

ORDER BELOW EXH 14

The present application is filed by the plaintiff under the provisions of Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking a temporary injunction restraining the defendants, their servants, agents or any person acting through them from taking any coercive action, including demolition or removal of the suit construction, pursuant to the notice by defendants, till final disposal of the suit.

2. The case of the plaintiff, as pleaded in the plaint and reiterated in the application at Exh.14, is that she has constructed a shop premises in Survey No.69B/4 situated at village Kalmath, Taluka Kankavli, District Sindhudurg, on the basis of a consent granted by her father-in-law, Meghnath Maruti Patil. According to her, the defendants issued notice dated 13/03/2025 to the plaintiff directing removal of the construction and informing her that demolition action would be taken on 24/03/2025. The plaintiff contends that no opportunity of hearing was afforded to her prior to issuance of the said notice despite the Gram Panchayat being aware that the construction had been undertaken by her. She has further contended that the impugned notice is illegal, arbitrary and violative of the principles of natural justice. It is further her case that the suit shop is the only source of livelihood for herself and her family and that the defendants are selectively proceeding against her at the instance of a third person while ignoring several other alleged unauthorized constructions in the village. It is therefore contended that unless temporary protection is granted, she would suffer irreparable loss and injury and the very subject matter of the suit would be destroyed.

3. The defendants have resisted the application by filing say at Exh.15. The defendants have denied all material averments made by the

plaintiff and contended that the notice issued to the plaintiff is perfectly legal and forms part of the statutory procedure contemplated under Section 52 of the Maharashtra Gram Panchayat Act. It is specifically contended that the suit construction is unauthorized, without permission, in violation of the applicable planning and roadside regulations and liable to be removed. According to the defendants, the proceedings were initiated after receipt of complaint from Gargi Ganesh Rajput, who claims to be a co-sharer/adjacent possessor and alleges encroachment upon her property and right of way. It is further contended that the plaintiff is neither the owner nor lawful occupier of the property and has merely relied upon the consent of her father-in-law. The defendants have also contended that the plaintiff has not produced any material showing that the construction was authorized or that requisite permissions had been obtained. According to the defendants, an unauthorized construction cannot be protected by an order of temporary injunction and therefore the application deserves to be rejected.

4. Learned Advocate Shri S.B. Dalvi appearing for the plaintiff submitted that the original notice was issued to the plaintiff's father-in-law and thereafter the defendants issued a separate notice dated 13/03/2025 directly to the plaintiff, which constitutes the cause of action for the present suit. He further argued that although the defendants have repeatedly described Gargi Ganesh Rajput as a co-sharer, her name does not appear anywhere in the 7/12 extract produced on record by the plaintiff. He further submitted that though the defendants have asserted that action was initiated on the basis of Gargi Rajput's complaint, no such complaint has been produced before the Court. According to him, the defendants have failed to

substantiate their allegations and therefore the plaintiff has established a prima facie case warranting protection till disposal of the suit.

5. Per contra, learned Advocate Shri A.P. Barve appearing for the defendants submitted that the present suit is one seeking both perpetual injunction and mandatory injunction and therefore compliance with the provisions of Order VII Rule 3 of the Code of Civil Procedure is mandatory. According to him, neither the plaint nor the application discloses proper description of the suit property, its dimensions, nature of construction, date of construction or whether any permission was obtained prior to construction. He further submitted that the letter dated 05/06/2026 addressed by Meghnath Maruti Patil to the Gram Panchayat, produced by the plaintiff vide list at Exh.24, is an afterthought and the contents thereof themselves disclose that the construction was unauthorized since regularization thereof has been sought by expressing willingness to pay penalty. He therefore argued that an admittedly unauthorized construction cannot be protected by grant of temporary injunction and prayed that the application be rejected.

6. In view of the rival pleadings, documents placed on record and submissions advanced by the learned advocates for both sides, the following points arise for determination, for which findings are recorded for the reasons stated below.

Sr. No.	Points for Determination	Findings
1.	Whether the plaintiff has made out a prima facie case for grant of temporary injunction?	No

2.	Whether the balance of convenience lies in favour of the plaintiff?	No
3.	Whether the plaintiff will suffer irreparable loss and injury if temporary injunction is refused?	No
4.	What order?	The application is rejected with costs.

REASONS

AS TO POINT NOS.01 TO 04.

7. I have carefully considered the pleadings of both parties, the documents produced on record, the rival submissions advanced by the learned advocates and the material available on record. The present application is required to be decided in light of the settled principles governing grant of temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908. It is well settled that grant of temporary injunction is a discretionary and equitable relief. Before such relief can be granted, the applicant must establish the existence of a prima facie case, that the balance of convenience lies in his favour and that refusal of injunction would result in irreparable injury incapable of being adequately compensated in terms of money. These three ingredients are cumulative and each of them must coexist. The Hon'ble Supreme Court in ***Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719*** has reiterated that existence of a prima facie case alone is not sufficient and the Court must

also examine the balance of convenience and irreparable injury before exercising equitable jurisdiction.

8. The principal relief sought in the suit is a decree of perpetual injunction restraining the defendants from acting upon the notice dated 13/03/2025 and a mandatory injunction against the defendants. Thus, the foundation of the suit is the legality of the notice issued by the Gram Panchayat and the consequential proposed demolition of the alleged unauthorized construction. The plaintiff has challenged the notice primarily on the ground that she was not afforded an opportunity of hearing and that the action is arbitrary and actuated by extraneous considerations. On the other hand, the defendants contend that the notice forms part of the statutory process contemplated under Section 52 of the Maharashtra Gram Panchayat Act and has been issued for removal of an admittedly unauthorized construction. Therefore, the first question which arises is whether the plaintiff has established a prima facie legal right warranting protection pending adjudication of the suit.

9. The plaintiff has produced on record the notice dated 13/03/2025 issued by the Gram Panchayat addressed to her. A bare reading of the said notice reveals that it merely informs the plaintiff that demolition action would be undertaken on 24/03/2025 and directs her to remove the construction voluntarily before that date, failing which the Gram Panchayat would remove the same and recover the expenses incurred. The notice nowhere discloses that any prior opportunity was granted to the plaintiff to explain her case before directing demolition. The plaintiff has contended that although an earlier notice had been issued to her father-in-law, she herself was never heard before the impugned notice came to be issued. Whether such opportunity was in fact required, whether the statutory

procedure prescribed under Section 52 of the Maharashtra Gram Panchayat Act has been fully complied with and whether the notice satisfies the requirements of law are all matters which require detailed adjudication after evidence. At this interlocutory stage, it is not expected to finally pronounce upon the validity of the statutory notice. Nevertheless, the notice itself constitutes the immediate cause of action for the suit and raises a triable issue regarding the legality of the proposed action.

10. At the same time, the plaintiff has not produced any material whatsoever to prima facie establish that the construction sought to be protected is authorized. Except stating that the construction was made pursuant to the consent of her father-in-law, no document has been produced showing grant of building permission by the Gram Panchayat or approval by the competent planning authority. The plaint and the application are also conspicuously silent regarding the exact date of construction, the dimensions of the structure, the nature of construction and the permissions allegedly obtained. Mere consent of a family member cannot substitute statutory permission required under the applicable village planning laws. Consequently, the plaintiff has failed to prima facie demonstrate that the construction sought to be protected has been erected in accordance with law.

11. On the contrary, the plaintiff herself has produced on record the letter dated 05/06/2026 submitted by her father-in-law Meghnath Maruti Patil to the Gram Panchayat. A careful reading of the said document assumes considerable significance. In the said letter, Meghnath Maruti Patil requests the Gram Panchayat to regularize the existing shed, carry out assessment thereof and permit payment of house tax. More importantly, he specifically states that if prior permission was in fact necessary, he is ready

and willing to pay the prescribed penalty and requests the Gram Panchayat to regularize the structure. Such recitals prima facie indicate that the construction had not been regularized till the date of the said application and that regularization itself was being sought from the Gram Panchayat. Although the plaintiff has attempted to rely upon this document in support of her case, the contents thereof do not prima facie establish legality of the construction. On the contrary, the document raises a prima facie inference that the construction had not received statutory approval and that post facto regularization was being sought. Whether such construction is ultimately capable of being regularized is again a matter to be decided by the competent authority and, if necessary, during trial. However, at this interlocutory stage, document filed vide list at Exh.24 does not advance the plaintiff's claim that the construction is lawful.

12. Learned Advocate for the plaintiff has strongly contended that the entire action has been initiated only because of the complaint allegedly made by Gargi Ganesh Rajput and that the defendants have failed to produce such complaint. It has also been argued that Gargi Rajput is not shown as a co-sharer in the 7/12 extract produced by the plaintiff. These submissions certainly create certain factual disputes regarding the background in which the proceedings were initiated. However, even assuming that the defendants have not produced the complaint or that Gargi Rajput is not reflected in the revenue record, that circumstance by itself does not determine the legality or otherwise of the construction. The statutory power of the Gram Panchayat to remove an unauthorized construction, if otherwise available under law, is not dependent solely upon the complaint of a private individual. Once information regarding an unauthorized construction reaches the Gram Panchayat, the authority is

competent to examine the matter in accordance with law. Therefore, non-production of Gargi Rajput's complaint or absence of her name in the revenue record cannot by itself furnish a prima facie legal basis for protecting an otherwise unauthorized construction.

13. Learned Advocate for the defendants has also argued that the plaint does not sufficiently describe the suit property as required under Order VII Rule 3 of the Code of Civil Procedure. Indeed, the plaint does not specify the exact dimensions of the shop, its location within Survey No.69B/4 or the precise nature of the construction. Such deficiency may assume significance during trial while considering maintainability or identification of the property. However, at the present interlocutory stage, this Court refrains from recording any conclusive finding on the applicability or effect of Order VII Rule 3 CPC, since the question primarily concerns the maintainability of the plaint and identification of the property and would require fuller consideration after completion of pleadings. Nevertheless, the absence of detailed particulars regarding the structure certainly weakens the plaintiff's plea that a definite identifiable structure deserves equitable protection.

14. In the present case, although certain disputed questions regarding compliance with statutory procedure and observance of principles of natural justice arise for consideration, the plaintiff has simultaneously failed to place any prima facie material establishing that the construction itself is authorized. The equitable jurisdiction under Order XXXIX Rules 1 and 2 CPC cannot be exercised solely because the plaintiff may suffer hardship if the structure is demolished. Such hardship cannot override the statutory powers vested in the Gram Panchayat if the construction is ultimately found to be unauthorized. Consequently, I am

unable to hold that the plaintiff has established a prima facie case warranting grant of temporary injunction.

15. The balance of convenience also does not lie in favour of the plaintiff. Granting injunction at this stage would have the effect of restraining the Gram Panchayat from exercising statutory powers conferred upon it under the Maharashtra Gram Panchayat Act in relation to an apparently unauthorized construction. Such restraint upon statutory authority can be justified only when a strong prima facie case of illegality is demonstrated. On the other hand, refusal of temporary injunction would not finally determine the rights of the parties, since the legality of the notice and the consequential action would still be examined during trial. Therefore, greater inconvenience would be caused by preventing the statutory authority from discharging its statutory obligations than by declining temporary protection in favour of a construction whose legality itself remains seriously doubtful.

16. As regards irreparable injury, the plaintiff has contended that the suit shop constitutes the source of livelihood for her family and that demolition would cause irreparable loss. There can be no dispute that demolition of a commercial structure may cause hardship. However, irreparable injury in law must necessarily flow from invasion of a legally protectable right. Where the existence of such legal right itself is doubtful and the structure sought to be protected is prima facie unauthorized, the mere possibility of financial loss cannot by itself justify grant of injunction. If ultimately the plaintiff succeeds in establishing that the action of the defendants was contrary to law, appropriate reliefs in accordance with law would remain available. Therefore, the ingredient of irreparable injury, in

the facts of the present case, cannot outweigh the absence of a strong prima facie legal right.

17. Upon cumulative consideration of the pleadings, documents and surrounding circumstances, this Court is of the considered opinion that the plaintiff has failed to establish the essential ingredients governing grant of temporary injunction. The plaintiff has failed to prima facie establish legality of the construction sought to be protected. The balance of convenience does not favour restraining the statutory authority from exercising powers vested under law. Consequently, Point Nos.1 to 3 are answered in the negative and, in answer to Point No.4, the following order is passed.

ORDER

1. The application at Exh.14 is rejected with costs.
2. It is clarified that the observations made herein are prima facie in nature and shall not influence the final adjudication of the suit on merits.

Kankavli
Date: 07/07/2026

(Shubham G. Laturiya)
Civil Judge J.D., Kankavli
JO Code: - MH03297