
(2007) 04 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 4214 of 2006

Rampyaribai Daga and others

APPELLANT

Vs

Niladevi Jakhotiya and others

RESPONDENT

Date of Decision : 30-04-2007

Acts Referred:

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

Citation : (2007) 5 ALLMR 95 : (2007) 4 MhLj 213

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : P.Y. and S.P. Deshpande, for the Appellant; M.G. Bhangde, for the Respondent

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.—Rule. Rule returnable forthwith. Heard finally by consent of parties.

2. By the present petition, the petitioners have challenged the order dated 21-3-2006 below Ex. 66 in Regular Civil Suit No. 436 of 1998 refusing to review the order below Ex. 58 dated 12-1-2006 passed by the 7th Joint Civil Judge, Jr. Dn., Amravati. There is a further prayer in the writ petition to direct the trial Court to decide the application (Ex. 37) under Order 39, Rule 2-A of the CPC before deciding the suit on merits along with other issues.

3. The petitioners filed Regular Civil Suit No. 436 of 1998 for declaration, possession and injunction with respect to 32 gunthas of land and a house thereon at Amravati and plot No. 5, Sheet No. 64 known as "Vijay Bagh" against the respondents. In the suit, an application for grant of temporary injunction was also filed. On that application, on 25-9-1998 the trial Court issued ex parte interim injunction against the respondents which was extended from time to time till 26-10-1998 and the parties were directed to maintain status quo till the decision of the application (Ex. 5) for temporary injunction. According to the

petitioners on 18-10-1998, though the order of temporary injunction was in operation, the respondents along with other 25-30 goondas came to the disputed premises at about 8.30 p.m. and forcefully entered the premises and removed the board of "Vijay Bagh" and also constructed two tin-sheds in the open land and threatened petitioner No. 2 and his family members. The petitioner, therefore, on 26-10-1998 filed an application under Order 39, Rule 2-A of CPC for breach of injunction which was granted by this Court on 25-9-1998 and continued till 26-10-1998. With these averments the said application was filed and it remained pending in the trial Court as, according to the petitioners, the records were lying with the appeal that was filed and the cases were transferred from time to time to various Courts.

4. Thereafter the case was fixed on 17-11-2005 when the respondents filed application (Ex. 58) and prayed for fixing the case for hearing and not for evidence on Ex. 37 which was the application filed under Order 39, Rule 2-A of Civil Procedure Code. The trial Court made an order on 12-1-2006 on Ex. 58 and ordered that the application (Ex. 37) under Order 39, Rule 2-A of CPC be decided along with other issues in the suit on merits and accordingly framed an additional issue for breach of injunction. This part of the order dissatisfied the petitioners and, therefore, they filed an application for review (Ex. 66) in the same Court which was rejected by the order dated 21-3-2006. This order is under challenge in the present writ petition.

5. Arguments:

Heard Mr. P. Y. Deshpande assisted by Mr. S. P. Deshpande for the petitioners and Mr. M. G. Bhangde, learned Senior Counsel for the respondents. Mr. Deshpande, Learned Counsel for the petitioners, vehemently argued that the proceedings under Order 39, Rule 2A are distinct and have to be tried separately from the trial of the suit. He argued that the breach complained of by the petitioners was during the period when the injunction order was in operation and, therefore, it was necessary to try the proceedings for breach of injunction independently. There is no reason or logic for framing additional issue of breach of injunction in the suit and to decide the same along with other issues in the suit. He then submitted that insofar as pendency of application (Ex. 37) is concerned, that was not because of the fault of the petitioner, but since the records were lying in the Appellate Court with the appeals and further the cases were transferred from one Court to another several times. At any rate, he submitted that the application (Ex. 37) has nothing to do with the merits of the controversy in the suit or the issues arising in the suit. In support of his submissions, he relied upon the decision of Allahabad High Court in the case of Gyan Chand Jain and others Vs. XIIIth Addl. District and Sessions Judge, Agra and others, .

6. Per contra, Mr. Bhangde, learned senior counsel, for the respondents submitted that the petitioners are guilty of keeping the application (Ex. 37) pending for number of years and that was one of the reasons why the trial Court rightly decided to hear that application along with the suit and the trial Court has

rightly framed an additional issue in the suit to that effect. He then submitted that the facts in the present case were peculiar and, therefore, the need or exigency to decide the application (Ex. 37) along with other issues in the suit on merit arose. He then submitted that no prejudice would be caused to the petitioners if the application (Ex. 37) is decided together.

7. Consideration :

Having heard the Learned Counsel for the rival parties and having given my anxious thought in the matter, I find that the proceedings under Order 39, Rule 2A of the CPC are absolutely independent proceedings. Whether there was breach of injunction or not is a question to be decided upon evidence and the said question has no relevance with the issues in the suit which are to be decided on merits of the suit. The eventuality of breach of injunction has occurred not at the time of filing of the suit but subsequent to the filing of the suit. The issues framed in the suit on merits of the suit cannot be mixed up with the trial of the application (Ex. 37) for breach of injunction. The question whether the petitioners would be prejudiced or not is not relevant. What is relevant is the practice and procedure that is required to be adopted while deciding the suit and the application for breach of injunction. As a matter of fact, in my opinion, the application for breach of injunction should be separately registered as Misc. Judicial case and should be tried by framing appropriate issues. Thus the proceedings for breach of injunction has absolutely nothing to do with the decision of the suit on merits. I fail to understand as to why the proceedings under Order 39, Rule 2A of CPC are not separately registered and separately tried by the learned trial Court.

8. Insofar as the delay in deciding the application (Ex. 37) is concerned, it appears that the order injunction that was made was carried in appeal before the District Judge and, as jointly submitted before me by the counsel for the parties, same is now sub judice in the writ petition which is admitted by this Court. The petitioners have also given a reason that because of transfer of the case from one Court to another, the said application could not be decided. This explanation is not unbelievable. Be that as it may, when the practice and procedure that is required to be followed is to try the proceedings for breach of injunction independently, the question of prejudice should not detain me in quashing and setting aside the impugned orders. In support of my reasons as aforesaid, the weighty reasons recorded by the Hon''ble Judge Shri G. P. Mathur in the case of Gyan Chand Jain and others Vs. XIIIth Addl. District and Sessions Judge, Agra and others, (supra) in paragraph 4 thereof, leads me to hold that the impugned orders are bad in law. The relevant portion of paragraph 4 of the said judgment reads thus :

A proceeding under Order 39, Rule 2-A, Civil Procedure Code, initiated on the ground of disobedience or breach of injunction order, is in the nature of a criminal proceeding as the person against whom such proceeding is initiated is liable to be detained in prison if it is found that he had committed breach of

injunction order. Since a punishment is imposed and a person is sent to jail, the principle on which these proceedings are decided are entirely different. Here the principle of criminal law will apply and the plaintiff will have to establish beyond any shadow of doubt that the defendants had committed disobedience or breach of the injunction order even though he had full knowledge of the same. The burden of proving its case in such cases lies entirely on the plaintiff. The principle on which a civil suit is decided are different as here decision on the issues arising out of pleadings is taken on the basis of preponderance of evidence. Therefore, a common judgment and order deciding the main suit as well as application under Order 39, Rule 2-A, CPC will not be proper.

9. In the result, writ petition is allowed. The impugned order dated 21-3-2006 below Ex. 66 and the impugned order dated 12-1-2006 below Ex. 58 passed by the trial Court in Regular Civil Suit No. 436 of 1998 are hereby quashed and set aside. The trial Court is directed to register the proceedings for breach of injunction below Ex. 37 separately as Misc. Judicial case and decide the same on its own merits by framing an issue and recording the evidence, if any. The trial Court is further directed to decide the said proceedings within a period of three months from the date of receipt of writ of this Court. As the civil suit is pending since 1998,¹ direct the trial Court to decide the same as expeditiously as possible and in any case within a period of nine months from the date of receipt of writ of this Court. Rule made absolute in above terms. No costs.