



BEFORE 9th Jt. CIVIL JUDGE, (S.D.) PUNE.

Goel Ganga Constructions

... Plaintiff.

Vs.

Pune Municipal Corporation

... Defendant.

ORDER BELOW EXH. 5.

1. By virtue of present application plaintiff invoked jurisdiction of court for the purpose of exercising same as contemplated in provisions of Order XXXIX Rule 1 & 2 of Code of Civil Procedure, 1908, in terms of restraining defendant from assigning work of construction on suit property to other agency.

2. Before parting with the order it is necessary mention that, this suit has been transferred in pursuance with order of Hon'ble Principal District Judge, Pune in MCA No. 449/2019 dated 02/05/2019. Thus, record of proceeding received by this court from the court of Civil Judge (J.D.) Pune (PMC Court). For the decision of application in hand it appears that, the then Civil Judge (J.D.) Pune (PMC Court) was pleased to grant ad-interim temporary injunction vide order dated 11/09/2014. By many orders thereafter such order of interim injunction is extended till the matter reach to this court.

Brief facts of the application are as under :-

3. Plaintiff by virtue of suit challenge letters dated 15/05/2014 and 06/08/2014 issued by Pune Municipal Corporation thereby intending

to reassign work to some other agency which is already allotted to plaintiff. By way of temporary injunction application, plaintiff seek relief to the extent of restraining defendant from assigning the construction work to some other agency. Basically, it is a case of plaintiff that, after negotiation with defendant corporation, on public private partnership basis work of construction of the road is assign to plaintiff company. Such plaintiff company was supposed to perform certain acts towards performing their obligatory duties for completion of tender work. The concerned order through which work came to be assigned to plaintiff company has been mentioned in the documents attached with the suit. Voluminous record covering correspondence with documents related to tender work is place before the court. It is covered from the day of work order till August, 2014.

4. It is a case of plaintiff that, towards the completion of work on agreed terms, there were some obstructions by third party who is not concerned with suit proceeding. Plaintiff could not perform his part of obligation towards construction of road due to some encroachment by local resident in some portion of suit property. According to plaintiff, various land owners did not cooperated for handing over their respective portion for the construction work. Not only defendant but a consultant appointed by defendant is also made aware of such encroachment. In the absence of any statutory powers on the point of acquisition and removal of encroachment plaintiff plead that, it was and is the sole duty of defendant to remove such encroachment. However, defendant tried to deviate from their responsibility. On the other hand, they tried to shift their responsibility to plaintiff.

5. Plaintiff also pleaded in the suit that, in furtherance with contract, with part performance, they submitted RA bill which acknowledged by defendant through their represented officers certifying for necessary payment. In fact, payment was by way of credit note which plaintiff company was to get it discounted for the purpose of payment towards development charges.

6. Though being acquainted with issue of encroachment, defendant by alleging breach against plaintiff, issued letters dated 15/005/2014 and 06/08/2014 intending to reassign work to some other agency. In that regard plaintiff plead that, they have already made huge investment as well as, completed certain part of the work order. Thus, they would suffer irreparable loss if at all defendant proceed further with intended action. Therefore, by way of present application plaintiff pray for interim injunction.

7. In response to notice of application on behalf of defendant composite reply to the application and written statement to the suit is filed vide Exh. 22 on 17/11/2015 after condoning the delay. At the outset, defendant contended that, there is no breach on the part of defendant for the tender work assigned to plaintiff company. From the very beginning plaintiff construction company was aware of such encroachment which they agreed to remove on their own cost. Later on, with malafide intention they deferred from their stand. Accordingly, there is a breach of terms and conditions on the part of plaintiff. Thus, plaintiff company is not entitle for any relief of temporary injunction. Defendant specifically plead that, some encroachment is on the portion owned by plaintiff. Plaintiff themselves agree to remove such encroachment. However, such encroachment was

not remove. Defendant further submit that, plaintiff company paid amount of Rs. 58,57,470/- towards earnest amount for the work order at the very beginning. In such circumstances, defendant plead that, plaintiff is not entitle for any relief. Accordingly, prayed for rejection of application.

8. On considering rival contention and submission thereof, following points arise for consideration which are proposed to be answered for the reasons as mentioned below.

Points	Findings
1. Whether plaintiff shows a prima facie case in his favour ?	Affirmative.
2. Whether balance of convenience lies in favour of plaintiff ?	Affirmative.
3. Whether plaintiff will suffer irreparable loss if temporary injunction as prayed is not granted ?	Affirmative.
4. What judgment and order ?	... As per final order.

R E A S O N S :

9. Considering interconnected facts related to controversy between parties, restricted to present application in the backdrop of voluminous record, i propose to record findings for all points by common observation.

10. Restricted for present application, it is inevitable to mention parameters laid down for exercising the jurisdiction related to grant or refusal to grant temporary injunction. Exercising authority for temporary injunction is matter of discretionary relief by the court. Plaintiff or defendant as the case may be is required to point out exceptional prima facie case for the relief of temporary injunction. Balance of convenience as

well as, possibility of suffering irreparable loss are also relevant consequential consideration for the said purpose. Accordingly, if at all such parameters are convincingly disclosed to accept the plea of plaintiff, prima facie, it would be matter of readily ground of temporary injunction pending and hearing final disposal of suit.

11. So far as, prima facie case is concerned, it is mentioned that, prima facie does not mean to prove the case in whole at the very threshold of the proceeding. Several documents and available material are significant and accepted course for decision of application. Neither of documents can be ignored for that purpose. Determination whether prima facie case is made out or not is the evaluation on face of documents and other material presented by parties. It is to be inferred as to whether on the face of those documents, conclusion of proceeding is possible successfully as pleaded by plaintiff on the strength of such material with evidence. No doubt, authoritative pronouncement of judgment is not at all deserving at this stage.

12. To accept the case of plaintiff on the prima facie material it is necessary for court to draw the inference with conclusion of likelihood of plaintiff succeeding with suit and its possibility on the strength of available material. Said proposition, in my humble opinion would be justified and enough to understand case of parties. The party who claims temporary injunction has to make out the case for enquiry and with probable successful conclusion. In short, an impression in the mind of court must be created showing probable conclusion in favour of plaintiff.

13. At the initial stage of oral submissions learned advocate for plaintiff and learned advocate for defendant without any hesitation fairly conceded that documents filed and relied by plaintiff as well as referred by defendant are not disputed for its existence, contents as well as, its niceties for all purpose. Thus, it is conveniently submitted that, documents filed are required to be interpreted for the decision of application and suit. According to learned advocate for plaintiff, interpretation for drawing inferences for the purpose of deciding entitlement of plaintiff is a exercise to be undertaken.

14. Heard learned advocate Shri. S.S.Bhalerao for plaintiff. Heard learned advocate Shri. Kulkarni for defendant. Perused several documents filed on record. Gone through the submissions and previous orders passed by the then Civil Judge (J.D.) (PMC court) from date of presentation of suit till assignment to present court.

15. For understanding the nature of controversy with its four corner for decision on entitlement, I deem it and appropriate to reproduce the concluding paragraph of letters dated 15/05/2014 and 06/08/2014 which according to plaintiff is impugned material against them.

Reference:- (Letter dated 15/05/2014)

In continuation to our all earlier corresponded wherein you had not completed subject work within time limit even extended time limit also. Under ref above “31”, we have already given you notice, for non-compliances & work delaying without any reason has been resulting contractual failure from your end & may lead to the back listing of your company. You have submitted your unmeasured bill which has been rejected from our end because your intention shown that after getting

reimbursement you will not proceed for balance work completion. The same has been done by you more last 1 year you have to complete all balance work with in before coming monsoon then only your bill will be entertain.

This must please be treated as most urgent and has to comply without any further delay. Failing above you would be held responsible, please note.

This is has been issued to you as last & final intimation our end.

Sd/-xxx

Executive Engineer (Roads)

Pune Municipal Corporation

Reference:- (Letter dated 06/08/2014)

In continuation to our all above earlier correspondence with you; wherein you had failed to complete the subject work even in extended time limit up to 31st March, 2014. Moreover several reminders/ notices from PMC & Consultants had been issued to you under contract clause No. “42 of Additional General Condition of contract” page no. 110 of Vol-I last para wherein, 30 days has been passed & the desired progress had not been improved by you, inspite complete subject site dead lock has been done from your end. Under this contract clause corporation has full right to get it balance work done by deploying other agency at your risk & cost, please note.

Further under special condition of contract clause 19 & 20 page no. 92 of Vol-I clearly specifies that you will not be entitled for any claim/ compensation if the execution of work get delayed, so your all say for any claim so far stands rejected from Pune Municipal Corporation, please note.

Now Pune Municipal Corporation has liberty to deploy other qualified agency to complete the subject work at your risk & cost and if any consequences arises for completing the same, would be totally in your responsibility, please note.

This has been issued to you as last, full & final instruction from our end i.e. EE (Roads) Pune Municipal Corporation & no further correspondence would be entertained hereafter please note.

Sd/-xxx

Executive Engineer (Roads)

Pune Municipal Corporation

16. According to plaintiff, those two letters shows intention of defendant to reassign work to other agency. Conclusion and inferences drawn are without any substance. Those are illegal and without any sufficient material. It is against the principle of natural justice. Therefore, such findings should not be allowed to find a good ground for proceeding further which ultimately would hurt interest of plaintiff company.

17. For the purpose of considering submissions and to assess material on prima facie basis, series of letters filed relied and referred by both parties are given anxious consideration. Submissions of both parties are borne in mind. On prima facie basis importance and significance of those letter is taken into consideration for decision of application. According to plaintiff, there was an encroachment caused by local residents within the vicinity of propose site of road construction. Plaintiff also relied observations and orders passed by Civil Judge (J.D.) Pune (PMC Court) and maintain by Hon'ble District Court in a suit filed by some

of residents against PMC. In fact, it appears that, such suit is a out come of complaint filed by plaintiff and its director with PMC. The court is pleased to pass following order.

R.C.S.No. 1191/2017 (ORDER BELOW EXH.5)

ORDER

1. Plaintiff's application below Exh. 5 is partly allowed.
2. Defendant no. 3 is hereby restrained by an order of temporary injunction from operating, implementing and executing the notice dtd. 27.4.2017 till the final disposal of present suit.
3. Rest of the prayers in application stands rejected.
4. Costs in cause.

Pune
Date: 12/10/2017

Sd/-xxx
Civil Judge, Junior Division,
(PMC) Court, Pune.

18. Appeal preferred by director of plaintiff firm against such order is dismissed by Hon'ble District Court, Pune through following order.

MISC. CIVIL APPEAL NO.379/2017

ORDER

1. Appeal is dismissed.
2. No order as to costs.

Pune.
Dated: 02/01/2018

Sd/-xxx
(R.B.Agarwal)
Adhoc District Judge-1, Pune.

19. There is no hesitation about these orders which as on today hold a good ground. On prima facie consideration these orders may also have contributed to cause incapacity of plaintiff to complete the work. Defendant is also one of the party to those proceeding. They are aware of these facts. In fact, their appears no proceeding against persons causing encroachment independently by defendant. Now, in the backdrop of such scenario it is a matter of adjudication to conclude as to who committed breach on the point of agreed terms between parties. At the very threshold of the proceeding no inference can be drawn by jumping to any conclusion. Series of documents can only be looked into on prima facie basis. Anyway evidence is necessary on points involved in the suit proceeding. Only possible inference which can be drawn that, there is a dispute between plaintiff firm and residents lingering from a long period which ultimately got converted into suit proceeding.

20. It is the matter of record and admitted to larger extend that some portion of road is completed by plaintiff and is admitted by defendant. Officer of defendant corporation also certifying completion of such work. It is necessary to mention that, earnest amount of several lakhs is still pending with defendant corporation. However, on the point of encroachment there is a different version appearing from written statement in its corresponding version to series of correspondence between plaintiff and defendant. Defendant initially seems to have insisted that, it is for plaintiff to remove the encroachment but later on, slightly deferring with the previous version by saying that, plaintiff was to help defendant in removing such encroachment.

21. Prima facie it appears that, several bills submitted by plaintiff company that defendant were certified by officers of defendant corporation shows that, there was an positive steps for the completion of work allotted to plaintiff firm. It further appears that, series of letters issued by plaintiff company to defendant in regard to several meetings held with all relevant departments and their officers with the representative of plaintiff firm. Even after lapse of initial period after allocation of work, there was no progress by defendant and other department of government. Coordination appears lacking amongst the department of corporation with other department. This may also have caused hindrance in process of completion of construction. Prima facie inaction is appearing on the part of defendant.

22. In my humble opinion, those letters issued by defendant and their officers prima facie appears without any substance. Unless it is well founded that, breach is caused, no findings can be recorded against the interest of plaintiff company. Conclusion drawn by officer are without any material. Prima facie it appears that, without any substance and reason forthcoming, officer of defendant drawn a conclusion that, plaintiff is likely to disappear by not doing the further work. Therefore, defendant withheld payment. I do not agree with submissions of learned advocate of defendant to justify department action on all count.

23. Learned advocate for defendant in support of his contention relied a case of Hon'ble Supreme Court of India in Raunaq International Limited Vs. IVR Construction Limited. It is unreported judgment. He also relied a case of Mahadev Shelke Vs. Pune Municipal Corporation reported in (1995) 3 SCC 33. According to him, based upon ratio of those cases

plaintiff is not entitle for any relief. Learned advocate for plaintiff tried to distinguish facts. On considering submissions in the backdrop of ratio first of all proposition of law are respected. However, considering the facts those appears nonidentical with the facts of present suit. In one case issue related to acquisition is involved. In the another case litigation between two companies on the point of award of contract is involved. Neither of situation is identical with facts of those cases. Therefore, i am of the humble opinion that, ratio of those two cases are not applicable to present controversy.

24. The crucial point all together at the time of final decision would arise about responsibility of plaintiff towards alleged breach on the point of work order. Such point can be answered only after evidence is taken. However, at this stage, looking to the strength of documents a case of enquiry is made out by plaintiff on prima facie basis. Apparently plaintiff seems to have made a huge investment along-with depositing earnest amount. In such scenario, on considering case of both parties no hardship will cause to defendant in the backdrop of huge deposit of plaintiff available with them. On the other side, if defendant is not restrained, or allowed to continue with action in the backdrop of letters, irreparable loss will cause to plaintiff. Observations for removal of encroachment and empowerment in that regard are always governed by provisions of statutory powers. At this stage, plaintiff is expected by defendant to exercise such powers. Prima facie their appears no authority with plaintiff to remove such encroachment. By a further order of court of competent jurisdiction plaintiff is restrained after year 2017 from removing the encroachment. Such order is maintained by Hon'ble District court, Pune.

25. In that backdrop a prima facie case is made out by plaintiff disclosing his probable strength in documents filed and relied by him. On comparing case of both parties balance of convenience appears in favour of plaintiff. If defendant is not restrained on temporary basis likelihood of plaintiff suffering with irreparable loss can't be ruled out. Thus, based upon observations in preceding paragraph, on prima facie basis it is a matter of exercising the authority for grant of temporary injunction in favour of plaintiff as a equitable relief by extending the discretion based upon observations with reasons points arise for consideration are answered in affirmative. Thus, consequence of those findings for reasons and observations against points, contentions of parties stand parted with by following order.

ORDER

1. Application is allowed.
2. Defendant is temporarily restrained from taking any action in response to letters dated 15/05/2014 and 06/08/2014 by appointing any new agency against the work order till final decision of suit.
3. Suit being 5 year old is hereby expedited.

Date : 07/10/2019

Sd/-xxx
9th Jt. Civil Judge S.D., Pune.

Certificate

I affirm contents of this PDF file Order/ Judgment are as per original.

Name of Steno	: Mr. B.M.Salve
Court Name	: 9 th Jt. Civil Judge S.D. & Addl. C.J.M. Pune.
Date	: 07/10/2019
Order signed by P.O. On	: 11/10/2019
Judgment/Ord uploaded on	: 11/10/2019