

(2013) 10 BOM CK 0026

In the Bombay High Court

Case No : Appeal From Order No. 1108 of 2013 with Civil Application No. 1306 of 2013 in Appeal From Order No. 1108 of 2013

Therakan D. Joseph

APPELLANT

Vs

M/s. Dolphin Developers

RESPONDENT

Date of Decision : 15-10-2013

Acts Referred:

Citation : (2014) 3 ALLMR 773 : (2014) 1 BomCR 848 : (2014) 4 MhLj 391

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : A.A. Kumbhakoni assisted with Mr. Rajesh Singh, for the Appellant; G.S. Godbole a/w Mr. S.A. Sawant and Mr. Ketan Joshi instructed by y Mr. Mujib Khan, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Heard finally, by consent. The Appeal from Order is filled by the Appellant-Original Defendant, as the learned Judge, City Civil Court, Dindoshi by ad-interim order dated 16 September 2013 passed the following mandatory order:-

1. Defendant is directed to remove lathe machine from the portion admeasuring 5 x10 sq. ft. from the suit property, more particularly described in Ex. A annexed to the plaint within a period of one month from today.
2. The Appellant-Plaintiff filed the Suit some time in September 2013 along with the Notice of Motion basically for monetary claim and also for a mandatory order/ injunction to remove the lathe machine from the portion of the land in question. Admittedly the Suit, as well as, the Motion is pending for hearing.
3. The learned counsel appearing for the Appellant-Original Defendant contended that there is no case for grant of ad-interim mandatory injunction, specifically at this stage of the construction and the development of the property in question. The law with regard to the grant of ad-interim mandatory injunction, as noted by

the Apex Court in *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, is as under:-

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

4. The learned counsel appearing for the Respondent-original Plaintiff has relied on the case of *Deoraj Vs. State of Maharashtra and Others*, and contended that there is no total bar to grant such mandatory injunction, if the facts and circumstances are made out to avoid extreme hardship or injustice. The grant of mandatory ad-interim relief was not the issue in *Deoraj (Supra)*.

5. There is no total bar that no ad-interim mandatory injunction can be granted, considering the scope and purpose of Order 39 Rules 1 and 2 of the CPC (for short, the CPC) read with Section 151 of the CPC and also considering the scheme of Specific Reliefs Act, but this is only on a foundation of the exceptional and compelling case, justifying the same, covering the extreme hardship, immediate and pressing injury and injustice would be caused, if such mandatory order is not granted.

6. The controversy revolved around and as submitted by the learned counsel appearing for the parties, needs to be considered at the time of final hearing of Notice of Motion in question. The Court may pass appropriate order as prayed.

The grant of ad-interim mandatory injunction, in my view, is not the case made out in the present facts and circumstances, for the reason that the construction and/or the development of the property in question is going on since long. It is not the case that the situation arose for the first time/recently and therefore, they have no option but to ask for such mandatory injunction. For further development certain steps are required, just cannot be stated to be a matter of great urgency and/or of any emergent hardship. The Plaintiff took its own time to take such action and now cannot be permitted to insist. The Court in such background, cannot direct by ad-interim mandatory injunction to remove those machines and basically against the owner of the property. The rival monetary claim/contention pending the Suit can be adjudicated at this stage, but certainly not the case of grant of ad-interim mandatory injunction as granted in the present case without considering the aspect of delay and laches. No ingredients as contemplated in Deoraj (Supra) is made out for such mandatory injunction.

7. Therefore, by keeping all points open, I am inclined to set aside the order of the ad-interim relief, as no case is made out. However, Notice of Motion is expedited and be disposed of within four weeks.

8. In view of this, the Appeal from Order is allowed. The parties are still at liberty to settle the matter. The Civil Application is accordingly disposed of. No costs.