

(2018) 04 MP CK 0092
In the Madhya Pradesh High Court
Case No : MP.No.1005 OF 2018

Mehrunnisha And Others

APPELLANT

Vs

Rajeendra Rathore

RESPONDENT

Date of Decision : 13-04-2018

Acts Referred:

Constitution of India — Article 226, 227
Code Of Civil Procedure, 1908 — Rule Order 39 Rule 1, 2
Indian Evidence Act, 1872 — Section 65B

Citation : (2018) 04 MP CK 0092

Hon'ble Judges : SUJOY PAUL, J

Bench : Single Bench

Advocate : Jaideep Sirpurkar, Akash Singhai

Final Decision : Dismissed

Judgement

This petition filed under Article 226 of the Constitution takes exception to the orders passed by the appellate court in Civil Appeal No.1/18 whereby

the interference was declined on the injunction order dated 16.1.2018 passed in Civil Suit No.86A/16.Â

2. Draped in brevity, the admitted facts between the parties are that the respondent/plaintiff filed a suit for permanent injunction before the trial court

which was registered as Civil Suit No.86A/16. The trial court by order dated 12.12.2017 Annexure R/1 put the other side to notice and till next date

injunctioned the petitioners/defendants not to evict the plaintiff. Thereafter, the defendants entered appearance and filed their response to the application

under Order 39 Rule 1 and 2 CPC.

3. The court decided another application of plaintiff dated 8.12.2017 (Annexure P/2) by order dated 16.1.2018 and directed the defendants not to

interfere in the possession of the plaintiff.Â In addition, the plaintiff was directed to remove the wall constructed in front of suit shop.Â The

defendants unsuccessfully assailed this order in Regular Civil Appeal No.1/18 which was dismissed on 15.2.2018.

4. Shri Jaideep Sirpurkar, learned counsel for the petitioners assailed the impugned order by contending that (i) in the plaint averments and in the injunction application, there is no iota of pleading about raising of any such wall by the defendants in front of suit shop.Â In absence of pleadings, no amount of evidence can fill the lacuna; (ii) the injunction application does not contain any specific prayer for removal of wall; (iii) application aforesaid is not supported by any affidavit; (iv) the photographs on which reliance is placed by impugned order were not based on any pleadings; (v) no person entered the witness box to give credence to the said photographs; (vi) for grant of injunction, the necessary ingredients as laid down by Supreme Court in 1990 (2) SCC 117 (Dorab Cawasji Warden vs. Coomi Sorab Warden and others) should have been satisfied. In absence of any such ingredients, the court below erred in granting benefit to the plaintiff.Â In support of the said contention, reliance is also placed on 2006(3) SCC 312 (Kishore Kumar Khaitan and another vs. Praveen Kumar Singh).

5. Per contra, Shri Akash Singhai opposed the said contention. He submits that impugned orders do not suffer from any jurisdictional error. The courts below have assigned justifiable reasons for the findings. Initially, when order dated 12.12.2017 Annexure R/1 was passed, no wall was constructed by the defendants.Â It was constructed in undue haste to defeat the initial injunction order. Immediately thereafter, this fact was brought to the notice of the trial court by affidavit dated 19.12.2017 Annexure R/4.Â The defendants also filed photographs which substantiates the claim of the plaintiff.Â Neither plaintiff nor defendants filed affidavit in support of their applications/ reply.Â Thus, no fault can be found in the impugned orders.

6. Shri Sirpurkar during the course of arguments fairly submits that he is aggrieved by impugned order to the extent directions were issued for removing the wall. On rest of the part of injunction order, he has no objection.

7. No other point is pressed by the learned counsel for the parties.

8. I have heard the learned counsel for the parties and perused the record.

9. Indisputably, in the application filed by plaintiff under Order 39 Rule 1 and 2

CPC Annexure P/2, the plaintiff only prayed that if he is forcibly dispossessed from suit shop, it will cause irreparable cause to him and; therefore, a suitable order injuncting the defendants in this regard may be passed.Â Admittedly, in the plaint averments and in the injunction application (Annexure P/2), there is no pleading regarding construction of wall by the defendants.Â The lower appellate court has given a finding in this regard in para 11 of the order dated 15.2.2018.Â The first attack of the petitioner is based on the settled principle that injunction cannot be granted on mere asking.Â An order can be passed in the circumstances which are clear and the prima facie material is there to justify the passing of such order.Â The bone of contention of petitioner is that in absence of pleading no such injunction for removing the wall could have been granted.Â More so, when the photographs were not duly proved as mandated in Section 65B of Evidence Act, 1872. .Â In this regard, a judgment of this court reiterated in 2011(5) MPHT 199 (Kailash vs. Suresh Chandra) is relied upon by the petitioners.

9. The learned counsel for the plaintiff contended that when the suit and injunction application was filed and initial injunction order dated 12.12.2017

Annexure R/1 was passed, no wall was constructed by the defendants.Â The said wall was constructed after passing of injunction order dated

12.12.2017 Annexure R/1.Â This fact was brought to the notice of the trial court by filing affidavit Annexure R/4.Â

10. In the considered opinion of this court, this would have been better for the plaintiff to file a separate interlocutory application for removing the wall

containing a specific prayer in this regard.Â However, the very purpose of filing an application is to put the other side to notice about the case/claim

of the plaintiff.Â The format of such application is not very important.Â The affidavit Annexure R/4 in clear terms shows the case of plaintiff

wherein it is averred that in front of shutter of suit shop, the defendants have constructed a wall because of which plaintiff is unable to reach to the

suit shop.Â The place of entry to the shop is closed by raising the wall.Â Pertinently, the court below passed order dated 16.1.2018 by injuncting the

defendants to interfere in the possession of the plaintiff.Â The court below in order to give effect to its earlier order dated 12.12.2017 passed the

impugned order.Â No doubt, the photographs can be treated as secondary

evidence if statutory requirement ingrained in Section 65B is complied with.Â However, it cannot be forgotten that at present, the trial court was examining the existence of prima facie case in favour of the plaintiff.Â A microscopic reading of order of trial court dated 16.1.2018 shows that plaintiff and defendants both have filed photographs of the wall which is allegedly raised after passing of first injunction order.Â Â In para 8 of this order, the trial court referred about the photographs filed by present petitioners/defendants and opined that existence of wall in front of shutter of the shop is clear even from the photographs filed by petitioners/defendants.Â Thus, no prejudice is caused at this stage to the defendants if photographs of other side were considered by the trial court. Interestingly, in the present petition, the petitioner has not attacked the finding of para 8 of the order dated 16.1.2018 inasmuch as photographs filed by defendants were considered by the trial court.

11. At the cost of repetition, in the considered opinion of this court, submission of an application in a particular format is a procedural aspect. This exercise is being done in order to put the other side to notice and enable the other side to know the case of the claimant.Â In the present case, the defendants were fully aware that case of plaintiff so far IA is concerned was for removing the wall.Â They defended their case effectively and filed their set of photographs.Â Thus, it cannot be said that petitioners/defendants were taken by surprise and a relief is granted regarding which they had no idea.Â Putting it differently, the defendants clearly understood the claim of plaintiff in the IA No.1 coupled with their affidavit and therefore filed photographs of the said wall.Â This is trite law that a procedural aspect should not be given undue weightage.Â The Apex Court in 1975(1) SCC 774 (Sushil Kumar Sen vs. State of Bihar) opined that the mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.Â The processual law so dominates in certain systems as to overpower substantive rights and substantial justice.Â The humanist rule that that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable.Â Justice is the goal of jurisprudence â?" processual, as much as substantive.Â In (1976) 1 SCC 719 (State of Punjab vs. Shamlal

Murari), the Apex Court held that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.Â In (1984) 3 SCC 46 (Ghanshyam Dass vs. Dominion of India), the Apex Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.Â In (2005) 4 SCC 480 (Kailash vs. Nanhku and others), the Apex Court held that the provisions of Civil Procedure Code or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

12. The principles laid down in the judgment cited by Shri Sirpurkar cannot be doubted.Â The plaintiff, in the present case, could make out a prima facie case and satisfy the requirement of grant of injunction.Â The endeavour of courts below was to ensure that the basic injunction order dated 12.12.2017 is given effect to.Â If no interference is made on a wall constructed in front of shutter of the shop, the plaintiff will not be able to approach and enter the shop.Â This will automatically result into his dispossession from the shop.Â Therefore, the impugned order dated 16.1.2018 is nothing but an endeavour to ensure that the basic order dated 12.12.2017 is complied with.Â Putting it differently, the courts below have passed the impugned order to give effect to the basic injunction order and tried to disapprove the action of constructing wall to overreach the basic order of injunction. Pertinently, Shri Sirpurkar fairly contended that he had no objection against the interim order to the extent plaintiff's possession was protected.Â In my view, the construction of wall amounts to interference in possession of the plaintiff.Â Thus, impugned order cannot be interfered with on hyper technical ground.Â Interference under Article 227 of the Constitution can be made on limited grounds.Â In (2010) 8 SCC 329 (Shalini Shyam Shetty and another vs. Rajendra Shankar Patil), the Apex Court opined as under:

â??(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible

view.Â In other words, the jurisdiction has to be very sparingly exercised.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of

justice in such a way as it does not bring it into any disrepute.Â The power of interference under this article is to be kept to the minimum to ensure

that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the

functioning of the tribunals and courts subordinate to the

High Court.â??

(Emphasis Supplied)

A plain reading of this judgment shows that even a wrong order on facts and law cannot be interfered with on mere asking or on a drop of fact.Â In

view of aforesaid analysis, interference is declined.Â Petition is dismissed.