

ORDER BELOW EXH.27 IN R.C.S.NO.33/2024.

Heard Mr. A.V. Deshpande learned Advocate for the plaintiff and Mr. N.V. Durgude learned Advocate for the defendant.

2] This is an application filed by the plaintiff and sought relief of police protection against the defendant under Section 151 of the Code of Civil Procedure for implementation of injunction order.

3] The plaintiff has averred that he has filed present suit for perpetual injunction against the defendants. The defendants have appeared and filed written statement and say to the injunction application. On 09/05/2024 an order is passed by this Court below temporary Injunction application. The Court issued temporary injunction against the defendants. Thereafter, on 03/08/2024 at about 4.00 p.m. the plaintiff was doing agricultural work, but the defendants again causing obstruction to the plaintiff. Thereafter, the plaintiff has tried to file complaint against defendants but police refused to take complaint on the ground of pending civil litigation.

4] The plaintiff has further averred that defendants are causing obstruction to the possession of the plaintiff, in spite of an order of temporary injunction in plaintiff's favor. Therefore, the plaintiff prays to give police protection for sowing and other agricultural work.

5] The defendants have filed say at Exh.32 & strongly resist this application. The defendants have contended that present

application is not tenable as per law. The defendants are law abiding citizens and therefore they had never tried to breach the injunction order. On the other hand plaintiff is trying to establish false case & therefore filed present application. Hence defendants prays to reject this application.

6] On going through the application, say and argument advanced by both the sides it seems that the plaintiff sought police protection order on the basis of temporary injunction order. Mr. A.V.Deshpande learned advocate for the plaintiff has vehemently argued that the plaintiff is having no man power. Temporary injunction order is in his favour, even though the defendants are causing obstruction. Hence it is necessary to issue police protection against the defendants. To substantiate his case plaintiff relied on decision of Hon'ble Bombay High Court in the case of Hemant Vasant Jagtap and another Vs. Haji Abdul Malik Haji Yunusisa and others, 2023(3)Mh.L.J., in which Honble High Court, held that, ***'In appropriate cases where the court is fully convinced about existence of grave emergency, such as apprehension of violence by the persons against whom the order has been passed, police protection can be provided for enforcement of an order of injunction under the provision of section 151 of C.P.C.'***

7] Per contra, Mr. N.V. Durgude learned advocate for the defendants argued that application is false and mischievous. Defendants never tried to breach the order of injunction. Application is filed after laps of considerable time. This itself shows that incidence is never happen. Moreover, the alleged complaint is

given by plaintiff through post office to Concern Police Machinery. If plaintiff was in urgent need of help of police protection he could have been speedily approach to concern police station in person and can ask for police aid. But the conduct of the plaintiff shows that the present false application is filed by them only to misguide the Court and to harass the defendants. The plaintiff is trying to get disadvantage of court order with the help of police, hence this application needs to be rejected.

8] Admittedly, an order below temporary injunction application is passed in favour of the plaintiff. No appeal is pending against said order. At the same time, the issue of possession yet to be decided finally. In view of ration laid down by Hon'ble High Court in Hemant Vs. Haji Abdul Malik(Supra), while police protection or police aid, Court has to be fully convinced about existence of grave emergency, such as apprehension of violence by the persons against whom the order has been passed. By applying this criteria to present facts and circumstances it appears that the alleged incidence is occurred on 03/08/2024. Plaintiff has filed police complaint at Mohol Police station on 06/08/2024 i.e. near about after 3 days complaint is filed by plaintiff. However the fact of filing complaint at Police station on 6/8/2024 and reason for 3 days delay is nowhere explained in present application by plaintiff.

9] Further most importantly, present application is filed by plaintiff on 17/12/2024. It means application is filed nearly after fore months of alleged incidence. There is no case of plaintiff of obstruction or breach of interim injunction order by defendants on

immediate previous days of application. In this back ground it is difficult to believe the version or case plaintiff stated in present application and defence of defendant seems more probable. Therefore police aid can not be granted in such situation.

10] Further more specifically, the plaintiff has remedy under Order 39 Rule 2-A which provides consequence of disobedience of breach of injunction against the alleged act of the defendants. The plaintiff has filed this application under section 151 of the Code of Civil Procedure. At this stage I am relied on **Shipping Corporation of India Ltd. vs. Machadeo Brothers** reported in 2004 (4) Mah.L.R.302 SC wherein it is held that "*if there is no specific provision then inherent powers under section 151 can be exercised.*" But in the present case there is specific provision under Order 39 Rule 2-A of the Code of Civil Procedure, the plaintiff can file separate proceeding against the defendants for the breach of injunction.

11] In given circumstances I am of the view that powers under section 151 of the Code of Civil Procedure cannot be invoked. As finality of the issue of the possession yet to be decided. Temporary injunction order, Misc. appeal order is pending before the Hon'ble High Court. In the result I proceed to pass the following order.

ORDER

Application (Exh. 27) is hereby rejected.

Date:06/03/2025
Place: Mohol.

(Smt. P.S.Govekar)
2nd Jt.Civil Judge Jr.Dn.Mohol.