
(2004) 07 BOM CK 0105
In the Bombay High Court
Case No : Appeal From Order No. 293 of 2004

Ajay Mittal Industrial Premises Co-op. Society	APPELLANT
Vs	
Raj Publicity	RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2005) 1 ALLMR 236 : (2005) 2 BomCR 360 : (2004) 3 CivCC 639 : (2004) 4 MhLj 305

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : S.P. Kanuga, for the Appellant; Navin Parekh and Hetal Patel, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—This Appeal from Order is heard finally by consent of parties.

2. The appellant is challenging the legality and validity of the interim order dated 23.1.2004 passed by the City Civil Court, Bombay, granting interim injunction in favour of the respondent- original plaintiff, whereby the appellants- are restrained from demolishing or destroying plaintiff's hoardings put up on the terrace of the building of the defendant-society.

The Facts:

3. The facts giving rise to the present appeal in nutshell are that the respondent-plaintiff instituted a suit against the present appellant claiming declaration that there was a concluded contract between the defendants and the plaintiff allowing the plaintiff to put up the Hoarding structures on the terrace of the defendants for displaying advertisements therefrom and also prayed for permanent injunction.

4. In the aforesaid suit, respondent-plaintiff took out notice of motion bearing

No. 26/2002 for interim relief.

5. The trial Court after hearing plaintiff was pleased to grant ad-interim order with liberty to serve notice of motion. After service, notice of motion was taken up for hearing. The City Civil Court, Bombay, by a cryptic order without recording any reasons in support thereof, has made the notice of motion absolute and thereby allowed the respondent-plaintiff to continue to utilise hoardings beyond the period stipulated in the written contract.

The aforesaid order is the subject-matter of challenge in the present appeal.

Consideration:

6. Having heard parties, if one turns to the impugned order, the order is running into four paragraphs. First paragraph only says heard the advocates. Second para describes the mere fact that the notice of motion was taken out by the plaintiff restraining the defendants from disturbing, demolishing and/or removing the plaintiff's hoardings from the suit premises. It is nothing but reproduction of prayer clause. Third para refers to the agreement and defaults committed by the plaintiff in payment of amount of monthly compensation with conclusion that dispute between the party is nothing but monetary dispute which cannot be ascertained at the stage of motion. Last para of the order states that ad-interim relief is running in favour of the plaintiff and against the defendants. That is how plaintiff is held to be entitled for order of temporary injunction restraining the defendants from demolishing or destroying plaintiff's hoarding. The trial Court with such perfunctory order proceeded to grant interim relief which is not only travelling beyond the scope of the suit but also beyond the period of the contract. The trial Court (sic) refers to any of the ingredients of Order 39 Rules 1 and 2 of the Code of Civil Procedure, which are required to be considered before granting injunction.

7. It is now well settled that granting or refusing to grant interim injunction is covered by three well established principles, viz.: 1) whether the petitioner has made out a prima facie case; (2) Whether balance of convenience is in his favour and (3) whether petitioner will suffer irreparable loss and/or injury if temporary injunction is refused.

8. The party who seeks the aid of the Court for injunction must show that the act complained of is in violation of his right and whether there is a fair and substantial question to be decided between the parties, and that there is a bona fide dispute between the parties. If such conditions are proved to be available, then relief can be prayed for. It is, then the duty of the Court to consider the materials placed on record in the matter of granting or refusing to grant temporary injunction. Considering the documents an appropriate interim order can be passed. The order granting or refusing to grant interim relief must contain some discussion with respect to the document placed on record. The order must reflect an application of mind on the part of the Court passing the order.

9. Interim reliefs are granted on the basis of the case made out in the pleadings finding that in the interest of justice interim order is necessary in order to prevent the abuse of process of law or to prevent wastage or to maintain the situation as on date or from recurrence of certain incident which were existing as on the date of presenting such application. The Court has also to take into consideration the balance of convenience and whether the petitioner would suffer any irreparable loss if no injunction is granted. The Court would not be justified in granting injunction without examining the matter in detail by merely saying that prima facie case was made, apart from stating that the other two requirements were fulfilled or not. Before temporary injunction can be granted, it is necessary to prove that irreparable injury is going to be caused which cannot be properly compensated in damages.

10. In the light of the above well recognised law, if one turns to the impugned order, there is absolutely no consideration muchless whisper about prima facie face, balance of convenience and/or injury which the plaintiff may suffer if no injunction is granted. The impugned order is most perfunctory and casual order. It exhibits complete non-application of mind on the part of the trial Court.

11. The Bombay City Civil Court is supposed to be model Court for all other subordinate Courts. The Judge of the Bombay City Civil Court was not expected to exhibit such callus, casual and perfunctory approach while passing interlocutory order. If one turns to the allegation made in the plaint, it is grounded only on one alleged legal right the plaintiff has a right to display its hoardings until the expiry of contracted period i.e. upto 31st December 2003. The said period has come to an end with the expiry of 31st December 2003. Thus, at any rate, trial Court ought to have restricted operation of injunction upto 31st December 2003. No such precaution is taken by the trial Court while granting interim order.

12. In the case of State of Orissa v. Madan Gopal, AIR 1952 SC 11, Apex Court has clearly held that an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceedings.

13. In the instant case, plaintiff itself does not pray for large relief in the plaint whereas by interim order trial Court has granted interim relief beyond the length and width of the plaint. The trial Court is not expected to make out altogether a new case which was not in the contemplation of the parties.

14. One more shocking undisputed fact in this case is brought to the notice of this Court by the learned Counsel for the appellant, that the plaintiff was in huge arrears of amount of monthly compensation. The trial Court had directed the plaintiff to deposit arrears of monthly compensation. The plaintiff did not comply with the said direction given by the trial Court. The plaintiff tried to cover its lapse by putting a lame excuse for non-compliance of the order directing deposit of arrears of amount of compensation. In this backdrop, it was expected on the

part of the trial Court while granting interim relief to find out whether or not the previous directions of the Court have been complied with. If not, it was expected on the part of the trial Court to grant conditional interim relief restricting its operation till the date of expiry of the period of license. As a matter of fact, as on date, the very purpose of the suit has worked out. The dispute raised in the suit has lost its relevance due to passage of time. Prayer clause in the plaint only makes out a case that defendants are not entitled to prevent the plaintiff from displaying advertisements from the suit structure so long as their period of contract is not over. Therefore, it is clear that no injunction could have been granted for period beyond 31st December 2003. As already found, the said period was to expire on 31st December 2003. Now, the said period has expired. On the above background, the impugned order is unsustainable and liable to be set aside.

15. In the result, the impugned order is quashed and set aside. Appeal is allowed with no order as to costs.

16. At this stage, learned Counsel appearing for the respondent prayed for continuation of the interim relief for a period of eight weeks. The said prayer is opposed by Shri Kanuga for the appellant. For the reasons stated in the judgment, prayer for continuation of the interim relief is rejected.