question is whether the reliefs or any of the reliefs, sought by the plaintiff by present application, can be allowed. In this connection, the provisions of Rules 1 and 11 of Order XXXIX and section 151 of CPC need to be noted. These provisions read as follows-

Rule 1 of Order XXXIX Cases in which temporary injunction may be granted.-

Where in any Suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders.

Rule 11 of Order XXXIX Procedure on parties defying orders of Court and committing breach of undertaking to the Court -

1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or a proceeding gives an undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravence such order or commits a breach of such undertaking, the court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach is committed by the defendant or the opponent.

2) The Court may on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes, amends for the default or contravention or breach to the satisfaction of the Court.

Provided that, before passing any order under this Sub-rule notice shall be given to the parties likely to be affected by the order to be passed.

Sec.151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

16. Reading of the aforesaid provisions shows that, as per Rule 1 of Order XXXIX, the Court may by order grant a temporary injunction for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit, until the disposal of the suit or until further orders. As per section 151, the Court can make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

17. Co-joint reading of Rule 1 of Order XXXIX and section 151 of the Code makes it clear that, when the Court has passed an order for temporary injunction, it can also pass further appropriate order which seems necessary for the purpose of procuring effect to such order of temporary injunction. Thus, when the Court has restrained a defendant

from interfering or obstructing in the plaintiff's use or exercise of right of way, it can also pass further necessary orders to remove obstacles or obstructions created in use or exercise of such right.

18. In the given factual scenario, instead of direction for removal of gate, if the defendant No. 01 is directed to remove the lock of the gate and allow access to the plaintiff from the gate to exercise his right of way, as per order dated 07/07/2022, the object of that order can be secured.

19. In view of phraseology used by the provision of Sub-rule (2) of Rule 11, the Court can pass the appropriate order as is contemplated therein. Thus, even at the time of deciding an application seeking any relief as per Sub-rule (1) of Rule 11, the Court can make the appropriate order. Such order can be for the purpose of preserving effect of the order for temporary injunction by Court or an undertaking by the concerned party. Therefore, in suitable cases, appropriate directions can be issued so as to enable the concerned party to make or amend for the default or contravention or breach to the satisfaction of the Court.

20. In light of all these aspects, at this stage, the relief of striking out of defence of the defendant No. 01 does not appear necessary. Hence, I pass following order -

ORDER

1. Present application is partly allowed.
2. Defendant No. 01 shall remove the lock of the gate and shall allow access to the plaintiff in terms of order below Exh. 06 on 07/07/2022.

Date : 06.03.2023

(B. D. Tare)
Civil Judge (J.D.), Deorukh

- : C E R T I F I C A T E : -

Judgment/order in (Order below Exh. 95 in R.C.S No.30/2021)

I affirm that the contents of this Pdf file order are same words as per original order.

Name of Stenographer	:- S. S. Thaware (Jr. Clerk)
Court Name	:- The Court of Civil Judge (J.D.) & Judicial Magistrate F.C., Deorukh
Date	:- 06/03/2023
Order signed by PO. on	:- 06/03/2023
Order uploaded on	:- 08/03/2023