

ORDER BELOW EXH.5

1. The applicant/plaintiff has moved this application under O-39, R 1 and 2 read with section 151 of the Civil Procedure Code for grant of temporary injunction.

2. The factual matrix of the case of applicant/plaintiff in brief is as under :-

That the applicant/plaintiff owns shop by name "Totla Automobiles" situated on Nazul plot no. 174, Sheet No. 18-D at Jaistambh chowk, Karanja Lad, Dist. Washim admeasuring 13.38 sq. mtr. The applicant/plaintiff purchased the said shop by registered sale-deed dated 24-12-1998. It is the contention of applicant/plaintiff that, there are two doors (shutter) to the said shop, one is from eastern side and another is from northern side. Towards, the eastern side of the said shop, there is public road situated on plot no.173/1. The public road is also situated towards northern side of said shop which is the front portion of said shop. The predecessor of applicant/plaintiff was and now applicant/plaintiff is using both eastern side as well as northern side doors (shutters).

3. That the defendant no. 1 to 4 have purchased eastern side shop situated on Nazul plot no. 175 of applicant/plaintiff's shop. The defendants thereafter demolished the old shop and constructed new one in September 2014. While constructing their new shop, defendant no. 1 to 4 have encroached on government land i. e. on road situated on plot no. 173/1, sheet No.18-D. The defendant no. 1 to 4 have also constructed Ota in front of their shop by encroaching on government land. That, the rain water of the roof of defendants shop is flowing towards the shop of applicant/plaintiff.

4. The applicant/plaintiff time and again requested the defendant no. 1 to 4 not to construct illegally and also to remove all their illegal

construction. The applicant/plaintiff has also filed application before defendant no. 5 i. e. Municipal Council, Karanja, but too of no use. The defendant no. 1 to 4 started their newly constructed shop by name "Chandradeep Enterprises" on plot no. 175.

5. That, on 02-09-2015, the defendant no. 1 to 4 kept their goods in front of eastern side door (shutter) of applicant/plaintiff's shop i. e. on newly constructed Ota. That, the defendant no. 1 to 4 have thereby closed the eastern way of applicant/plaintiff. Despite requests defendants no. 1 to 4 have not removed the said obstruction. The applicant/plaintiff had lodged report to the police station, Karanja, but of no use. Ultimately applicant/plaintiff issued legal notice to the defendants and thereafter filed present suit along with temporary injunction application. The applicant/plaintiff prayed for temporary mandatory injunction thereby directing defendant no. 1 to 4 to change the flow of rain water of the roof of their shop situated on plot no. 175. The applicant/plaintiff also prayed for temporary injunction thereby restraining the defendants 1 to 4 from obstructing his eastern side door and way.

6. The defendant no. 1 to 4 have appeared in the matter and filed reply vide Exh.09 and resisted applicant/plaintiff's claim. They have denied each and every adverse allegations made against them. They contented that, they have not encroached on any government land as alleged. They also denied that, they have carried out any new construction by demolishing the old construction without permission of defendant no. 5 i. e. Municipal Council. They admitted the applicant/plaintiff's ownership over plot no. 174, but they denied that the applicant/plaintiff has any way from eastern side of his shop. The defendant no. 1 to 4 have further come up with a case that, the construction of their shop is, as it is and they have only carried out minor repairs for which the permission of defendant no. 5 is not required. With this the defendant no. 1 to 4 have prayed for rejection of temporary injunction

application.

7. The defendant no. 5 have appeared in the matter and filed reply vide Exh. 15 to the temporary injunction application. They denied contention of applicant/plaintiff about his ownership over the shop for the want of knowledge. The defendant no. 5 come up with a case that, defendant no. 1 to 4 have constructed shop on plot no. 175 illegally and without their permission. The defendant no. 5 have also submitted that the defendant no. 1 to 4 encroached on government land by constructed their Ota on plot no. 173/1. They come up with a case that they are taking legal action against defendant no. 1 to 4 and in that respect notices were also issued to them. They submitted that the allegations against them are false and no relief can be granted against them. With this they prayed for dismissal of suit against them.

8. From the rival pleadings & the arguments advanced by the learned counsel for the parties, following points arise for my determination and I have recorded my findings against each of those for the reasons mentioned thereunder -

Sr.No	POINTS	FINDINGS
1	Whether the applicant/plaintiff proves prima-facie case in his favour?	No.
2	Whether balance of convenience lies in favour of the applicant/plaintiff ?	No.
3	Whether the applicant/plaintiff would suffer irreparable loss if interim injunction as prayed is not granted in his favour ?	No.
4	What order ?	As per final order.

REASONS**AS TO POINT NOS. 1 to 3 :-**

9. From the submissions of defendant no. 5 it is clear that, construction of defendant no. 1 to 4 is prima facie appears to be illegal and unauthorized. It further appears from the submissions of defendant no. 5 that, they are taking legal action against defendant no. 1 to 4 and in that respect notices were also issued to them. There is no reason to disbelieve the submission of defendant No. 5, being a local and independent body. Now it is worthwhile to see as to whether the said illegal construction prima-facie caused any obstruction or loss to the applicant/plaintiff.

10. It is seen in the matter that admittedly the applicant/plaintiff has another way i. e. northern side main door (shutter) to his shop from where he has admittedly approach way to the main road. The photographs filed by applicant/plaintiff himself on record goes to show that the northern side door is the main way of approach for the applicant/plaintiff and his customer to his shop. The photographs filed by the applicant/plaintiff in respect of old shop situated on plot no. 175 and the new shop constructed by defendant no. 1 to 4 on same plot goes to show that, both the old and new shop are constructed identically. Thus, though it appears that the defendant no. 1 to 4 have constructed shop illegally, but from the said fact only one cannot directly jump to the conclusion that the said construction any way cause hurdle, obstruction or injury to the applicant/plaintiff. This is more so as the applicant/plaintiff has other way of approach from northern side of his shop.

11. It is further seen in the matter that, applicant/plaintiff come up before the court claiming discretionary relief of temporary injunction that too after the construction of defendant 1 to 4 was completed. The applicant/plaintiff himself has come up with a case that, defendant no. 1 to 4

carry out construction of new shop in September, 2014 itself. The applicant/plaintiff has not given any reason as to why he has not approached to the court initially at the time of said construction. The latches of the applicant/plaintiff dis-entitle him from claiming discretionary relief of temporary injunction.

12. It is pertinent to note here that the right of way of applicant/plaintiff from eastern side of his shop is not recorded in any of government record. Though the applicant/plaintiff contended that he has way from eastern side door of his shop to the main road, his contention are not prima-facie established by any public record. The revenue record i. e. Aakhiv patrika of plot no. 174 filed on record by the applicant/plaintiff himself at document No. 10 below Exh. 4 goes to show that, applicant/plaintiff has approach way from northern side only. Thus, applicant/plaintiff prima-facie fails to establish that he is using the eastern side door of his shop to approach the public road.

13. It is seen that the plaintiff though coming with the case that the rain water from the roof of defendant nos. 1 to 4's shop is coming in his shop but there is no material on record to substantiate the same. Further the pleading of the plaintiff in that respect is also vague. The plaintiff has not clarify as to when the rain water from defendant NO. 1 to 4 came towards his shop. Mere on the say of plaintiff it can not be prima-facie said that the construction of the roof of defendant's shop is such that the flow of rain water directly comes towards the shop of plaintiff. The relief sought in that respect is mandatory in nature which can be granted only in rarest to rare case. If such relief will be granted at this interim stage, it will amount to decreed the suit without going into trial. In any case, there is no material on record to say that the plaintiff has made out strong prima-facie case so as to grant

temporary mandatory injunction in his favour.

14. Considering the fact that the government Local Body i. e. defendant no. 5 Municipal Council is taking action against defendant no. 1 to 4 for their illegal construction and the fact that prima-facie right of way from eastern side door of applicant/plaintiff's shop is not established by the applicant/plaintiff and as applicant/plaintiff failed to prove that any loss is caused to him due to illegal construction of defendant no. 1 to 4, I am of the opinion that, applicant/plaintiff fails to prove the required ingredients for granting temporary injunction and hence I am giving my finding to point no. 1 to 3 in the negative and in response to point no. 4, I pass following order.

ORDER

1. The application (Exh.5) is rejected.
2. Cost to follow the event.

Karanja.

Date : 03-12-2015.

(Smt. R. R. Lohiya)
 Civil Judge (Junior Division)
 Karanja (Lad), District Washim.

CERTIFICATE

I affirm that the contents of this P. D. F. File Judgment/Order are same word to word, as per the original Order.

Name of Stenographer	:	D.B. Lachure
Court Name	:	Civil Judge (JD), Karanja.
Date	:	03-12-2015
Order signed by the Presiding		
Officer on	:	03-12-2015
Order uploaded on	:	07-12-2015